

**COMMISSION OF INQUIRY INTO STATE CAPTURE**

**HELD AT**

**PARKTOWN, JOHANNESBURG**

10

**29 MAY 2019**

**DAY 101**

20

**PROCEEDINGS ON 29 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**: We are ready Chair.

**CHAIRPERSON**: Okay alright. I am told the technicians could not get things sorted out in time for us. I hope they will check them much earlier.

**ADV MAHLAPE SELLO**: We hope so.

10 **CHAIRPERSON**: So that we are not delayed in starting.

**ADV MAHLAPE SELLO**: Yes Chair.

**CHAIRPERSON**: For the future. Okay let us – let us continue.

**ADV MAHLAPE SELLO**: Thank you Chair. Chair we have taken the liberty of pulling out your volumes 3 and 1 because they are the next volumes we will dealing with. We hope that we will save you the time of searching for the volumes behind you. Mr Sedumedi when we parted yesterday we had – we were on slide 53. We had dealt with the RFP and you gave context to what you are about to talk about next.

**MR TSHIAMO MICHAEL SEDUMEDI**: Correct.

20 **ADV MAHLAPE SELLO**: You recall that we considered the provisions of the RFP and in particular spoke about the notion of break pricing.

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

**ADV MAHLAPE SELLO**: Chair.

**CHAIRPERSON**: So the lever arch file that we were using yesterday we do not need this morning?

**ADV MAHLAPE SELLO:** No that is Volume 2. We parted on Volume 2 which contains the RFP.

**CHAIRPERSON:** Yes.

**ADV MAHLAPE SELLO:** Mr Sedumedi has highlighted those aspects of the RFP that are relevant to this issue.

**CHAIRPERSON:** I have got only Volumes 1 and 3 on my desk.

**ADV MAHLAPE SELLO:** Yes and it is because we now move onto Volume 3.

**CHAIRPERSON:** Oh we are done with the other ones?

10 **ADV MAHLAPE SELLO:** We are done with two for now.

**CHAIRPERSON:** Ja that is what I was asking.

**ADV MAHLAPE SELLO:** Yes Chair.

**CHAIRPERSON:** Okay.

**ADV MAHLAPE SELLO:** So I was just recapping.

**CHAIRPERSON:** Alright.

**ADV MAHLAPE SELLO:** From yesterday that in considering Volume 2 we looked at the terms of the RFP and the conditions of – of engagement of bidding. And we parted on this

**CHAIRPERSON:** Yes.

20 **ADV MAHLAPE SELLO:** On the understanding that bidders were aware before they submitted their bids that Transnet reserved unto itself the right to reduce the number of locomotives to change the timeframe within which they must be delivered before contracting.

**MR TSHIAMO MICHAEL SEDUMEDI:** Correct.

**ADV MAHLAPE SELLO:** And that for that none of the bidders would

penalise Transnet by way of increasing the price per locomotive?

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

**ADV MAHLAPE SELLO:** We then considered the situation – the rights reserved by Transnet for itself post contracting which introduces the notion of break pricing should after contracting Transnet decide to terminate the contracts before all locomotives have been acquired there shall be a break price that is attached – that would be payable by Transnet as a consequence of that decision.

**MR TSHIAMO MICHAEL SEDUMEDI:** That is correct indeed.

- 10 **ADV MAHLAPE SELLO:** So we have put that to the side. You now have slide 53 which is annexed and it is titled Batch Pricing. Could you take the Chair firstly through the notion of batch pricing? Where it derives from and what your slide 53 communicates to him?

- MR TSHIAMO MICHAEL SEDUMEDI:** Thanks. The phrase batch pricing does not necessarily appear anywhere in the RFP document. The concept arose during one of the negotiations. Secondly on the memorandum that the then GCE Mr Brian Molefe submitted to the board accounting for an increase in the ATC. There was a cost element of R2.7 billion which was associated with what was called on that
- 20 memorandum batch pricing. However when now one especially in the context of what Advocate Sello has spoken about wanted to reconstruct what could this batch pricing be? You could directly infer to the paragraph on 3.1 in the RFP that speaks about the fact that Transnet does not expect to pay a price premium should it decide to reduce quantities of the locomotives. So that is the only time when the

concept of batch pricing arises.

**ADV MAHLAPE SELLO:** But then our understanding through you yesterday is should Transnet so decide or should Transnet split the award amongst various bidders there would not be a price attached to that decision?

**MR TSHIAMO MICHAEL SEDUMEDI:** It is correct.

**ADV MAHLAPE SELLO:** So now you are saying that the price that was imposed or the penalty imposed on Transnet for doing precisely that which is to split the award amongst different bidders gave rise to what  
10 is called batch pricing?

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

**ADV MAHLAPE SELLO:** But it does not help us to go into the RFP to try and understand what batch pricing is because RFP does not contemplate such a notion?

**MR TSHIAMO MICHAEL SEDUMEDI:** It does not contemplate such a notion that is correct.

**ADV MAHLAPE SELLO:** You say it arose during negotiations.

**MR TSHIAMO MICHAEL SEDUMEDI:** Correct.

**ADV MAHLAPE SELLO:** Can you take us through then the detail of  
20 that?

**MR TSHIAMO MICHAEL SEDUMEDI:** Alright. Chair the on the slide there that table that appears on the slide is a replica of a document that appears on Volume 3 page 5147.

**ADV MAHLAPE SELLO:** Is it necessary to go there or at least for the record you have confirmed that you uplifted it directly from that page.

**MR TSHIAMO MICHAEL SEDUMEDI:** Correct. Yes but we need not necessarily have to go to there but there is another one on 5148 which we did not reproduce. But maybe let us just take the Chair through this specific one. It will be found on page 5148 of the – 5147.

**ADV MAHLAPE SELLO:** Yes.

**MR TSHIAMO MICHAEL SEDUMEDI:** The – in terms of the PPM because the PPM did contemplate that parties may embark on a post tender negotiations. So the PPM expects that one there must be a team that must be set up and all members of the team must have sort  
10 of a consensus or a common approach or a mandate on negotiating various items that will form part of the negotiations. And as well they must seek approval from the board that indeed they can go and negotiate all those items. And we know as a matter of fact that indeed on this one there was a board submission that was prepared to get permission to go and negotiate. Now this document is a sheet titled Negotiation Baseline Worksheet. And it says Price. So there were different elements on price albeit that must be negotiated. Now on this issue it does say what is the negotiation point? It says batch pricing. This document comes from Transnet itself. Produced at that time of the  
20 negotiations albeit it is written draft it is – I must indicate because we talk about what is the relevance of that aspect. Then it says next item current offer. They typed in price changes based upon quantity ordered. It means this now what the drafter of this document is telling the negotiation team.

**CHAIRPERSON:** I am sorry I think I must go to what you are looking at

because I think you may be looking at Volume 3?

**ADV MAHLAPE SELLO:** Volume 3, 5147 Chair.

**CHAIRPERSON:** 5147?

**ADV MAHLAPE SELLO:** Yes Chair.

**CHAIRPERSON:** Okay.

**ADV MAHLAPE SELLO:** What is at 5147 is replicated on the slide.

**MR TSHIAMO MICHAEL SEDUMEDI:** I just picked up now Advocate Mahlape?

**ADV MAHLAPE SELLO:** Yes Sir.

- 10 **MR TSHIAMO MICHAEL SEDUMEDI:** That this specific one – the other ones have been attached but I think on my bundle I do not have the one that speaks to break pricing.

**ADV MAHLAPE SELLO:** Okay.

**MR TSHIAMO MICHAEL SEDUMEDI:** I think but we can use that one on the slide.

**ADV MAHLAPE SELLO:** That is fine.

**CHAIRPERSON:** Well I thought some of the things you were reading I could not see on the slide that is why.

**MR TSHIAMO MICHAEL SEDUMEDI:** No they are on the slide Chair.

- 20 Slide 53.

**CHAIRPERSON:** Oh maybe this one that I was looking at.

**MR TSHIAMO MICHAEL SEDUMEDI:** No that is it.

**CHAIRPERSON:** Okay.

**MR TSHIAMO MICHAEL SEDUMEDI:** Okay on slide if you repeat?

**CHAIRPERSON:** You have not got something to show us exactly where

it is?

**ADV MAHLAPE SELLO:** We tried that Chair and...

**MR TSHIAMO MICHAEL SEDUMEDI:** Let us see if it does not allow my point.

**ADV MAHLAPE SELLO:** Yes I understand there is something about white light.

**CHAIRPERSON:** Oh.

**ADV MAHLAPE SELLO:** So the pointer will not be able to work on the screen.

10 **CHAIRPERSON:** Oh okay alright well you can just do the best you can.

**MR TSHIAMO MICHAEL SEDUMEDI:** Okay, okay. On the top Chair.

**CHAIRPERSON:** To tell me. Ja.

**MR TSHIAMO MICHAEL SEDUMEDI:** On the top Chair the title says Negotiations base worksheet

**CHAIRPERSON:** Yes.

**MR TSHIAMO MICHAEL SEDUMEDI:** Price.

**CHAIRPERSON:** Yes.

**MR TSHIAMO MICHAEL SEDUMEDI:** And it...

20 **ADV MAHLAPE SELLO:** So before we go on. You stated that there were a number of these worksheets?

**MR TSHIAMO MICHAEL SEDUMEDI:** Correct.

**ADV MAHLAPE SELLO:** Dealing with different topics?

**MR TSHIAMO MICHAEL SEDUMEDI:** Different topics as it is apparent from page

**ADV MAHLAPE SELLO:** 5148 you indicated.



**MR TSHIAMO MICHAEL SEDUMEDI:** 51 yes.

**ADV MAHLAPE SELLO:** So these – did these worksheets reflect Transnet's agreed to negotiating position?

**MR TSHIAMO MICHAEL SEDUMEDI:** Okay. Can you just clarify that aspect Chair because these documents we received them from Transnet when we were conducting our investigations.

**CHAIRPERSON:** Yes.

**MR TSHIAMO MICHAEL SEDUMEDI:** And obviously as well when we had interviews with Mr Jiyani amongst others he confirmed that indeed  
10 people had mandates. But it turned out later after our – the [indistinct] report that this as Mr Jiyani said was just a draft document to guide the team. In our interview as well with Mr Laher and he confirmed in written that this is the only document that was provided to them to guide them in negotiations. So it is then now we know this was the document albeit being written in draft on a document but it was at least the document that was used as a guide to those who were negotiating.

**ADV MAHLAPE SELLO:** Okay. So as far as these negotiating worksheets are concerned you would like us now to consider the worksheet dealing with batch pricing?

20 **MR TSHIAMO MICHAEL SEDUMEDI:** The one dealing with batch pricing.

**ADV MAHLAPE SELLO:** Which is what we have at your slide 53 Volume 3 page 5147.

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

**ADV MAHLAPE SELLO:** Okay. Then you can take us through the

detail?

**MR TSHIAMO MICHAEL SEDUMEDI**: Alright. So you will see on that one [indistinct] negotiation point. The

**ADV MAHLAPE SELLO**: In the first column.

**MR TSHIAMO MICHAEL SEDUMEDI**: The first column.

**ADV MAHLAPE SELLO**: Okay.

**MR TSHIAMO MICHAEL SEDUMEDI**: On the left negotiation point and on the right it says batch pricing. So that is – now we know this specific worksheet deals with batch pricing and it then stipulates...

10 **CHAIRPERSON**: And negotiation point basically means negotiation item which it is not?

**MR TSHIAMO MICHAEL SEDUMEDI**: And [indistinct]

**CHAIRPERSON**: A point where they stand on a particular issue it is just a negotiation item.

**MR TSHIAMO MICHAEL SEDUMEDI**: Correct. It is a negotiation item.

**CHAIRPERSON**: Alright.

**MR TSHIAMO MICHAEL SEDUMEDI**: I think that is the better phraseology.

**CHAIRPERSON**: Ja.

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

**MR TSHIAMO MICHAEL SEDUMEDI**: It is a negotiation item. And the current offer because now this reflects what is on offer. It says price changes based upon quantity ordered. Right?

**ADV MAHLAPE SELLO**: Now on that price – current offer it is what is offered by the bidders?

**MR TSHIAMO MICHAEL SEDUMEDI:** That is what the document signifies.

**ADV MAHLAPE SELLO:** Okay.

**MR TSHIAMO MICHAEL SEDUMEDI:** Now the negotiation issues. So what is it that you must negotiate? The drafter of this document says? The price remains fixed as if order is placed for full 599 or for 599 for the electric or 465 for the diesel. So now we know this is what their team must note. Now what is important Chair is the comment – the column after comments. It gives the team.

10 **CHAIRPERSON:** Well just to go back negotiation issues. I know we said negotiation item earlier on. Now they say negotiation issues. But actually do they not mean Transnet's negotiation point there to say this is where we are, we stand, this is our position?

**MR TSHIAMO MICHAEL SEDUMEDI:** That is correct. I think – Chair you are quite correct that is how we understood.

**CHAIRPERSON:** Yes.

**MR TSHIAMO MICHAEL SEDUMEDI:** The issue to say this is the position that Transnet adopts...

**CHAIRPERSON:** Yes.

20 **MR TSHIAMO MICHAEL SEDUMEDI:** On this particular item.

**CHAIRPERSON:** Item exactly.

**MR TSHIAMO MICHAEL SEDUMEDI:** Being batch pricing.

**CHAIRPERSON:** Yes.

**MR TSHIAMO MICHAEL SEDUMEDI:** So that is how all these worksheets must be understood.

**CHAIRPERSON**: Yes, ja. They just got their terms mixed up a bit.

**MR TSHIAMO MICHAEL SEDUMEDI**: Correct.

**CHAIRPERSON**: Okay, alright.

**MR TSHIAMO MICHAEL SEDUMEDI**: Now after comments it is blank.

The terms at the bottom it gives ranges. What is the most desirable outcome? Was a list acceptable agreement and what is the target agreement if you go from first, second and third column? Because remember this is a negotiation so it might be and this point will come more clearer if you look at other points to indicate the ranges to say  
10 what is the most desirable outcome? What is the most least acceptable agreement and what is the target agreement? You will see on this one under all items it is remove batch pricing. So the most desirable outcome remove batch pricing. The least acceptable agreement remove batch pricing. Target agreement remove batch pricing. There is no change in terms of what is the scope that you give to the team? And this is consistent.

**ADV MAHLAPE SELLO**: Chair if...

**CHAIRPERSON**: Well I think what is – what gives rise to confusion is the dividing line between the horizontal column where you have most  
20 desirable outcome. Least acceptable agreement and target agreement. The dividing line creates the impression that where it says remove batch pricing is – enjoys the same status as comments, negotiation issues, current offer whereas from what you are saying it seems to me that that dividing line should not be there and remove batch pricing, remove batch pricing, remove batch pricing under different headings all

falls under the column that has most desirable outcome.

**MR TSHIAMO MICHAEL SEDUMEDI:** Correct.

**CHAIRPERSON:** What it – it means is that the most desirable outcome is the removal of batch pricing.

**MR TSHIAMO MICHAEL SEDUMEDI:** Correct because that [indistinct] is grey, yes.

**CHAIRPERSON:** And least acceptable agreement but that does make sense or does it?

**ADV MAHLAPE SELLO:** Chair may I?

10 **CHAIRPERSON:** Ja.

**ADV MAHLAPE SELLO:** If we go to Volume 3 page 5147.

**CHAIRPERSON:** Yes.

**ADV MAHLAPE SELLO:** What you have at slide 53 is an attempt to uplift that table in its entirety.

**CHAIRPERSON:** Hm.

**ADV MAHLAPE SELLO:** I think perhaps technology got the better of Mr Sedumedi and did not quite work out. It is better understandable at 5147 and the Chair can see the various option – outcome options that are considered.

20 **CHAIRPERSON:** Oh yes.

**ADV MAHLAPE SELLO:** And the position adopted by Transnet in each instance which is remove batch pricing.

**CHAIRPERSON:** Yes, yes. But in – in my – on my 5147 there is no remove batch pricing under most desirable, is that right?

**ADV MAHLAPE SELLO:** I am at

**CHAIRPERSON**: At 5147 are we on the same page?

**ADV MAHLAPE SELLO**: Apologies Chair. You swopped it around it is 5148.

**CHAIRPERSON**: 5148.

**ADV MAHLAPE SELLO**: 5148.

**CHAIRPERSON**: Okay.

**MR TSHIAMO MICHAEL SEDUMEDI**: Batch pricing.

**CHAIRPERSON**: I was only told of ...

**ADV MAHLAPE SELLO**: I apologise I only noticed when the Chair  
10 draws that to my attention. So what we have on slide 53

**CHAIRPERSON**: Yes.

**ADV MAHLAPE SELLO**: Is what appears at 5148.

**CHAIRPERSON**: That – it is much better. Ja.

**ADV MAHLAPE SELLO**: Yes.

**CHAIRPERSON**: It is – ja it is – one understands it much better.

**ADV MAHLAPE SELLO**: Yes.

**CHAIRPERSON**: I think I – on this one I am going to do something on  
this line that will make sure three months from now if I look at this page  
I will understand it the way I should understand it.

20 **ADV MAHLAPE SELLO**: 5148 Volume – yes Chair.

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

**CHAIRPERSON**: Okay but I wanted to say – I wanted to say – saying  
least acceptable agreement remove batch pricing and also having that  
as the most desirable did not seem to make sense to me.

**MR TSHIAMO MICHAEL SEDUMEDI**: Correct. You see Chair because I

think if you understand these – this was a template.

**CHAIRPERSON**: Hm.

**MR TSHIAMO MICHAEL SEDUMEDI**: This was a template he did not customise the template for every – for each item but we adopted a same template all [indistinct] changing was the – the mandate that they seek. So the – all the worksheets the headings most [indistinct] they appear as they are but I think the message that was being put across here is that under all circumstances the position was just view one. There is no variance on the position remove batch pricing so they just  
10 put in under all three items remove batch pricing. They were consistent at least in that regard.

**CHAIRPERSON**: Well I – You know I thought that what they meant was their most desirable outcome is remove batch pricing but that they will not or maybe I expected that they would not accept batch pricing under any circumstances.

**MR TSHIAMO MICHAEL SEDUMEDI**: Correct.

**CHAIRPERSON**: But that cannot be correct because they say, list acceptable. So it still – which means it is still acceptable. So list acceptable can only as I understand – It can only mean we can live with it  
20 but we do not want it. So but that is why it is still acceptable but we will take it and we will be – we will take it grudgingly you know whereas my expectation was that they would say, there is no way we are going to take batch pricing so remove it. That was my expectation but my reading of list acceptable agreement I do not know whether you have the same understanding is we can agree to it but we really will be

complaining.

**MR TSHIAMO MICHAEL SEDUMEDI**: But Chair if you look at what is the outcome that they want under the list of acceptable agreement is remove batch pricing.

**CHAIRPERSON**: Yes but it is...

**MR TSHIAMO MICHAEL SEDUMEDI**: It is an unfortunately.

**CHAIRPERSON**: They do not say we do not want it altogether under any circumstances. You understand?

**MR TSHIAMO MICHAEL SEDUMEDI**: I follow what...

10 **CHAIRPERSON**: It is like it is their bottom line.

**MR TSHIAMO MICHAEL SEDUMEDI**: Their bottom line is remove batch pricing because you will recall Chair...

**CHAIRPERSON**: Or maybe is bottom line the correct word maybe it is not the correct word.

**ADV MAHLAPE SELLO**: Chair may I perhaps see if we can try and understand that?

**CHAIRPERSON**: Yes.

**ADV MAHLAPE SELLO**: With reference to another page?

**MR TSHIAMO MICHAEL SEDUMEDI**: Correct.

20 **ADV MAHLAPE SELLO**: You have 5147.

**CHAIRPERSON**: Hm.

**MR TSHIAMO MICHAEL SEDUMEDI**: If you will get 5147 as an example Chair. Which was a for one to understand the context of how they use the sheets.

**ADV MAHLAPE SELLO**: So then if we compare the two.



**MR TSHIAMO MICHAEL SEDUMEDI:** Yes.

**ADV MAHLAPE SELLO:** The Chair will see that in the shaded areas and the – and what is typed in italics that appears to be the form – the manner in which the form comes.

**MR TSHIAMO MICHAEL SEDUMEDI:** Correct.

**ADV MAHLAPE SELLO:** What is typed in normal font is a response to the respective issues. So if – it would appear that every worksheet must indicate a position for the most desirable outcome, least desirable and the target agreement. So when one looks at 5147 the Chair  
10 realises the responses are different. At 5147 the most desirable outcome is no compensation for loss in profits only 50% of related [indistinct] costs paid for. The second then column says well if we cannot get the most desirable outcome what is the worst case position we can live with and that now says break pricing as offered by bidders. So there is a difference there. When we got to 5148 our understanding what is sought to be communicated is under any scenario we will not accept batch pricing. So even if you come out in the least – with the least acceptable agreement it should not provide for batch pricing. Could have been better, could have communicated the point better  
20 admittedly but in reading these worksheets that is the interpretation I think Mr Sedumedi led us to understand.

**CHAIRPERSON:** You see my understanding is that what this document sought to do is to give Transnet's negotiating team their mandate.

**MR TSHIAMO MICHAEL SEDUMEDI:** Correct.

**CHAIRPERSON:** For negotiation. Now when you give somebody a

mandate for negotiation you give them your first price.

**ADV MAHLAPE SELLO:** Yes Chair.

**CHAIRPERSON:** You might give them your second price, that price but one of the things you do is what the bottom line is and your bottom line might be if they are not prepared to for example remove this item there will be no agreement. Okay?

**MR TSHIAMO MICHAEL SEDUMEDI:** Hm.

**CHAIRPERSON:** That is one position.

**MR TSHIAMO MICHAEL SEDUMEDI:** Yes.

- 10 **CHAIRPERSON:** Another position is you say to your negotiation team this is my first price, this is my second price, this is my third price go and do the best you can but you know we cannot afford not to have an agreement with these people. I really do not like – I will not be happy if they do not agree to my first price, my second price, my third price but rather than have no agreement with them I will take this but I will be very unhappy.

**ADV MAHLAPE SELLO:** Yes Chair.

- CHAIRPERSON:** We will still have an agreement but I will be very unhappy. Now where it says least acceptable agreement it seems to  
20 me to be saying. I – we will still have – we will still accept an agreement that has got this but it is – it is the last – it is the – it is something that we will really take with – we will really be complaining we do not want it. It is just that the alternative of not having an agreement is something we cannot afford. So that is my understanding as opposed to saying if they insist on batch pricing there will not be an

agreement. That is different. I do not understand that to be what is communicated by least acceptable price or agreement.

**ADV MAHLAPE SELLO:** Chair.

**CHAIRPERSON:** But it may be that when one reads other documents then maybe reads them together one can come to a different understanding.

**ADV MAHLAPE SELLO:** I guess it will depend and we will see if Mr Sedumedi can assist us with that. Whether reference let us say to least acceptable agreement relates to the point under consideration or  
10 negotiation or relates to the agreement as a whole. Because if it relates to an agreement as a whole then this page would communicate in my view that when it comes to batch pricing even the least acceptable agreement will not have batch pricing. The last column says target agreement. What are we targeting agreement to look like in respect of all the various points under negotiation and insofar as batch pricing is concerned is the target is the agreement should not have batch pricing. So I say it depends what – whether agreement refers to agreement on the point or agreement as a document the contract to be concluded.

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

**CHAIRPERSON:** And maybe you are in a position to say what your understanding was or what your understanding is of what is being communicated here without what you may have been told during the investigation but you may have – this may have been clarified during the negotiations by relevant people and at Transnet to say this is what

we were communicating whether or not we succeeded in articulating it might be another matter.

**MR TSHIAMO MICHAEL SEDUMEDI:** But maybe let us address in two fronts Chair. At least this document on the face of it before the negotiations were completed it at least confirms that Transnet at its early stage at least they were still in [indistinct] the reason they put up this is – this was informed by the position in the RFP document but Transnet does not expect to pay a price premium should there be any reduction in the quantities. And that as we can see on that item like  
10 the Chair correctly said should be a negotiating – negotiation position but the price must remain fixed as if the order is placed for the full 500 [indistinct]. So that is consistent with the provisions of the RFP. Now Advocate Sello had said the items on the most desirable let us compare it with break pricing. On page – and any other one for that matter. It is – can break pricing or any of the sheets that Chair can look at.

**CHAIRPERSON:** And what was the break pricing now? You know we have got batch pricing now break pricing?

**MR TSHIAMO MICHAEL SEDUMEDI:** Okay you recall Chair yesterday when we...

20 **ADV MAHLAPE SELLO:** Mr Sedumedi I apologise. Chair you asked if we had done with Volume 2?

**CHAIRPERSON:** Ja.

**ADV MAHLAPE SELLO:** Perhaps it might be appropriate to go to Volume 2 because break pricing at least is specifically dealt with there.

**CHAIRPERSON:** Yes okay I just want to understand.

**ADV MAHLAPE SELLO:** And then Volume 2 and I will give you a page and then Mr Sedumedi can contrast break pricing and batch pricing.

**CHAIRPERSON:** Yes okay.

**ADV MAHLAPE SELLO:** Volume 2 Chair. Page 4552.

**CHAIRPERSON:** 455?

**ADV MAHLAPE SELLO:** 4552 it starts and overleaf there are two bullet points. The second bullet point specifically relating to break pricing is at 4553 at the top of the page.

**CHAIRPERSON:** Huh-uh. Yes.

- 10 **ADV MAHLAPE SELLO:** So perhaps the Chair can read that and then Mr Sedumedi will try to distinguish that batch pricing from break pricing.

**TSHIAMO MICHAEL SEDUMEDI:** Got it.

**CHAIRPERSON:** Okay, yes.

**ADV MAHLAPE SELLO:** Okay.

**TSHIAMO MICHAEL SEDUMEDI:** So break pricing envisage the situation we are at during the seven year (indistinct) that the OEMs will deliver the locomotives over a seven year period which is why the RFP then made provision for the table ...

- 20 **CHAIRPERSON:** Hm.

**TSHIAMO MICHAEL SEDUMEDI:** For the bidders to indicate in the event that Transnet opts to terminate ...

**CHAIRPERSON:** Hm.

**TSHIAMO MICHAEL SEDUMEDI:** The agreement at different stages. What would be the price of a locomotive for each of the three points ...?

**CHAIRPERSON:** Hm.

**TSHIAMO MICHAEL SEDUMEDI:** If I can ...

**CHAIRPERSON:** Hm.

**TSHIAMO MICHAEL SEDUMEDI:** Use that phrase. Now those prices as per the diagram there it says that must be called break pricing because if you look at the column at the – on that table – as an example Chair this is a (indistinct) schedule in batches. It indicates different delivery periods and they inserted a different number of locomotives per period and they are expecting the bidders not to  
10 indicate what will be their break price.

**CHAIRPERSON:** For a particular batch for a particular period?

**TSHIAMO MICHAEL SEDUMEDI:** Correct Chair.

**CHAIRPERSON:** That that is – that is the break price?

**TSHIAMO MICHAEL SEDUMEDI:** That is the break – that is the break price.

**CHAIRPERSON:** Thank you, thank you.

**ADV MAHLAPE SELLO:** Can I – can I interrogate that a bit? Is it a particular price for the particular batch or is it my pricing is based on a seven year delivery per locomotive and if after contracting you then  
20 reduce the quantities because I would have put up my production line to produce – let us say 599? I will have certain sunken costs in the first year that I was hoping would get (indistinct) I will recover over seven years but then if you bring it forward then I might be saddled with certain costs.

**TSHIAMO MICHAEL SEDUMEDI:** Correct.

**ADV MAHLAPE SELLO:** That I am not able to recover. If that were to happen you agree that if according to my bid I had given you R100 per locomotive in the first – the first year and R120 in the second year over a seven year period. If you break that – the contract in the third year I go back and revise my price for the first year. It is no longer R100. It is R150. That is the break pricing as

**TSHIAMO MICHAEL SEDUMEDI:** That is the break price.

**ADV MAHLAPE SELLO:** As I understand from the document.

**TSHIAMO MICHAEL SEDUMEDI:** That is it.

10 **ADV MAHLAPE SELLO:** Was that your understanding as well?

**TSHIAMO MICHAEL SEDUMEDI:** That is my understanding as well ...

**ADV MAHLAPE SELLO:** Okay.

**TSHIAMO MICHAEL SEDUMEDI:** Chairperson.

**CHAIRPERSON:** So it would be the price that would have been originally given plus whatever extra costs may the bidder would otherwise suffer as a result of no longer having to deliver over a seven year period?

**TSHIAMO MICHAEL SEDUMEDI:** Correct.

**CHAIRPERSON:** Okay.

20 **TSHIAMO MICHAEL SEDUMEDI:** And that would happen after the contract has already been concluded.

**CHAIRPERSON:** Yes.

**TSHIAMO MICHAEL SEDUMEDI:** It is (intervenes).

**CHAIRPERSON:** Yes.

**TSHIAMO MICHAEL SEDUMEDI:** This could only arise ...

**CHAIRPERSON:** *Ja.*

**TSHIAMO MICHAEL SEDUMEDI:** In a post contract award stage.

**CHAIRPERSON:** Yes.

**TSHIAMO MICHAEL SEDUMEDI:** It can be before ...

**CHAIRPERSON:** Three years four years?

**TSHIAMO MICHAEL SEDUMEDI:** Correct.

**CHAIRPERSON:** *Ja.*

**TSHIAMO MICHAEL SEDUMEDI:** Correct.

**ADV MAHLAPE SELLO:** Okay. Then we go to batch pricing now. We  
10 need to contrast batch pricing with that one.

**TSHIAMO MICHAEL SEDUMEDI:** Correct. So on page 5147 Chair a similar template but this time the negotiation item – not the point – I just spoke of a – the negotiation item is break pricing, right. Reduce risk and cost under (indistinct) and the current offer is a price due to (indistinct). So that tells you there is a bridge of a contract that has been already concluded by Transnet and the OEM. Now what is a negotiation stance? It says:

“The price remains fixed. No risk of additional cost  
to Transnet.”

20 But then again just like in batch pricing - the same table as you can see Chair. I am using the very same template. What is the most desirable outcome?

“The least acceptable agreement and a target  
agreement.”

Now you see on this one the most desirable outcome that Transnet will



desire – would like to have is no compensation for loss in profits only 50 percent of the related sunken – related sum costs paid for. Now what will be our – the least acceptable. If you say you have now been able to achieve that which we desire is to – it says break pricing as offered by the bidders. So you see now that is now an example that I just spoke about to say there is this range that is being offered to the team to say this is our target but in the event that you are not able to reach that target at least then accept – if you say you have lost on this point is when you have accepted the break pricing as currently offered

10 by the bidders. Now contracts distinguish that with batch pricing. On batch pricing if you use the same table the most desirable outcome is to remove batch pricing. The second option if you say you have lost still remove batch pricing. So therefore on this point it is not an option for you to accept the batch pricing as offered by the bidders. Thou shall not accept batch pricing. As to whether that will (indistinct) that is another issue all together. The bidder will try to demonstrate on its own is that at least that demonstrates that this draft document is consistent with what the RFP had already envisaged. So the drafters were quite alive to the fact that the mandate as per the FRP is that

20 Transnet should not pay a price premium as a result of reduction in the quantity of the locomotives that are delivered.

**ADV MAHLAPE SELLO:** Before contract conclusion?

**TSHIAMO MICHAEL SEDUMEDI:** Before the contract is been concluded.

**ADV MAHLAPE SELLO:** Yes.

**CHAIRPERSON:** At 54 – at page 5147 least acceptable agreement break pricing as offered by bidders. What do you say that – that means?

**TSHIAMO MICHAEL SEDUMEDI:** It means – remember if you compare with – you recall Chair on that table that we spoke about.

**CHAIRPERSON:** I want to say please do not compare it for now. We can compare it later (intervenes).

**TSHIAMO MICHAEL SEDUMEDI:** No, no I am not comparing.

**CHAIRPERSON:** Your under – *ja* just (intervenes).

10 **TSHIAMO MICHAEL SEDUMEDI:** My – my understanding ...

**CHAIRPERSON:** *Ja*.

**TSHIAMO MICHAEL SEDUMEDI:** Is this but in the bid documents ...

**CHAIRPERSON:** Hm.

**TSHIAMO MICHAEL SEDUMEDI:** Are submissions ...

**CHAIRPERSON:** Hm.

**TSHIAMO MICHAEL SEDUMEDI:** In response to that table that we read earlier on. The bidders have indicated that their prices would be for different stages ...

**CHAIRPERSON:** Hm.

20 **TSHIAMO MICHAEL SEDUMEDI:** Of Transnet breaking the contract. So there is – there are figures on the table.

**CHAIRPERSON:** Hm.

**TSHIAMO MICHAEL SEDUMEDI:** So the least acceptable means then accept that which the bidders have offered when they submitted their bids.

**CHAIRPERSON:** Yes. You see that is my own understanding ...

**TSHIAMO MICHAEL SEDUMEDI:** Correct.

**CHAIRPERSON:** To on that point ...

**TSHIAMO MICHAEL SEDUMEDI:** Yes.

**CHAIRPERSON:** And that is why when you go to the slide at 53 I was saying there seems to be a contradiction between saying – when you say the least acceptable agreement is remove batch pricing because least acceptable seems you will accept – it seems to say you will accept grudgingly but you are saying remove. So – so – but I think – I  
10 think irrespective of what the wording is maybe one should understand it to be that they actually did not want batch pricing at all.

**TSHIAMO MICHAEL SEDUMEDI:** Correct Chair.

**CHAIRPERSON:** Where they might just not have articulated that properly because maybe – maybe in regard to batch pricing the heading should have been unacceptable agreements – you know – so if you come back to us and say we must accept batch pricing that is unacceptable. So we will not accept that – you know – because I think that is what it seems they were trying to convey but when you say least – when you say least acceptable under 5147 ...

20 **TSHIAMO MICHAEL SEDUMEDI:** It (intervenes).

**CHAIRPERSON:** On the understanding that you give that – that I can understand.

**TSHIAMO MICHAEL SEDUMEDI:** Correct.

**CHAIRPERSON:** But I guess that what you are saying is when it comes to batch pricing your understanding was simply what they were saying

that will be unacceptable to have batch pricing.

**TSHIAMO MICHAEL SEDUMEDI**: Correct Chair.

**CHAIRPERSON**: And to – was that to the extent that if batch pricing was insisted upon by the bidders there would rather be no agreement?

**TSHIAMO MICHAEL SEDUMEDI**: On this point.

**CHAIRPERSON**: Hm.

**TSHIAMO MICHAEL SEDUMEDI**: At least on – on this point ...

**CHAIRPERSON**: *Ja*.

**TSHIAMO MICHAEL SEDUMEDI**: There can now be an agreement.

10 Now one would have expected the team to have done then in the event as it – as it turned out obviously there was a push back ...

**CHAIRPERSON**: Hm.

**TSHIAMO MICHAEL SEDUMEDI**: On this item.

**CHAIRPERSON**: Hm.

**TSHIAMO MICHAEL SDUMEDI**: It now speaks to how then do we depart from the provisions of the RFP ...

**CHAIRPERSON**: Hm.

**TSHIAMO MICHAEL SEDUMEDI**: At this point ...

**CHAIRPERSON**: Hm.

20 **TSHIAMO MICHAEL SEDUMEDI**: Because when the bid was advertised ...

**CHAIRPERSON**: Hm.

**TSHIAMO MICHAEL SEDUMEDI**: It was made clear to all the bidders that we reserve the right to – these awards between more OEMs the effect of which will obviously lead to a reduction in quantities and in

that same table on page 4552 of volume 2 ...

**CHAIRPERSON:** Hm.

**TSHIAMO MICHAEL SEDUMEDI:** Transnet said it does not expect to pay a price premium should there be – should it – it has an option of changing qualities. So that is what was pronounced in the RFP.

**CHAIRPERSON:** Hm. Well I am not sure what they – what they had in mind but surely if we have an agreement over a seven year period and that agreement entails that from year one - I mean - over seven years that from year one or year two or whatever I may start incurring certain  
10 costs on the basis that I have a seven year agreement with you.

**TSHIAMO MICHAEL SEDUMEDI:** Hm.

**CHAIRPERSON:** If I do not incur those costs in the second year or third year I will not be able to deliver in the fourth year or fifth year.

**TSHIAMO MICHAEL SEDUMEDI:** Hm.

**CHAIRPERSON:** If I – if I incur certain costs in order to ensure that I perform later on in terms of the contract and then you change the – the duration of the contract it seems that – you know – that should affect – you should pay something because I am obliged if I want to make sure that I perform in terms of the contract in the fifth year or sixth year or  
20 seventh year. If I am obliged to spend money much earlier but that those costs I would otherwise not recover if you change your mind and you terminate on the third year fourth year. It seems fair that you should – you should compensate me. So – so I do not know whether they - they meant that they did not want to pay even that or they simply meant to say we – we do not want you to change the price in terms of

getting income. At the expenses one would think they should be paid for.

**TSHIAMO MICHAEL SEDUMEDI:** Mr Chair that which you have explained ...

**CHAIRPERSON:** Hm.

**TSHIAMO MICHAEL SEDUMEDI:** Is break pricing.

**CHAIRPERSON:** Okay, okay.

**TSHIAMO MICHAEL SEDUMEDI:** Yes. That is break pricing.

**CHAIRPERSON:** That is break pricing?

10 **TSHIAMO MICHAEL SEDUMEDI:** That is break ...

**CHAIRPERSON:** That is acceptable?

**TSHIAMO MICHAEL SEDUMEDI:** That is acceptable.

**CHAIRPERSON:** Oh.

**TSHIAMO MICHAEL SEDUMEDI:** That is why if you look at page 5147 ...

**CHAIRPERSON:** Yes.

**TSHIAMO MICHAEL SEDUMEDI:** It does say so.

**CHAIRPERSON:** Okay, okay.

20 **TSHIAMO MICHAEL SEDUMEDI:** That this is what - at least if you negotiate the most desirable is for us only to be liable for 50 percent ...

**CHAIRPERSON:** Yes.

**TSHIAMO MICHAEL SEDUMEDI:** Of the sum costs.

**CHAIRPERSON:** Okay, okay.

**TSHIAMO MICHAEL SEDUMEDI:** That one (indistinct) was quite alive to that.

**CHAIRPERSON:** So batch pricing would be something else?

**TSHIAMO MICHAEL SEDUMEDI:** Batch pricing is something else.

**CHAIRPERSON:** Ja.

**TSHIAMO MICHAEL SEDUMEDI:** We say before ...

**CHAIRPERSON:** Hm.

**TSHIAMO MICHAEL SEDUMEDI:** We even conclude the contract ...

**CHAIRPERSON:** Hm.

**TSHIAMO MICHAEL SEDUMEDI:** I am telling you now ...

**CHAIRPERSON:** Hm.

10 **TSHIAMO MICHAEL SEDUMEDI:** But you might not get the full 599 or 465. So know now ...

**CHAIRPERSON:** Hm.

**TSHIAMO MICHAEL SEDUMEDI:** Before we even conclude contract at this bidding stage you must know now ...

**CHAIRPERSON:** Hm.

**TSHIAMO MICHAEL SEDUMEDI:** That you are not going to get the full 599 and you must know that if I decide before award to reduce these quantities I do not expect you – I do not expect as Transnet ...

**CHAIRPERSON:** Hm.

20 **TSHIAMO MICHAEL SEDUMEDI:** to pay a premium for that. So that is a pre ...

**CHAIRPERSON:** Hm.

**TSHIAMO MICHAEL SEDUMEDI:** Contract conclusion position.

**CHAIRPERSON:** Hm.

**ADV MAHLAPE SELLO:**

**TSHIAMO MICHAEL SEDUMEDI:** The break pricing – like the Chair has correctly outlined ...

**CHAIRPERSON:** Hm.

**ADV MAHLAPE SELLO:**

**TSHIAMO MICHAEL SEDUMEDI:** Could – those costs could only arise ...

**CHAIRPERSON:** Hm.

**TSHIAMO MICHAEL SEDUMEDI:** During the course ...

**CHAIRPERSON:** Hm.

10 **TSHIAMO MICHAEL SEDUMEDI:** Of the agreement.

**CHAIRPERSON:** Hm.

**TSHIAMO MICHAEL SEDUMEDI:** So that is the distinction between ...

**CHAIRPERSON:** Hm.

**TSHIAMO MICHAEL SEDUMEDI:** Batch pricing and break pricing.

**CHAIRPERSON:** Hm. Well the – over – over the – the seven year period there would be a change in prices for everything just generally.

So the components which you would use in order to build the locomotives – you know – the components would become more expensive each year – you know – 10 percent higher. I would imagine

20 that that was built – would have been built into the price?

**TSHIAMO MICHAEL SEDUMEDI:** Correct Chair.

**CHAIRPERSON:** So what more would they have wanted if they had built that into the price?

**TSHIAMO MICHAEL SEDUMEDI:** I beg your pardon Chair.

**CHAIRPERSON:** What more would the bidders have wanted really if



they would have built that into the price? I am trying to see whether during your investigation you got to understand what it is that they would otherwise have been wanting if they had built in the annual increases that would have occurred.

**TSHIAMO MICHAEL SEDUMEDI:** Because Chair (indistinct) those are the usual effect that even in this conversation when you speak about escalations and hedging ...

**CHAIRPERSON:** Yes.

**TSHIAMO MICHAEL SEDUMEDI:** That is where things like  
10 (intervenes).

**CHAIRPERSON:** Yes. Those (intervenes).

**TSHIAMO MICHAEL SEDUMEDI:** Into the price to ...

**CHAIRPERSON:** Yes.

**TSHIAMO MICHAEL SEDUMEDI:** Look into the duration of the delivery.

**CHAIRPERSON:** Yes.

**TSHIAMO MICHAEL SEDUMEDI:** So all those costs would have been effected in.

**CHAIRPERSON:** *Ja.*

**TSHIAMO MICHAEL SEDUMEDI:** As well them been aware that  
20 Transnet is not willing to pay a price premium ...

**CHAIRPERSON:** Hm.

**TSHIAMO MICHAEL SEDUMEDI:** For a reduction in quantity. So that has already made the offer at the beginning.

**CHAIRPERSON:** Hm.

**TSHIAMO MICHAEL SEDUMEDI:** They would have taken that aspect ...

**CHAIRPERSON:** Yes.

**TSHIAMO MICHAEL SEDUMEDI:** Into account as well.

**CHAIRPERSON:** Yes. So it is this premium that I am trying to understand what – what it is.

**ADV MAHLAPE SELLO:** They call it a premium. It is a penalty really in effect.

**CHAIRPERSON:** It is a penalty.

**ADV MAHLAPE SELLO:** So if you put out a bid for 599 ...

**CHAIRPERSON:** *Ja.*

10 **ADV MAHLAPE SELLO:** And I then split that award before four OEMs ...

**CHAIRPERSON:** Hm.

**ADV MAHLAPE SELLO:** It means each OEM which individually had bid for 599 ...

**CHAIRPERSON:** Hm.

**ADV MAHLAPE SELLO:** Ends up with less. Let us say 200.

**CHAIRPERSON:** Hm.

**ADV MAHLAPE SELLO:** None of them is going to increase the price of the locomotives because now they have got 200 instead of 599.

20 **CHAIRPERSON:** Hm.

**ADV MAHLAPE SELLO:** That is the – what we call premium penalty.

**CHAIRPERSON:** Maybe ...

**ADV MAHLAPE SELLO:** Yes.

**CHAIRPERSON:** Penalty explains it better.

**ADV MAHLAPE SELLO:** The language – we are losing the language of

the RFP.

**CHAIRPERSON**: Okay, alright thank you. Let us – let us continue.

**ADV MAHLAPE SELLO**: Okay. So then we understand and – and your understanding of the position adopted by Transnet in negotiations regarding batch pricing is important because that goes to certain findings you make?

**TSHIAMO MICHAEL SEDUMEDI**: Correct.

**ADV MAHLAPE SELLO**: So if you could just very briefly wrap up your understanding and then inform the Chair what the eventual position was  
10 as regards the batch pricing.

**TSHIAMO MICHAEL SEDUMEDI**: Right Chair. At the beginning of this letter I had said the – one of the cost elements that were indicated by Mr Brian Molefe in his memorandum to the Board on why the price increased from the approved 38 billion to 49 (indistinct).

**CHAIRPERSON**: 38 billion to 49 billion?

**TSHIAMO MICHAEL SEDUMEDI**: Correct Chair.

**CHAIRPERSON**: *Ja*.

**TSHIAMO MICHAEL SEDUMEDI**: There are various costs that contributed towards that increase and an amount of 2.17 billion was  
20 dedicated only to batch pricing and he does even put an explanation there that this is an adjustment of the price as a result of Transnet now having split the bids amongst the four OEMs. So as a result of that decision these are costs that is attributable to that item and the total amount of that is 2.7 billion. So we are saying in carrying of that cost was contrary to the provisions of the RFP and it was thus irregular

under the circumstances. So that is the point that we wanted to demonstrate on this issue.

**ADV MAHLAPE SELLO:** Just for the record. In that same response you said it was a cost of 2.17 billion.

**TSHIAMO MICHAEL SEDUMEDI:** *Ja.*

**ADV MAHLAPE SELLO:** Then you said 2.7 billion. Can you correct? What is the final number?

**TSHIAMO MICHAEL SEDUMEDI:** It is 2.7 billion.

**ADV MAHLAPE SELLO:** Okay. You had said 17 at some point. I just  
10 wanted to make sure that we are on the same page. Okay. Then that deals with your slide 3 which is now for the first time we see an introduction of a particular cost that was not contemplated in the RFP and it – at least the first addition to the original 38.6 billion approved by the Board has now increased by 2.7 billion on the basis of this. Is that correct?

**TSHIAMO MICHAEL SEDUMEDI:** That is correct.

**CHAIRPERSON:** So is – is the position that the negotiation team was given this mandate which on your understanding meant that they should not agree to batch pricing but ultimately they did agree to it or what  
20 happened?

**TSHIAMO MICHAEL SEDUMEDI:** Ultimately they did agree to it which is why Mr Molefe had in his explanation to the Board he itemises the issues that contributed to the increase in the batch price.

**CHAIRPERSON:** And do – do we know why they agreed to it in circumstances where their mandate did not include agreeing to it?

**TSHIAMO MICHAEL SEDUMEDI:** Okay. Yes Chair. I will ...

**CHAIRPERSON:** Or am I making you to jump to ...

**TSHIAMO MICHAEL SEDUMEDI:** No, I will provide an explanation ...

**CHAIRPERSON:** Yes.

**TSHIAMO MICHAEL SEDUMEDI:** To the Chair because obviously after we – you recall Chair at the beginning of our testimony yesterday we said the – the reports were made available to all the persons who were implicated in the reports. So we got various responses. We will start first with Mr Jiyane and Mr Laher. One, they conflated batch  
10 pricing/break pricing. In their response they are saying no look at the RFP break pricing was envisaged.

**CHAIRPERSON:** Break pricing?

**TSHIAMO MICHAEL SEDUMEDI:** Break. So in the ...

**CHAIRPERSON:** Oh, break *ja*.

**TSHIAMO MICHAEL SEDUMEDI:** In responding to an allegation that the RFP did not envisage batch pricing.

**CHAIRPERSON:** They respond about break pricing?

**TSHIAMO MICHAEL SEDUMEDI:** The respond about break pricing.

**CHAIRPERSON:** Yes.

20 **TSHIAMO MICHAEL SEDUMEDI:** So they conflate the cost of break pricing and batch pricing.

**CHAIRPERSON:** But these were senior people who should have known the difference quite well in their own organisation. I know that you might ...

**TSHIAMO MICHAEL SEDUMEDI:** I – I concur.

**CHAIRPERSON:** Not be able to say anything.

**TSHIAMO MICHAEL SEDUMEDI:** Well I fully share the same sentiments Chair.

**CHAIRPERSON:** Hm.

**TSHIAMO MICHAEL SEDUMEDI:** I think that is - which is why in our report we made that point. Secondly Mr Laher ...

**CHAIRPERSON:** So – so in other words they - they said what is wrong with you people. There was nothing wrong that was done here. We – you know – what was done was envisaged by the RFP.

10 **TSHIAMO MICHAEL SEDUMEDI:** The RFP, correct.

**CHAIRPERSON:** They were talking about break – break pricing.

**TSHIAMO MICHAEL SEDUMEDI:** They were talking about ...

**CHAIRPERSON:** Ja.

**TSHIAMO MICHAEL SEDUMEDI:** Break pricing.

**CHAIRPERSON:** I – but I guess that your team would have said but that is something else and then what was their explanation when they were confronted with the different – with the two meanings of the two concepts?

**TSHIAMO MICHAEL SEDUMEDI:** This is what Mr Laher says in writing.

20 We have in our report as well attached a copy of the subsequent email correspondence with Mr Yousuf Laher.

**ADV MAHLAPE SELLO:** You – sorry. You may provide Chair with a summary of that response. We will try and locate it (intervenes).

**TSHIAMO MICHAEL SEDUMEDI:** (Intervenes).

**CHAIRPERSON:** Later on.

**TSHIAMO MICHAEL SEDUMEDI:** I still know it vividly. He says this draft document should have been updated because it was now clear after the split that the OEMs were not going to accept to charge a same price that we had offered when the full component of 599 was offered. So therefore this and the words that he used in that email is that the draft document should have been updated to take into account that point. So ...

**CHAIRPERSON:** So ...

**TSHIAMO MICHAEL SEDUMEDI:** He had raised the fact that – because  
10 at this point that is now – that is where now he sees the difference  
between batch pricing and break pricing. He says but these (indistinct)  
should not have been a correct position that you should have adopted  
because the bidders were putting pressure that they want batch pricing.  
Now secondly we then listen to the - there is a video recording where  
Messieurs Laher and Jiyane were now briefing Mr Anoj Singh on the  
day's proceedings because probably on a daily basis they would have  
some daily briefings with Mr Singh to report on what transpired during  
the day and this transcript is one of those that will be made to the  
Commission as part of our (indistinct) yesterday. In this transcript  
20 when Mr Laher reports on various issues he then says oh batch pricing  
– these OEMs they got – the word that he used - that they nearly fell  
off their chairs when we told them that our position is that we do not  
want batch pricing. Their offers must not change depending on the  
qualities that are being offered. So that now indicates that despite  
what the subsequent that he says now that report is out. At that time

when the negotiations had been – that was the position that he adopted as a Transnet Official - but then as it is common cause - obviously that position was not successfully advanced. There was a push back from the OEMs and eventually they relented. In actual fact on that same transcript Mr Jiyane says look – you know - that is just a wish. I do not think the (indistinct) are going to agree to this point.

**CHAIRPERSON:** Who - who says that?

**TSHIAMO MICHAEL SEDUMEDI:** That is Mr Thamsanqa Jiyane.

**CHAIRPERSON:** Oh, yes.

10 **TSHIAMO MICHAEL SEDUMEDI:** Now telling ...

**CHAIRPERSON:** Mr Anoj Singh?

**TSHIAMO MICHAEL SEDUMEDI:** Telling Mr Laher at that time.

**CHAIRPERSON:** Oh.

**TSHIAMO MICHAEL SEDUMEDI:** No it is Mr Laher that is reporting on that specific item. So the response that comes from Mr Jiyane is that that is a wish use of – I do not think these guys are going to agree to that point but at least it confirms a point that the (indistinct) principle that at that time when the issue was being discussed. At least there was that understanding that batch pricing is something that Transnet  
20 does not expect to incur. All response that we get now is more of people trying to justify what had happened at the negotiations.

**CHAIRPERSON:** You see maybe it – maybe this demonstrates why we spent a little bit of time trying – trying to understand what least acceptable agreeable means.

**TSHIAMO MICHAEL SEDUMEDI:** Yes.



**CHAIRPERSON:** Because when you give a negotiating team a mandate it is important that they should understand what your bottom line is. What it is that you say if they do not – the other party does not agree to this item.

**TSHIAMO MICHAEL SEDUMEDI:** (Indistinct).

**CHAIRPERSON:** Then we will have none – no deal.

**TSHIAMO MICHAEL SEDUMEDI:** *Ja.*

**CHAIRPERSON:** And where you say look try and get the best you can but if you do not get it do not rock the boat. You must still have an  
10 agreement that kind of thing but based on what you are saying it certainly does appear that Mr Jiyane – at least at that time of that meeting when he said that is just a wish - at least he did not understand the – Transnet's position on the batch pricing to be that if there is no agreement from the OEMs then there would be no deal at all. Okay.

**ADV MAHLAPE SELLO:** Chair I have just handed a document to – to Mr Sedumedi extracting it from the volumes. It is from volume 1 page 4318 and I just need Mr Sedumedi to confirm whether that is the email he just referred to and gave Chair the context. This is a response by  
20 Mr Yousuf Laher to MNS.

**TSHIAMO MICHAEL SEDUMEDI:** It is correct.

**ADV MAHLAPE SELLO:** As regards this – these issues.

**TSHIAMO MICHAEL SEDUMEDI:** Correct Chair.

**ADV MAHLAPE SELLO:** And it would appear to go slightly beyond what Mr Sedumedi has indicated because Mr Laher justifies the

inclusion of the batch price on a decision by the Board to include batch pricing of 24 January 2014 at that paragraph 1.

**TSHIAMO MICHAEL SEDUMEDI**: Correct Chair. If as an example the point that I made paragraph 8 which appears on – first this – this email from Mr Yousuf Laher dated 14 August 2018 this was now after he had received the report addressed to Mr Ndlovu the Chairperson – the Chairman of MNS and the item there speaks to the Transnet 1 064 locomotives. Now in paragraph 8 of – after he explains his position about the role that he played. He says:

10                    “I was never given an approved mandate for renegotiations. Only a draft version was provided.”

This document that he has drafted he now confirms is the document that was used.

                         “Nevertheless I added in good faith to be the best that I could for Transnet. The draft renegotiation mandate is surely incorrect and outdated as the Board’s decision to reduce the batch sizes to four OEMs instead of two OEMs prior to negotiations was not filtered through into the negotiation  
20                    mandate.”

Now again in his thinking the result of the award being split, which eventual that to reduction in quantities necessitated Transnet incurring batch pricing but that is not in line with what the RFP envisaged, because the RFP was clear, if we split and there’s a reduction in the quantities Transnet does not expect to pay the price premium/penalty

should that happen.

So this explanation as well does not accord with what is contained in the RFP. He might have very, very good reasons why it made economic sense for bidders to penalise Transnet as a result the reduction in (indistinct) but that is not what Transnet had actually envisaged when it issued that RFP, because the bulk of its email is dedicated to explaining that rationale of economies of scale.

**CHAIRPERSON:** But isn't the, or shouldn't the position have been that you don't put in a bid if you do not accept that Transnet will not pay  
 10 any premium if they decide to split the tender or the – in other words, if in the RFP, included that requirement must the position be that if you submit the bidded bid you accept that requirement and if you don't accept that requirement you shouldn't put in a bid. Therefore, why was Transnet even opening negotiations on an issue like that, when they've made it clear those that put in a bid must be those who are prepared to accept the terms of the RFP, did you get to understand any of this during your investigation why they would – they opened discussions with the OEM's on this point.

**MR TSHIAMO MICHAEL SEDUMEDI:** Chair the constant thing in our  
 20 reports on charges written to procurement is that tenderers prepared their bids (indistinct) accordance with what is contained in the bid specifications, an organ of State should not be at liberty to materially change the terms of the bid documents during evaluation so that is the benchmark that we used to assess every conduct that spoke to changes (indistinct). You'll recall Chair, even on a 95 BBEE became a problem

during evaluation despite the fact of it being a requirement in the RFP. So there seems Chair to have been this approach that we can change the rules of the – you see either people are not fully appreciating the input of what is contained in the RFP when you're evaluating or some others – one could just not understand on that basis where people just feel the need to change the bids. I mean, even now, during the disciplinary proceedings (indistinct) because now one is able to, sort of, also get a feel of what went through people's minds when these things happened. They seemed to be explaining the difficulties that

10 they experienced with the RFP and now being creative to (indistinct) whatever they've conducted they seem to be experiencing without appreciating the fact that, that consideration must take place at the time when the specs are prepared. You can't get those noble considerations halfway in the process. So that's the issue that, I think the procurement team was failing to grasp.

**CHAIRPERSON:** But do you know whether the bids that were put in by the bidders in response to the RFP, do you know whether those bids contained anything along the lines that we are not – I'm not accepting or we're not accepting this condition or this requirement that there

20 should be no premium and that is how the issue came to be the subject of negotiation or did the bids not raise that issue at all, it might mean they were accepting and if so who introduced this for discussion and under what circumstances when the RFP was clear?

**MR TSHIAMO MICHAEL SEDUMEDI:** On the first question Chair, there is no bid that expressly stated rejection of the Transnet's position

outhit point. We know that the bids in this – the OEM's sorry made submissions on bench pricing, as of course, requested by the RFP so there's that part we know but whatever offer that was on the table at that stage would have been an offer relating to bench pricing. As to who and how the concept of bench pricing arose Chair, that is not quite clear save on this draft worksheet that was produced and as well a review of that video material where Mr Lehar was reporting on this point.

**CHAIRPERSON:** It would be interesting to know who introduced it and  
 10 what was their concern because if, for example, it was introduced by somebody from within Transnet, you know, one would really want to know, why introduce something that's been accepted because the RFP says here is a tender you can bid but these are the conditions and the bids come in, they accept that condition, there's nobody who makes an issue of it, so how does it come up and if it is raised by the bidders at what stage is it raised and on what justification after they have responded positively to a RFP that makes it clear that this is one of the conditions, okay.

**ADV MAHLAPE SELLO:** Yes Chair perhaps Mr Sedumedi might assist  
 20 us in that regard. Mr Sedumedi in your investigations were you able to determine when the notion of bench pricing first reared its head, were you able to trace it to its source and time?

**MR TSHIAMO MICHAEL SEDUMEDI:** The source and time, on investigation, is at a negotiation stage, the proof of how it was introduced was this document that we picked up, the draft worksheet

that now had a concept called bench pricing. We did not have sight of all – it's not all the sittings, because we've got a couple of recordings of the sittings so those that we have reviewed, we could not pick this issue out except for that time when Mr Lehar was now reporting back to Mr Singh that this issue arose but again, he doesn't describe who would have raised it save for loading and expression (indistinct) when you raise this point the OEM's nearly fell off their chairs, that's the phrase that he used. Other than that one was not able to really pick up who would have initiated the issue.

10 **ADV MAHLAPE SELLO:** I don't know if that assists Chair but at least we've got a sense that ...(intervention).

**CHAIRPERSON:** Yes that...(intervention).

**ADV MAHLAPE SELLO:** Up until negotiations it was not an issue.

**CHAIRPERSON:** If we are able, at some stage to get more particulars of the issue that would be helpful but if we don't that's okay but I guess as – at some stage when we have got some of the people who were involved – well the people who were involved in the negotiations should know who brought this issue up and why.

**ADV MAHLAPE SELLO:** And the email we referred to – that Mr  
20 Sedumedi referred to and I gave him a copy and for the record it's volume 14318 from Mr Lehar to MNS at paragraphs 11 and 12 gives us a sense of what Mr Lehar's understanding is and perhaps, Mr Sedumedi, you might want to read 11 and 12, although I doubt that it will answer the Chair's issue fully but seeing as this is Mr Lehar's own words who was part of the negotiating team let's see how much that

may assist.

**MR TSHIAMO MICHAEL SEDUMEDI:** Correct because we never had – because at paragraph 11 he just mentions that this was dealt with at some sub-committee which one, under what circumstances we are not privy to – we don't even have the minutes of that sub-committee so it's just his version of what might have transpired there.

**ADV MAHLAPE SELLO:** Just read that, the Chair doesn't have it open before him.

**MR TSHIAMO MICHAEL SEDUMEDI:** Okay, page 11...(intervention).

10 **ADV MAHLAPE SELLO:** Paragraph rather.

**MR TSHIAMO MICHAEL SEDUMEDI:** Sorry paragraph 11 of the email reads thus,

20 “The bench pricing was accepted by the sub-committee of the steering committee on the basis that the sub-committee or the steering committee accepted the overall price of the locomotive. My understanding being that the sub-committee or the steering committee deemed that they were obtaining value in other areas of the negotiation e.g. Forex hedging and the sub-committee or steering committee found the overall price acceptable. Then each item being negotiated was accepted on an overall basis”.

So that is what – in the next paragraph,

“The overall calculation making up the price had to reflect the reality of what was finally accepted by the sub-committee or the steering committee which includes an element of bench

pricing which contributed towards the price increases. It was common knowledge that this had to be included in the calculations based upon the overall price as accepted by the sub-committee or the steering committee. Had the bench pricing been excluded, it would have been incorrect as it would have misled the sub-committee or the steering committee of the actual price. In order to provide the sub-committee or the steering committee with the full facts, my calculations had to include the component pricing for each element of which bench pricing was one of the elements”.

**ADV MAHLAPE SELLO:** That Chair, then is Mr Lehar’s explanation of how bench pricing came about.

**CHAIRPERSON:** Yes, yes.

**ADV MAHLAPE SELLO:** I don’t know about the Chair I’m still not quite clear even on Mr Lehar’s explanation but that is his own words.

**CHAIRPERSON:** Yes, no, no, no I’m also still not but I guess that’s the best...(intervention).

**ADV MAHLAPE SELLO:** That’s the best that’s available.

**CHAIRPERSON:** Ja okay let’s proceed.

20 **ADV MAHLAPE SELLO:** Thank you, that then brings to an end our discussion on the inclusion of bench pricing of 2.7billion.

**CHAIRPERSON:** Just to go back to a point, did you say that in the increase of the price from 38billion to 49billion how much was the percentage that related to bench pricing in rands?

**MR TSHIAMO MICHAEL SEDUMEDI:** The figure is 2.7billion, that is



the amount that is equitable to that ...(intervention).

**CHAIRPERSON:** To bench pricing.

**MR TSHIAMO MICHAEL SEDUMEDI:** To bench pricing.

**CHAIRPERSON:** So part of the point you make is that the request for proposals, the tender that was issued made it clear to those who wanted to submit bids, that in effect, no bench pricing, if you put it that way would be acceptable so whoever put in a bid would have to know that, that would not be part of the deal but you say, notwithstanding the fact that the request for proposals made that quite clear, Transnet  
10 ultimately accepted a deal which included bench pricing and that increased the price by at least 2billion rand.

**MR TSHIAMO MICHAEL SEDUMEDI:** That's correct Chair.

**CHAIRPERSON:** And if they had stuck to what the request for proposals had said on this issue that amount would have – would not have been incurred.

**MR TSHIAMO MICHAEL SEDUMEDI:** That's correct Chair.

**CHAIRPERSON:** Thank you.

**ADV MAHLAPE SELLO:** Thank you Chair. Proceeding with your presentation then we're now at your page 54 and you are expressing  
20 your views on the lawfulness on the increase and the final estimated total cost, can you take us through that.

**MR TSHIAMO MICHAEL SEDUMEDI:** That's right, just as a contexture again on this slide, like I said when we spoke about the previous slide, here (indistinct) analyse each element, you will recall that there was a memorandum that Mr Brian Molefe prepared to the Board, that

memorandum was prepared after the conclusion of a contract at a rate of 49 billion and in that memorandum he lists the various issues that caused the increase. So this afternoon we also hear the evidence now on – to test the justifiability or otherwise of those elements. So in this slide we are only focusing ourselves on whether in them increasing the original price did they require to comply with the law, was there anything for them to get an approval or (indistinct) report this item to the Minister. So the overall conclusion (indistinct) is that, that increase of the ETC was unlawful in that it did not comply with applicable, legal prescripts and the reason as follows. You'll recall that in terms of

10 Section 52 (2) (d), if ... (intervention).

**ADV MAHLAPE SELLO:** Sorry of the PFMA?

**MR TSHIAMO MICHAEL SEDUMEDI:** Of the Public Finance Management Act, the – an organ of State or a public entity in this regard, before it acquires or dispose of a significant asset, it must obtain the approval of its Executive authority. Now as an entity if now you want to consider – the Act does not define what a significant or what significant means the (indistinct) regulations it then provides that the shareholder Minister and the Board, the Accounting Authority will

20 then agree on what constitute significant under the circumstances and then provide some methodology as to how you determine that figure. If you look at the (indistinct) that was concluded and that will then be reduced in what the PFMA envisaged to be a (indistinct) that is concluded on an annual basis in terms of the shareholders compact that was concluded with the shareholder Minister, what was considered

to be significant was an amount of 3.9billion. so any transaction to the value of 3.9 it must get the approval of the Minister, the Minister must keep tabs – that's the whole scheme of having that oversight over an organ of State, you need to be appraised as a Minister as to the transactions that this entity is concluding especially if now it reaches the amounts as agreed on this particular one. So that's what it says on the significance and material framework of Transnet. Now the ETC that was...(intervention).

**ADV MAHLAPE SELLO:** Sorry Mr Sedumedi, I thought you would  
 10 address this, you indicated that – and if I misunderstood you please correct me. Section 54 (2) (d), of the PFMA read with the MOI requires that any transaction by Transnet above a certain value requires approval not up to 3.9.

**MR TSHIAMO MICHAEL SEDUMEDI:** Not up to.

**ADV MAHLAPE SELLO:** Okay.

**MR TSHIAMO MICHAEL SEDUMEDI:** A transaction of 3.9billion and above.

**ADV MAHLAPE SELLO:** And above?

**MR TSHIAMO MICHAEL SEDUMEDI:** Correct.

20 **ADV MAHLAPE SELLO:** That is the one yes.

**MR TSHIAMO MICHAEL SEDUMEDI:** Anything that falls below that 3.9, obviously that's when they can transact without the necessity of obtaining an approval from the Minister.

**ADV MAHLAPE SELLO:** Okay.

**MR TSHIAMO MICHAEL SEDUMEDI:** So that's the context and we all

know that these transactions when it was initially concluded, indeed the shareholder Minister did approve the amount of 38.9. Now this transaction, the ETC amounted to 49 that is an increase of round about 15, if my maths...(intervention).

**ADV MAHLAPE SELLO:** Over perhaps.

**MR TSHIAMO MICHAEL SEDUMEDI:** Over its roundabout 15 so that tells us that this transaction the Minister, when he approved, he approved on a basis that it was 38.9 to an extent that the increase that was – that occurred now is way above 39billion. It is our view that  
10 Transnet ought to have went back to the Minister to appraise him of the increase and obtain his approval in that regard. So (indistinct) on record, you don't have any record of an application being made to the Minister for such an increase. So this is on a basis that we are saying, that aspect, on its own violated the provision of Section54 (2). We are quite aware that in terms of the DOA...(intervention).

**ADV MAHLAPE SELLO:** Please indicate what the DOA stands for?

**MR TSHIAMO MICHAEL SEDUMEDI:** The Delegations Of Authority.

**ADV MAHLAPE SELLO:** Yes.

**MR TSHIAMO MICHAEL SEDUMEDI:** It indicates that any – in the  
20 event that the transaction that was approved and the increase, you want to vary that by 15% you need to report that transaction to the Minister. So first there's this compact that speaks of the 3.9billion, there's a Delegation Of Authority (indistinct) document – sorry a document agreed to with the Minister that provides that if there's any increase in a transaction that was previously approved if that increase

is by 15% you must report that transaction to the Minister. In this instance, even this increase that you speak about far exceeds 15% so it was not even reported to the Minister. So if – when you use the DOA in terms of (indistinct) reporting or if you align with the view that they were required to obtain an approval based on the compact, neither of the two events occurred which is why we are saying this increase was not in line with the applicable agreement.

**ADV MAHLAPE SELLO:** You then make reference in your slide to expose factor ratification, would you like to address yourself to that  
10 briefly?

**MR TSHIAMO MICHAEL SEDUMEDI:** Correct yes, it's common cause, like I said this memorandum happened in May...(intervention).

**ADV MAHLAPE SELLO:** This memorandum by...(intervention).

**MR TSHIAMO MICHAEL SEDUMEDI:** By Mr Molefe to the Board motivating the increase in the ETC.

**ADV MAHLAPE SELLO:** Yes.

**MR TSHIAMO MICHAEL SEDUMEDI:** The agreements were already concluded in April already.

**ADV MAHLAPE SELLO:** The same year?

20 **MR TSHIAMO MICHAEL SEDUMEDI:** Of the same year. So the Board, upon being presented with the memorandum by Mr Molefe indeed approved that increase. So it is our view that an ex post facto ratification by the Board does not cure that violation of (indistinct) of the PFMA or the – its own internal delegation of authority that Transnet has provided.

**CHAIRPERSON:** Let me check if I understand you correctly, are you saying that in terms of Section 54(2) there was an obligation on the management of Transnet or on Transnet to seek the approval of the Minister once the price had reached 3.9billion?

**MR TSHIAMO MICHAEL SEDUMEDI:** As soon as the increase in the price exceeded at 3.9billion we hold the view that, that would have required the triggering of Section 54(2).

**CHAIRPERSON:** Ja but you say they didn't get such approval from the Minister but they did get approval from the Board and you say that  
10 approval from the Board didn't cure the defect in the sense that – or the breach of Section 54(2) in terms of their failure to obtain the Minister's approval, that's the point you make?

**MR TSHIAMO MICHAEL SEDUMEDI:** That's the point that I'm making Chair.

**CHAIRPERSON:** Okay.

**ADV MAHLAPE SELLO:** Thank you Chair. Is there anything else you would like to draw the Chair's attention to as regards your findings on this unlawful increase?

**MR TSHIAMO MICHAEL SEDUMEDI:** That would be our position  
20 (indistinct) nothing further Chair.

**ADV MAHLAPE SELLO:** Thank you Mr Sedumedi you may proceed with your presentation then.

**CHAIRPERSON:** Can I ask in regard to this point of the failure to obtain the Minister's approval, what was their response to that point, the management after they saw that, that's what you were thinking or

that's what the report was saying?

**MR TSHIAMO MICHAEL SEDUMEDI:** Even before we – during our interview with Mr Siyabonga Gama because this is one of the issues – because different persons that we were interviewing had different issues that we wanted them to address. We raised this issue with Mr Gama, we said, Mr Gama the increase in the ETC, this is the view that – when did you know about the increase, he said, one, I was not part of the – I recall Chair at that time Mr Gama was the GCE at Transnet but you'll recall that when this happened he was he was the Chief  
 10 Executive at TFR (indistinct) but this transaction related to his division. So by the time when we interviewed him he was already now the GCE at Transnet. We raised this issue, he said he only became aware of this increase on that morning when the agreements were already concluded in the morning because he alleged that he was not part of the negotiations so he only became aware of the increase when the agreements were already completed in the morning and at that time there was a press conference that was already going to be called by the Minister to announce the successful conclusion of this transaction. So therefore he was not privy to the amounts, we then asked, should  
 20 you not have – now that you are GEC, should you not have – as Transnet that is, have sought the approval of the Minister, he agreed with us that indeed we were required as Transnet to obtain that approval. However, at that late stage he was part of the negotiations he only learnt that morning, it was only a month later when a memorandum was presented by Mr Molefe – Brian Molefe, that he saw

what (indistinct) he now was in a better position to understand or be appraised of what led to the increase in the ETC and besides by that time the horse had already bolted nothing much could have been done. That is the position that I know was advanced by the former GCE during our investigations.

**CHAIRPERSON:** And you never got to hear what Mr Molefe's position is because he was no longer at Transnet at the time when you needed comments.

**MR TSHIAMO MICHAEL SEDUMEDI:** Chair from my recollection of the  
10 reports that one perused because I think (indistinct) in response to the Werksmans report, the view that was held by Mr Molefe was that there was no need for Transnet to obtain further approval from the Minister once this was done because he had already obtained the initial approval when the 38.9 billion was approved. But we never had a direct [indistinct] anything this is what I am saying is purely based on

**CHAIRPERSON:** Yes. On the reports

**MR TSHIAMO MICHAEL SEDUMEDI:** The reports that I have read.

**CHAIRPERSON:** Ja.

**MR TSHIAMO MICHAEL SEDUMEDI:** On this issue.

20 **CHAIRPERSON:** Hm. Who was the leader of the negotiation team?

**MR TSHIAMO MICHAEL SEDUMEDI:** It as Mr Anoj Singh and Mr Thamsanqa Jiyani.

**CHAIRPERSON:** Did they give you any comments on this point and if so what did they say?

**MR TSHIAMO MICHAEL SEDUMEDI:** Mr Singh always you will recall



Chair was no longer at Transnet.

**CHAIRPERSON**: Yes.

**MR TSHIAMO MICHAEL SEDUMEDI**: Which is why we asked the GCE.

**CHAIRPERSON**: Yes.

**MR TSHIAMO MICHAEL SEDUMEDI**: This issue because we held the view that as the GCE

**CHAIRPERSON**: Hm.

**MR TSHIAMO MICHAEL SEDUMEDI**: Even as a CE of Transnet of TFR

**CHAIRPERSON**: Yes.

10 **MR TSHIAMO MICHAEL SEDUMEDI**: Was this budget will come from his division.

**CHAIRPERSON**: Hm

**MR TSHIAMO MICHAEL SEDUMEDI**: So he is the one that ordinarily would have approved such costs.

**CHAIRPERSON**: Hm.

**MR TSHIAMO MICHAEL SEDUMEDI**: Which is why we had focussed our energies on understanding his thought process.

**CHAIRPERSON**: Hm.

20 **MR TSHIAMO MICHAEL SEDUMEDI**: Because at the end he is the person accountable for this transaction at least at the TFR level.

**CHAIRPERSON**: One would have thought that when you are talking such big amounts no deal would be reached without the CEO of is it TFR?

**MR TSHIAMO MICHAEL SEDUMEDI**: It is TFR.

**CHAIRPERSON**: TFR and the GCEO having been fully briefed what has

happened and with them having said we have satisfied ourselves that everything is in order before the negotiating team could go back and say okay we have a deal. You did not get a sense that – that happened or you did get the sense or what is the position?

**MR TSHIAMO MICHAEL SEDUMEDI:** The sense that we got and especially as confirmed by the response by Mr Gama is that the negotiating team were in different – in some premises because on that day the meeting I know it was at some hotel as he mentioned even though he could not provide us with the name of the hotel when the  
10 transaction was concluded. But from the look of things Mr Brian Molefe who at the time the GCE was obviously away of the [indistinct] because he Mr Gama, he handed that question to Mr Molefe to say what is the final figure Mr Molefe? Apparantly Mr Molefe said it is on 49 in his words he said he was actually shocked by...

**CHAIRPERSON:** That is Mr Gama?

**MR TSHIAMO MICHAEL SEDUMEDI:** That is Mr Gama.

**CHAIRPERSON:** Yes.

**MR TSHIAMO MICHAEL SEDUMEDI:** He was shocked to hear that figure. In actual fact on that day he was in the company of the  
20 chairperson of the board Mr [indistinct]. He conferred Mr {indistinct] to hear what Mr Brian Molefe is saying we will see how we will deal with this issue because at that time [indistinct] when he interviewed him was that there was a press conference that was about to happen in a matter of minutes and the Minister was also aware of this new amount and now they were going to announce that...

**CHAIRPERSON:** The deal had been concluded?

**MR TSHIAMO MICHAEL SEDUMEDI:** Yes at the time the agreements were signed already so it is why...

**CHAIRPERSON:** Oh the agreements had already been signed.

**MR TSHIAMO MICHAEL SEDUMEDI:** There is a press conference to announce that we have now successfully concluded the – one of the biggest locomotive transaction that is going to have all these benefits for the country and so forth and so forth. So that is the context that we understood from Mr Gama at least when we interviewed him on this  
10 aspect.

**CHAIRPERSON:** Well certainly I think the – the GCEO you know GCE you know should really look at a contract like this before it is signed when there are such big amounts involved and certainly also the CEO of the unit concerned. So – but we will hear from them. Yes.

**ADV MAHLAPE SELLO:** Thank you Chair. And just to place on record the summary of your discussions with Mr Gama in this respect will be found in the transcript?

**MR TSHIAMO MICHAEL SEDUMEDI:** Yes they are in the transcript Chair.

20 **ADV MAHLAPE SELLO:** That you will be providing.

**MR TSHIAMO MICHAEL SEDUMEDI:** Yes.

**ADV MAHLAPE SELLO:** Thank you. Now the Chair.

**MR TSHIAMO MICHAEL SEDUMEDI:** They have already been compiled.

**ADV MAHLAPE SELLO:** Now the Chair – the Chair asked you about Mr

Gama's understanding and the position he took and you provided an explanation. I would like to refer you back to Mr Laher's email Volume 1 page 4318 that you dealt with earlier and that would – and I would like you to have regard to paragraph 16 because paragraph 16 appears to give an indication of an appreciation of the increase in the ETC and how that issue was dealt with before the contracts were concluded.

**MR TSHIAMO MICHAEL SEDUMEDI**: Correct.

**ADV MAHLAPE SELLO**: Yes.

**MR TSHIAMO MICHAEL SEDUMEDI**: Let me just give you context to –  
10 let us read the paragraph so – before I give the context.

“Mr

**CHAIRPERSON**: Please do not forget what the question was?

**MR TSHIAMO MICHAEL SEDUMEDI**: I – I know the question.

**CHAIRPERSON**: Yes, yes.

1. At some stage I would like somebody to read Section 54 to me at some stage.

2. I would like to know who were members – who were members of the negotiating team but that I can be told now or later. I am easy.

20 You are ready to read 542 okay just read it ja okay.

**MR TSHIAMO MICHAEL SEDUMEDI**: The heading of Section 54 is Information to be submitted by accounting authorities being the board.

“Before a public entity concludes any of the following transactions the accounting authority for the public entity must promptly and in writing inform the

relevant treasury of the transaction and submit relevant particulars of the transaction to its executive authority for approval of the transaction. It releases various transactions of its nature. The relevant one for this purpose is D being acquisition or disposal of a significant asset.”

So that is what Section 54 2 D reads.

**CHAIRPERSON:** Yes. And you said there is no definition of significant...

10 **MR TSHIAMO MICHAEL SEDUMEDI:** Oh and then if you refer back Chair to Regulation 28.3.

**CHAIRPERSON:** Yes.

**MR TSHIAMO MICHAEL SEDUMEDI:** Treasury Regulation 28.3 of the PFMA.

**CHAIRPERSON:** But just to complete in the act there is no definition?

**MR TSHIAMO MICHAEL SEDUMEDI:** In the act itself there is no definition.

**CHAIRPERSON:** Okay alright.

20 **MR TSHIAMO MICHAEL SEDUMEDI:** And that is explained because those will vary from time to time. For purposes of material [see Section 55[2]] of the Act and significant [See Section 54[2]] of the Act the accounting authority must develop and agree a framework of acceptable levels of materiality and significance with the relevant executive authority so that will be now an agreed framework between the board being the accounting authority and executive authority.

**CHAIRPERSON**: The Minister

**MR TSHIAMO MICHAEL SEDUMEDI**: And being the Minister

**CHAIRPERSON**: Yes.

**MR TSHIAMO MICHAEL SEDUMEDI**: And you know that this will be on an annual basis.

**CHAIRPERSON**: Yes.

**MR TSHIAMO MICHAEL SEDUMEDI**: If you go to the [indistinct] this aspect will be addressed to say

**CHAIRPERSON**: Ja.

10 **MR TSHIAMO MICHAEL SEDUMEDI**: For purposes of this financial year

**CHAIRPERSON**: Ja.

**MR TSHIAMO MICHAEL SEDUMEDI**: These are the assets ex [indistinct] of these assets constitute material framework so it is this transaction then of this value that must then be reportable.

**CHAIRPERSON**: Yes.

**MR TSHIAMO MICHAEL SEDUMEDI**: Because in that practice knows then they will flash out how then you go about agreeing the framework between the Minister and the board.

20 **CHAIRPERSON**: Hm. Yes. So – so each year the executive authority and the accounting authority are supposed to agree what – how they will understand significant materiality to mean in terms of Section 54[2] read with the regulations.

**MR TSHIAMO MICHAEL SEDUMEDI**: Correct Chair because the guidelines issued by treasury in terms of calculating what is significant

and material speaks to the total assets

**CHAIRPERSON**: Yes.

**MR TSHIAMO MICHAEL SEDUMEDI**: Of the entity.

**CHAIRPERSON**: Yes.

**MR TSHIAMO MICHAEL SEDUMEDI**: So to an extent that there will be increase of assets that will require a revision of the actual amounts.

**CHAIRPERSON**: Yes.

**MR TSHIAMO MICHAEL SEDUMEDI**: Which is why the committee – even though the committee does not necessarily deal only with this  
10 aspect because there are other issues that are contained in shareholder compact but is one of the items in the shareholder compact is this aspect – this issue.

**CHAIRPERSON**: And you say that for the relevant period in this case the amount in the increase of the price would – that would trigger that provision was 3.9 billion.

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

**CHAIRPERSON**: Okay alright. Thank you.

**ADV MAHLAPE SELLO**: Thank you Chair. And perhaps for reference purposes that shareholder compact is part of the exhibits to be found at  
20 Volume 3 page 4980 and that will give us the trigger threshold of 3.9 billion. Thank you Chair. Getting back to the questions Mr Sedumedi.

**MR TSHIAMO MICHAEL SEDUMEDI**: Correct.

**ADV MAHLAPE SELLO**: You were going to explain to us or at least highlight to us Mr Lehar's understanding regarding the increase and what steps he took.

**MR TSHIAMO MICHAEL SEDUMEDI:** Okay.

**ADV MAHLAPE SELLO:** When he realised that the ETC would be increased. And you do so with reference to Mr Lehar's email at page 4138 volume 1.

**MR TSHIAMO MICHAEL SEDUMEDI:** Correct. Let me read paragraph 16 before I provide the context Chair.

**ADV MAHLAPE SELLO:** Yes.

**MR TSHIAMO MICHAEL SEDUMEDI:**

10                   “Nevertheless I acted in good faith to the best that  
could be done for Transnet and together with Mr  
Danny Smith we advised the GCFO Mr Singh that the  
transaction is exceeding ETC prior to conclusion of  
the contracts. The GCFO said that he would deal  
with it.”

The reason Mr Lehar sent us this email is that during our investigation we came across a document prepared by him and Mr Danny Smith. The document did not have a date. It just said April 2013. 2014 my apologies. In that document he was explaining the reasons for the increase and saying this increase or this amount that we are about to –  
20 or this amount that we have now agreed on exceeds the ETC that was approved. We need to get approval from the board. That is what the gist of the memorandum was saying. Now in our preliminary report that he produced in June we had said because we are – at a stage we were not yet interviewed Mr Laher. We said we picked up this document. We do not know whether it was prepared before or after the



negotiations. So we need to enquire before we take any action against Mr Laher we first need to enquire to determine his capability. We need to enquire whether was this done before or after. So that is this note that was in the report which he got. Which is why now you [indistinct] an explanation to us to say no that document which you have accepted it was not dated it is in April but we prepared it with Mr Smith prior to the conclusion of the contract. But the CFO Mr Singh had said do not submit that document we would – I will deal with the issue of the increase. Which is why in response to this when we now finalised our report we then did not make any finding against Mr Laher at least on this aspect.

**ADV MAHLAPE SELLO:** And this you – you do – and – I will rephrase. As you indicated to the Chair Mr Singh is not one of the people you had the benefit to interview?

**MR TSHIAMO MICHAEL SEDUMEDI:** No we never interviewed Mr Singh.

**ADV MAHLAPE SELLO:** Thank you. Then I – if the Chair is clarified on the issue of increase of the ETC.

**CHAIRPERSON:** Ja.

20 **ADV MAHLAPE SELLO:** We may proceed with your presentation.

**MR TSHIAMO MICHAEL SEDUMEDI:** The next part of the presentation Chair speaks to you will recall in our mandate we required [indistinct] if indeed there was a relationship between Tequesta and CSR. So in this part of the slide we will be focussing on that item. But before we deal with that particular specific agreement it is prudent that we first outline

the relationship between Mr Iqbal Sharma and Mr Salim Essa.

**ADV MAHLAPE SELLO:** And this you do because understanding that relationship is relevant to the question of the agreement with Tequesta.

**MR TSHIAMO MICHAEL SEDUMEDI:** In the agreement and the findings that you have made around that agreement. This diagram indicates that – we start with a company called Elgasolve on top. Mr Sharma declared Transnet on the 28 February 2013 that he is a – he has 50% shareholdernesship in a company called Elgasolve and he only conduct the CIPC record confirms that Mr Salim Essa was a director in that  
10 company. So at least now we know the first link that there is a business relationship there. At the bottom it is also...

**ADV MAHLAPE SELLO:** Sorry.

**MR TSHIAMO MICHAEL SEDUMEDI:** It is a pity I cannot...

**ADV MAHLAPE SELLO:** Okay now at the bottom you say is that bottom centre, bottom block, box.

**MR TSHIAMO MICHAEL SEDUMEDI:** Okay. At the top block that says Elgasolve.

**ADV MAHLAPE SELLO:** Yes.

**MR TSHIAMO MICHAEL SEDUMEDI:** Which I have just spoken about  
20 now.

**ADV MAHLAPE SELLO:** Yes.

**MR TSHIAMO MICHAEL SEDUMEDI:** Elgasolve owns 80 % shares in a company called if you go to your left NADP.

**ADV MAHLAPE SELLO:** Yes.

**MR TSHIAMO MICHAEL SEDUMEDI:** And the directors of NADP is Mr

Iqbal Sharma and Mr Essa.

**ADV MAHLAPE SELLO:** Yes.

**MR TSHIAMO MICHAEL SEDUMEDI:** And that is the second link. In turn NADP 20% shares in NADP are held by a company called Essa Capital PTY Limited and Mr Iqbal Sharma was a director in Essa Capital.

**ADV MAHLAPE SELLO:** Yes.

**MR TSHIAMO MICHAEL SEDUMEDI:** So it is now it confirms that at least insofar as Elgasolve, NADP and Essa Capital Mr Sharma and Mr  
10 Salim Essa have business interests in various – in varying degrees of course. And as well Essa Capital owns a company called VR Laser Properties. Towards your right which is owned by Mr Iqbal Sharma who was a director for – sorry he was a director in that company from 9 December 2012 to 12 October 2015 according to the CIPC records.

**ADV MAHLAPE SELLO:** I think that is 2013.

**MR TSHIAMO MICHAEL SEDUMEDI:** Yes 2013 to 2015.

**ADV MAHLAPE SELLO:** Yes.

**MR TSHIAMO MICHAEL SEDUMEDI:** VR Laser has leased premises to a company called VR Laser Services in which Mr Salim Essa is a  
20 director. In turn that VR Laser 79% of its shares are held by Elgasolve where at both Mr Salim Essa and Iqbal Sharma have a stake. So there is that relationship that we wanted to at least outline so as to understand some of the conclusions that we reach later on in our slides.

**ADV MAHLAPE SELLO:** Okay.

**MR TSHIAMO MICHAEL SEDUMEDI:** In this – slides just outlines the role of Mr Iqbal Sharma within Transnet.

**ADV MAHLAPE SELLO:** Hm.

**MR TSHIAMO MICHAEL SEDUMEDI:** We know that he was a board member in 2010 to 2014. He was also the chairperson of the BADC. A member of the BADC between 2012 and 2014. And on 24 January 2014 this BADC which was chaired by Mr Iqbal Sharma at the time approved the award of the 1064 locomotive transaction to Bombardier, CNR and CSR. CNR, CSR and GE. So we know that at that time when the award  
10 took place the chairperson of that committee was Mr Iqbal Sharma.

**ADV MAHLAPE SELLO:** Okay.

**MR TSHIAMO MICHAEL SEDUMEDI:** So at least that is the context that we thought the Chairperson must have as we are proceeding with the next slide.

**ADV MAHLAPE SELLO:** And before you leave that slide I note you indicate that based on that decision by BADC.

**MR TSHIAMO MICHAEL SEDUMEDI:** Correct.

**ADV MAHLAPE SELLO:** BT were allocated 240 electric locomotives, CNR 23, CSR diesel, CSR 359 electric and GE 233 diesel. I note at  
20 your page 57 at the bottom.

**MR TSHIAMO MICHAEL SEDUMEDI:** Yes Chair that is CNR electric let me see this should be – [indistinct] because the two are electrics and the other two are diesels.

**ADV MAHLAPE SELLO:** Oh the 232 awarded to CNR are electric.

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

**ADV MAHLAPE SELLO:** So there is an error there. So instead of 232 diesel to CNR it should read 232 electric.

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

**ADV MAHLAPE SELLO:** You correct – you sure about that ja.

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

**ADV MAHLAPE SELLO:** Okay. And...

**CHAIRPERSON:** All these corrections that need to be made...

**ADV MAHLAPE SELLO:** They will be followed by a statement Chair.

**CHAIRPERSON:** They will be [Indistinct]. Ja okay.

10 **ADV MAHLAPE SELLO:** It is just that it is important that this correction be noted at this juncture because the number of locomotives make their – find their way into the agreement that Mr Sedumedi will be dealing with and to avoid confusion.

**CHAIRPERSON:** So 232 becomes?

**ADV MAHLAPE SELLO:** Electric. It is wrongly defined in the...

**CHAIRPERSON:** As diesel?

**ADV MAHLAPE SELLO:** As diesel.

**CHAIRPERSON:** Okay.

**ADV MAHLAPE SELLO:** It is 323 electric locomotives. We correct  
20 thus far Mr Sudemedi?

**MR TSHIAMO MICHAEL SEDUMEDI:** Correct.

**ADV MAHLAPE SELLO:** Which would mean the CSR 359 are diesel?

**MR TSHIAMO MICHAEL SEDUMEDI:** Correct.

**ADV MAHLAPE SELLO:** No, no, no. Are you –

**MR TSHIAMO MICHAEL SEDUMEDI:** I am just...

**ADV MAHLAPE SELLO:** Getting it right.

**CHAIRPERSON:** Have you got it right?

**MR TSHIAMO MICHAEL SEDUMEDI:** Let me just get that thing right  
Chair.

**ADV MAHLAPE SELLO:** Just getting there.

**MR TSHIAMO MICHAEL SEDUMEDI:** 359 must be electric Chair. 359  
is electric.

**ADV MAHLAPE SELLO:** Yes which is CSR?

**MR TSHIAMO MICHAEL SEDUMEDI:** Let me just confirm that. I know  
10 CSR got ...

**ADV MAHLAPE SELLO:** Okay let us do this Mr Sedumedi. Let us  
proceed Ms Molefe will try – will find the award documents and then we  
can place on record that correction of course to be subsequently  
followed by a statement regarding all the corrections you have made to  
your slides.

**MR TSHIAMO MICHAEL SEDUMEDI:** Correct.

**ADV MAHLAPE SELLO:** So in the interim then let us proceed to your  
page 58.

**MR TSHIAMO MICHAEL SEDUMEDI:** Now on page 58 we deal with the  
20 business development agreement that we – was concluded between  
CSR and a company called Tequesta. Tequesta in the – the agreement  
is found in Volume 3

**ADV MAHLAPE SELLO:** Yes.

**MR TSHIAMO MICHAEL SEDUMEDI:** Page 5149.

**ADV MAHLAPE SELLO:** Okay. And is it necessary for the Chair to

have regard to the actual document?

**MR TSHIAMO MICHAEL SEDUMEDI:** No just not quite but just save to note the following key features coming out of that agreement.

**ADV MAHLAPE SELLO:** Yes.

**MR TSHIAMO MICHAEL SEDUMEDI:** Tequesta was represented by Mr Salim Essa.

**ADV MAHLAPE SELLO:** Yes.

**MR TSHIAMO MICHAEL SEDUMEDI:** In terms of that agreement it confirmed that this agreement is in relation to the 359 electric  
10 locomotives awarded to CSR.

**ADV MAHLAPE SELLO:** Hm.

**MR TSHIAMO MICHAEL SEDUMEDI:** Secondly it indicates that Tequesta will be paid 21% of the contract value between Transnet and CSR and 21% is stipulated that as R3 980 916 720.00.

**ADV MAHLAPE SELLO:** Yes

**MR TSHIAMO MICHAEL SEDUMEDI:** I was able to rehearse the figures this time around Chair.

**CHAIRPERSON:** Well Mr Sedumedi I assume you are just a lawyer not a chartered accountant so you may be forgiven. Yes.

20 **MR TSHIAMO MICHAEL SEDUMEDI:** And agreement further acknowledge this fact that CSR already paid 3.9% of the contract value being R706 707 480,00 to a company called JJT Trading FZE. And this amount which has been paid to JJT is deductible to the fee that is due to Tequesta.

**ADV MAHLAPE SELLO:** So the R70 million is deductible for the 3 –

from the R3.9 – for the 3 – from the R3 billion due to Tequesta in terms of this contract.

**MR TSHIAMO MICHAEL SEDUMEDI**: Correct.

**ADV MAHLAPE SELLO**: Okay.

**MR TSHIAMO MICHAEL SEDUMEDI**: Further confirms that Tequesta would provide services to CSR during the procurement period.

**ADV MAHLAPE SELLO**: Okay.

**MR TSHIAMO MICHAEL SEDUMEDI**: And there is a clause in that agreement that says there is no need for Tequesta to prove the  
10 services rendered [indistinct] that there is an acknowledgment by CSR that it would not have secured the 359 locomotives awarded from Transnet had not been for the active efforts of Tequesta.

**CHAIRPERSON**: At page 56 on the slide at page 56 in that slide you gave us a breakdown of the entities – of certain entities in which Mr I Sharma and Mr Essa were directors but I may have missed something. Did they have any presence in Tequesta?

**MR TSHIAMO MICHAEL SEDUMEDI**: Not Mr Sharma Chair it was Mr – only Mr Essa, Salim Essa.

**CHAIRPERSON**: Oh but is that on any page that we have dealt with  
20 that I might have missed?

**MR TSHIAMO MICHAEL SEDUMEDI**: Okay Chair the agreement itself if you...

**ADV MAHLAPE SELLO**: At Volume ...

**MR TSHIAMO MICHAEL SEDUMEDI**: At Volume...

**ADV MAHLAPE SELLO**: 2 according to your slide page 5149.



**CHAIRPERSON:** 5149?

**ADV MAHLAPE SELLO:** Yes Chair.

**MR TSHIAMO MICHAEL SEDUMEDI:** So that document 5149 starts on 5149

**CHAIRPERSON:** Yes.

**MR TSHIAMO MICHAEL SEDUMEDI:** It ends on 5167 but I want to draw the Chair's attention to page 5166 which is the signature page.

**CHAIRPERSON:** On page 5156?

**MR TSHIAMO MICHAEL SEDUMEDI:** 5166.

10 **CHAIRPERSON:** 5166.

**MR TSHIAMO MICHAEL SEDUMEDI:** Hm.

**CHAIRPERSON:** Yes.

**MR TSHIAMO MICHAEL SEDUMEDI:** You will note the signed at Shinzen on that date for and on behalf of Tequesta name Mr Salim Essa designation director and that is also confirmed in Mandarin.

**ADV MAHLAPE SELLO:** You can confirm that?

**MR TSHIAMO MICHAEL SEDUMEDI:** I can confirm.

**ADV MAHLAPE SELLO:** Ja.

**CHAIRPERSON:** Was Tequesta a company based in China?

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

**CHAIRPERSON:** Okay. Okay.

**MR TSHIAMO MICHAEL SEDUMEDI:** Not China it is not a South African company.

**CHAIRPERSON:** But how come you did not include that information on your slide in – at page 57 – 56 because that is under your discussion of

Tequesta is it not?

**MR TSHIAMO MICHAEL SEDUMEDI**: On page 58.

**CHAIRPERSON**: It is on page 58?

**MR TSHIAMO MICHAEL SEDUMEDI**: Correct Chair. The first bullet.

**CHAIRPERSON**: Well ja it says represented by – but of course somebody can represent them even if they are not directors so being a director would be much more important.

**MR TSHIAMO MICHAEL SEDUMEDI**: Okay.

**CHAIRPERSON**: Okay no that is fine. Well so the information that we  
10 see now on page 58 that there was no need well 1. Tequesta would provide services during the procurement period. Okay. Then it says:

“and no need for Tequesta to prove the services rendered save and acknowledgement by CSR that it would not have secured the 359 locomotives award but for the active efforts of Tequesta.”

That seems to – to have elements that we saw with Homix in some way. Homix you – you were telling me that in effect it was difficult to see what or it was not you. It was another witness.

**ADV MAHLAPE SELLO**: No. It was not Mr Sedumedi. I was about to  
20 say that ...

**CHAIRPERSON**: Okay. I am sorry.

**ADV MAHLAPE SELLO**: That is a Neotel transaction yes.

**CHAIRPERSON**: Oh that is why he is wondering about (intervenes).

**ADV MAHLAPE SELLO**: And MNS did not investigate that transaction  
Chair.

**CHAIRPERSON:** It was the witness before him.

**ADV MAHLAPE SELLO:** Yes.

**CHAIRPERSON:** Okay, alright. No that is fine then. Then I will not say anything to him.

**ADV MAHLAPE SELLO:** Okay.

**CHAIRPERSON:** I think ...

**ADV MAHLAPE SELLO:** The Chair perhaps can just note ...

**CHAIRPERSON:** You gave ...

**ADV MAHLAPE SELLO:** The similarities.

10 **CHAIRPERSON:** You gave evidence immediately after the other witness and ...

**TSHIAMO MICHAEL SEDUMEDI:** Oh.

**CHAIRPERSON:** There seems to be some similar features. Yes, okay.

**ADV MAHLAPE SELLO:** I guess Chair we are getting to information overload stage. That is understandable. While we are on 58 you noted your – your sub bullet to bullet 2 that the contract makes the point that 3.9 percent of the contract value and we – are we to understand contract value being the contract awarded to CSR?

**TSHIAMO MICHAEL SEDUMEDI:** Correct for the 359 locomotives.

20 **ADV MAHLAPE SELLO:** To the value of 706 million had already been paid to JJ Trading and that amount is deductible for the fee due to Tequesta?

**TSHIAMO MICHAEL SEDUMEDI:** That is correct.

**ADV MAHLAPE SELLO:** Were you able to determine who JJ Trading is?

**TSHIAMO MICHAEL SEDUMEDI:** No we could not because it is not a South African company. So we could not determine who JJ Trading FZE was.

**ADV MAHLAPE SELLO:** Were you able to determine why in a contract between CSR and Tequesta for a payment of a fee for services provided by Tequesta payment to a third party would – would be deductible from Tequesta's fee? Were you able to establish a relationship between any of the two parties in that triad?

**TSHIAMO MICHAEL SEDUMEDI:** We could not say for our own  
10 (indistinct) loss ...

**ADV MAHLAPE SELLO:** Yes.

**TSHIAMO MICHAEL SEDUMEDI:** And draw some conclusions but from the look of things it seems as if prior to Tequesta providing this service it seems as if JJ Trading would have rendered a similar service prior to Tequesta because in actual fact in their agreement it says that in the event that JJ Trading claimed this money that is when it will be deductible from this fee. So it seems to have – in the acknowledgement that there was a prior relationship between CSR Hong Kong and JJ Trading on a similar topic.

20 **ADV MAHLAPE SELLO:** And – and the clause you refer to would it be to Clause 6.1.1 at page 5158? I confine myself to the English version. I will ignore the Mandarin.

**TSHIAMO MICHAEL SEDUMEDI:** Six ...

**ADV MAHLAPE SELLO:** 1.1.

**TSHIAMO MICHAEL SEDUMEDI:** Correct. That was Clause 6.1.1.

**ADV MAHLAPE SELLO:** Yes.

**TSHIAMO MICHAEL SEDUMEDI:** Appearing on page 5158.

**ADV MAHLAPE SELLO:** Okay. Now this clause according to your first bullet point is dated 18 May 2015?

**TSHIAMO MICHAEL SEDUMEDI:** Correct Chair.

**ADV MAHLAPE SELLO:** The award and the contract concluded pursuant thereto was in March 2014?

**TSHIAMO MICHAEL SEDUMEDI:** Correct.

**ADV MAHLAPE SELLO:** The award to CSR?

- 10 **TSHIAMO MICHAEL SEDUMEDI:** Correct, yes. By the time this contract was dated and concluded the award had already taken place.

**ADV MAHLAPE SELLO:** A year previous? You say this is 18 May 2015.

**TSHIAMO MICHAEL SEDUMEDI:** Correct.

**ADV MAHLAPE SELLO:** The award is in March 2014.

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

**ADV MAHLAPE SELLO:** And this contract speaks of services provide – to be provided or provided by Tequesta during the procurement period. I am trying to reconcile the two dates and I am – I am struggling. Are you able to assist?

- 20 **TSHIAMO MICHAEL SEDUMEDI:** It is quite a (indistinct). The - how the wording is phrased it is phrased as if the service is still going to be performed because it says we hereby appoint Tequesta to provide the following services, right.

**ADV MAHLAPE SELLO:** Yes.

**TSHIAMO MICHAEL SEDUMEDI:** However in this one it gives the

impression of a future event. It speaks of the award because it defines the project as 359 electric locomotives awarded by Transnet to CSR. So there seems to be a misalignment of (indistinct) because it speaks of the future and as well acknowledges that you will not have gotten this contract had it not been of the votes of Tequesta.

**ADV MAHLAPE SELLO:** Okay. Maybe one day I will understand but in the meantime I would like you to have regard to Annexure A to that very same contract at page 5167 and I am particularly interested in item 5 of that Annexure 1 which is headed “Statement of Advisory Services to be  
10 Provided by Tequesta to the Company in Respect of the Project as Defined in Clause 1.1 of this Agreement.” Now at item 5 it states as follows and I quote:

“Assist the company in negotiating with the client  
on pricing levels in relation to the project.”

**TSHIAMO MICHAEL SEDUMEDI:** Correct Chair.

**ADV MAHLAPE SELLO:** Were you able to determine the meaning of that service to be provided and if – you referred the Chair to a number of video clippings you have of the negotiations. Were you able to tell from those video clippings whether Tequesta was represented in the  
20 negotiations?

**TSHIAMO MICHAEL SEDUMEDI:** On the review of the videos (intervenes).

**ADV MAHLAPE SELLO:** Yes.

**TSHIAMO MICHAEL SEDUMEDI:** All that we know is that those were CSR personnel that were negotiating with Transnet. We did not see

Mr Salim Essa. Mr Essa is a popular face. So we did not see Mr Salim Essa on the videos that were – that were reviewed at least.

**ADV MAHLAPE SELLO:** Now staying with Annexure A under the six items the following is noted:

“It is hereby noted and agreed between the parties that the above services are provided as a pre project service and will conclude on the company signing the contract for the project with the client.”

**TSHIAMO MICHAEL SEDUMEDI:** Correct.

- 10 **ADV MAHLAPE SELLO:** Are you able to – were you able to determine what the pre project services were?

**TSHIAMO MICHAEL SEDUMEDI:** We could not establish what that is because the same agreement versed the responsibility of compiling the bid documents with CSR. So insofar as that lot is concerned we are quite – I will have to rephrase that – the compilation of the documents and ensuring that the bid complies with the bid requirements that was the responsibility of CSR. Now it was quite a curious notion for us to say then what is this service that Tequesta would have rendered to CSR to ensure that CSR secures that 359 electrical locomotives.

- 20 **ADV MAHLAPE SELLO:** And lastly do you confirm that CSR bid for the full 599?

**TSHIAMO MICHAEL SEDUMEDI:** At the beginning CSR submitted a bid for the full 599.

**ADV MAHLAPE SELLO:** And yet in – in the definition section of – of this agreement at page 5153 I note the following item being defined:

Project 359 and this is defined as follows and I quote:

“Refers to any portion of the tender for the supply  
of 359 electric locomotives to Transnet SOC Limited  
South Africa hereinafter referred to as the client.”

359 is what was awarded to CSR?

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

**ADV MAHLAPE SELLO**: And that is a result of a negotiation – that pre  
negotiation?

**TSHIAMO MICHAEL SEDUMEDI**: Correct.

10 **ADV MAHLAPE SELLO**: And at that time CSR was not aware how  
many they would eventually be awarded?

**TSHIAMO MICHAEL SEDUMEDI**: Correct because at that time well  
they had only submitted a bid for the full 599.

**ADV MAHLAPE SELLO**: Okay. So no services then could have been  
capable of being rendered in respect of 359 because nobody know that  
CSR would get 359? Is that a fair ...?

**TSHIAMO MICHAEL SEDUMEDI**: That is correct.

**ADV MAHLAPE SELLO**: Thank you Chair. As pointed out that it is tea  
time – quarter past 11.

20 **CHAIRPERSON**: We will take the tea adjournment and we will resume  
at half past 11.

**ADV MAHLAPE SELLO**: Thank you.

**CHAIRPERSON**: Court adjourns.

**REGISTRAR**: All rise.

**INQUIRY ADJOURNS**



**INQUIRY RESUMES**

**CHAIRPERSON:** Yes you may proceed.

**ADV MAHLAPE SELLO:** Thank You Chair. Mr Sedumedi you move on then to your slide 59, in your report you have drawn certain inferences and conclusions from this contract which you highlight at your slide 59, would you like to go through that?

**MR TSHIAMO MICHAEL SEDUMEDI:** Correct Chair, so after analysing this agreement and (indistinct) between Mr Sharma and Mr Essa we said to ourselves, surely the procurement of the 1064 was required to  
10 comply with the provisions of the (indistinct) in particular and the PFMA relating to being competitive and fair, so we could not establish any lawful or commercial reason why would Mr Essa, Salim Essa interpose between Transnet and potential bidders because the bids are supposed to be evaluated on the base of their strength when you submit them and it was a irresistible (indistinct) to say Mr Sharma, having been the Chairperson of the BADC at the time when the bids were awarded and taking into account that he had (indistinct) with Mr Essa would have used his position to ensure that CSR is awarded this contract, so this is the inference we are saying was irresistible to arrive at. So it's purely  
20 (indistinct) that those are – what would have transpired.

**CHAIRPERSON:** In regard to that were you told what role he played in meetings to discuss this or were you just basing that on his relationship with Mr Essa, in other words in terms of minutes did you look at the role he played in meetings from which you are able to say, you know, he played a critical role in the decisions that favoured CSR.

**MR TSHIAMO MICHAEL SEDUMEDI:** In that Chair, (indistinct) we analysed the minutes which we can get the transcript of them but for the minutes as the Chairperson he was in charge of the proceedings when the management presented (indistinct) bidders ought to be, the split, the negotiation at (indistinct) those who were shortlisted and the ultimate award. So that's all that we could see in the minutes but we did not necessarily interrogate the transcript to see if there any further active role that he might have played to sway a decision away from CSR as an example, which is why we are saying just...(intervention).

10 **CHAIRPERSON:** Or towards, or rather away from – towards CSR isn't it.

**MR TSHIAMO MICHAEL SEDUMEDI:** Ja I'm saying if maybe he was swaying decisions away from other bidders (indistinct) so that's what I meant so...(intervention).

**CHAIRPERSON:** Ja you didn't have access to that, you didn't see anything like that.

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

**CHAIRPERSON:** Okay so it was just a relationship he had with Mr Essa.

20 **MR TSHIAMO MICHAEL SEDUMEDI:** Correct

**ADV MAHLAPE SELLO:** And on that score, I don't know if you are in a position to express an opinion on the reasonableness on a bidder paying 21% of the total value of the contract received presumably they do so with still profit to spare, would you...(intervention).

**MR TSHIAMO MICHAEL SEDUMEDI:** That was a (indistinct) of intense

debate when we finalised our reports because we found it strange that as a business person or entity would you be willing to forego 21% of your margin to an entity whom, on the agreement, you're saying you don't even need to know what services have they rendered, I'm just acknowledging that there is some service that they've rendered without any need for proof. So a reasonable conclusion to reach or inference is that you might have factored in this 21% when you made your offer during negotiations, you might have found some way of factoring in this 21% that you are required to pay (indistinct) in terms of this agreement.

10 **ADV MAHLAPE SELLO:** But that as a matter of fact is not something you have been able to determine.

**MR TSHIAMO MICHAEL SEDUMEDI:** No that is purely, as I said it is just an inference that we just drew because we could not have (indistinct) we didn't even include it in our report.

**ADV MAHLAPE SELLO:** Okay.

**CHAIRPERSON:** Did you establish whether this entity that was going to be paid this 21% whether it had – what it had done, if anything to assist CSR to get the contract. I think the agreement was saying that it wouldn't have to prove but CSR just acknowledged that had it not been  
20 for their assistance CSR would not have got the contract.

**ADV MAHLAPE SELLO:** At the time of (indistinct) financial reports it was not done, you recall Chair, I did say that we are in the process of engaging the OEM's this is one of the agenda items in our discussions with CSR and we disclose with them when we met with them in December that this is an item that we need to really get around. So we

(indistinct) at a stage where we have arrived at understanding the role that Tequesta would have played.

**CHAIRPERSON:** You know that earlier on I mentioned too – I made mention of Homix and I thought you were the one who had given evidence, you probably have heard of Homix in terms of Transnet and so on and so on.

**ADV MAHLAPE SELLO:** I have come across the name in various (indistinct) that we've conducted Chairperson.

**CHAIRPERSON:** Yes one of the issues that the witness before you  
10 testified to was that Homix entered into an agreement with Neotel and  
in terms of that agreement Homix was going to be paid some money on  
the basis that they had help or would help break a deadlock between  
Transnet and Neotel in terms of negotiations but part of the problem  
was that their witness said that there was no deadlock between  
Transnet and Neotel that was such that it could be said that Neotel had  
lost the business because the agreement was saying lost business –  
was referring to lost business but also either the agreement was  
reached on the day when the agreement between Neotel and Homix was  
reached on the day when the agreement between Neotel and Transnet  
20 was signed or the formal agreement between Homix and Neotel  
happened after the agreement between Transnet and Neotel had been  
signed and also that witness gave witness when I asked him whether –  
because he was an important character in the negotiation team of  
Transnet I said, well if there was a deadlock between Transnet and  
Neotel and somebody was asked to help break the deadlock surely they

would speak to the negotiating team, did they speak to you, you said no, did they – as far as you know did they speak to any member of your negotiating team, no. So the question arose what were they going to be paid for if they never spoke to, at least one of the negotiating teams but they were going to be paid a lot of money. So you have here another entity where – which is going to get a lot of money but their agreement with sales bar is that there's no need to prove what we've done, so it may well be a pattern that we see develop of how some of these things were done. I guess that I haven't – I can't remember with  
 10 regard to whom it's obviously it's important to look at the personalities involved in Homix compared to the personalities involved in this Tequesta whether in Homix for example you'll find Mr Essa or some other person that features prominently in some of these transactions.

**ADV MAHLAPE SELLO:** We will do that analysis Chair.

**CHAIRPERSON:** Ja thank you.

**ADV MAHLAPE SELLO:** You – I'm still at your 59 at your concluding paragraph would you like to speak to that, the conclusion you have drawn regarding this transaction – this agreement.

**MR TSHIAMO MICHAEL SEDUMEDI:** Correct Chair, as I said it's just a  
 20 emphasis of the point that I've already made that there just can't be any rational basis for this agreement to be concluded in a context of an open and competitive process where bids are supposed to be (indistinct) on the strengths so it means the Tequesta active efforts viewed against the relationship with Mr Sharma, would have undermined the spirit of an open and competitive bidding process, that

was just the conclusion that we just (indistinct).

**ADV MAHLAPE SELLO:** But whether or not they did, it's something that ...(intervention).

**MR TSHIAMO MICHAEL SEDUMEDI:** It's something –it's an inference that was purely an inferential (indistinct) it is irresistible to draw that type of an inference.

**ADV MAHLAPE SELLO:** Okay.

**CHAIRPERSON:** So it would be important to establish whether anybody in the negotiation team – in the Transnet negotiating team  
10 knew any active efforts by Tequesta or was aware of any such active efforts, okay.

**ADV MAHLAPE SELLO:** And that's once again something that we will pick up with those who were part of the negotiating team Chair.

**CHAIRPERSON:** Ja thank you.

**ADV MAHLAPE SELLO:** That brings us, according to my pack to the end of the issues you've dealt with and you raise around the Tequesta agreement.

**MR TSHIAMO MICHAEL SEDUMEDI:** That's correct Chair.

**ADV MAHLAPE SELLO:** You then move on to the next transaction.

20 **MR TSHIAMO MICHAEL SEDUMEDI:** The next set of slides Chair, speaks to the appointment or the procurement of the transaction advisors. The Chair would recall that 1064 given the magnitude of the transaction I might have acquired some external (indistinct) providers to provide some services. So the TA's as they are called, transaction advisors, they are the persons or the professionals that advise

Transnet on, amongst others, the validation of the bids case, the evaluation of these bids, how to structure the various agreements that would be required in the implementation of the project and procurement advice and of course legal services would have been also part of that scheme. So what we have done – so all this work is contained in two reports, we named them volume 2(a) and 2(b). For purposes of my evidence I will be focusing myself on volume 2(a) which will be the procurement of those advisors, the contracts that Transnet concluded with those advisors and the payments that were made. Now volume  
 10 2(b) which would have been the evidence, probably on Friday will then focus on the technical analysis of the transactions that Transnet would have concluded at the instance of the advice from the transaction advisors. So I thought I must just make that delineation of the evidence and how the reports are compiled.

**ADV MAHLAPE SELLO:** Understood, yes please continue.

**MR TSHIAMO MICHAEL SEDUMEDI:** We then move to slide 66, in May 2012 Transnet issued a confinement RFP to 9 entities for appointment of transaction advisors, we know on, review of the records that there were four responses that were received comprised of three  
 20 consortiums, there was one led by the McKinsey consortium, we'll talk about that, KPMG consortium PWC and then there was Weber Wentzel Attorneys did not form a consortium they just sent in a bid on legal services, but for purpose of our discussion nothing much turns on those issues expect to say that we all know that McKinsey consortium was the successful bidder.

**ADV MAHLAPE SELLO:** Yes.

**MR TSHIAMO MICHAEL SEDUMEDI:** And the consortium was led – this diagram indicates that McKinsey is a company incorporated even though the consortium was called McKinsey consortium, it was a main bidder and a core bidder called Letsema Consulting and the rest of the members were sub-contractors. So meaning the leads on (indistinct) McKinsey (indistinct) and Advanced Relative Technologies, Nedbank, Edward Nathan, (indistinct) and Auto Capital were the sub-contractors as indicated by that diagram on the right there.

10 **ADV MAHLAPE SELLO:** Okay.

**MR TSHIAMO MICHAEL SEDUMEDI:** Now we now deal with the finding, the MNS findings on the procurement process. The confinement RFP on page – volume 4 page 5637, by now you understand there are various stages of evaluation. So there was a first stage being administrative responsiveness, amongst the various documents that you required in that stage was for the bidders to complete all the forms that were enclosed in the bid documents but quite critically was the submission of the audited financial statements for the previous three years and in that bid again, is state, failure to  
20 comply with the provisions of stage 1 will render the bidders proposal to be non-responsive and that amounts to a disqualification. McKinsey Incorporated did not submit audited financial statements when they submitted their bid there was no financial statements as required by the bid but in that response of theirs they enclosed a letter that is in volume 4 page 5336 where at they said, and I quote it's an extract from



their letter,

“In terms of an internal governance regarding the provision of annual financial statements McKinsey provides such statements only in terms of statutory or regulatory requirements or when compelled to do so through any legal requirement”,

That's what we submit in the letter, the same letter also indicates – or it makes reference to a report of a factual findings by  
 10 PWC purport indicating that McKinsey – the whole idea in that letter was, you know, we attach a PWC report that demonstrates our financial position, however, that report referred to in the letter was not even enclosed in the bid documents. Now the requirement for financial (indistinct) not just a miscellaneous requirement it is just innocent or (indistinct), paragraph 15.2.6 of the Transnet procurement procedure manual which is in the volumes, it indicates the purpose of requiring financial statements is to assess the financial stability of the bidders, that's why at the very early stage of evaluation we need to see who are we dealing with. So it's not just one of those miscellaneous  
 20 requirements that are required by the bids. So this purpose as mandated by the PPM could not be achieved because Transnet then could not satisfy itself of McKinsey's financial stability as a result of them not providing this statement. So it was our view that McKinsey's submission or proposal was non-responsive and should not have been entertained proceeding further in the evaluation process.

**CHAIRPERSON:** You said that is – apart from the slides that's dealt with in volume 4?

**ADV MAHLAPE SELLO:** Let's go back and start with the question of administrative responsiveness that's where you start to direct the Chair's attention to the volumes. On your slide 68 you said it's volume 4 page 5637.

**MR TSHIAMO MICHAEL SEDUMEDI:** Page 5637.

**ADV MAHLAPE SELLO:** Yes, and you go further in your slide...(intervention).

10 **CHAIRPERSON:** Yes I've got 5637 now yes.

**ADV MAHLAPE SELLO:** Thank you Chair, you go further in your slide and say that page must be read with...(intervention).

**MR TSHIAMO MICHAEL SEDUMEDI:** Read with 5647.

**ADV MAHLAPE SELLO:** Yes so we keep our finger at 5637 and go to 5647, yes.

**MR TSHIAMO MICHAEL SEDUMEDI:** On 5637 it indicates there 8.1 step 1...(intervention).

20 **CHAIRPERSON:** Yes I'm sorry I may have missed something now about – just briefly the point you were making about test for administrative responsiveness...(intervention).

**MR TSHIAMO MICHAEL SEDUMEDI:** Correct Chair it's on page 5637.

**CHAIRPERSON:** Yes.

**MR TSHIAMO MICHAEL SEDUMEDI:** You'll see at the top of that page again paragraph 8, evaluation, methodology and criteria, Transnet will utilise the following methodology.

**CHAIRPERSON:** Yes.

**MR TSHIAMO MICHAEL SEDUMEDI:** And criteria in selecting a preferred service provider is so required, that is the statutory term that they include in their RFP's.

**CHAIRPERSON:** I wonder what this "if so required" means because I think we saw it in regard to another transaction, I mean, will there be a case where it won't be required to use them?

**MR TSHIAMO MICHAEL SEDUMEDI:** My interpretation and (indistinct) might be incorrect is that Transnet doesn't have an obligation to  
10 appoint a service provider, I just assumed that it means it doesn't follow that at the conclusion of this process there might be – or this might result in an appointment of a service provider. I say that based on a disclaimer that they always put in their bid documents, that they don't have an obligation of appointing anyone for this bid, that's how I've always...(intervention).

**CHAIRPERSON:** That I understand but that is in another place.

**MR TSHIAMO MICHAEL SEDUMEDI:** Yes.

**CHAIRPERSON:** Ja so this seems to suggest that we may not be required to use this methodology and criteria in selecting a bidder.

20 **MR TSHIAMO MICHAEL SEDUMEDI:** There are two choices Chair.

**CHAIRPERSON:** Yes.

**ADV MAHLAPE SELLO:** If I understand you Mr Sedumedi. Mr Sedumedi's understanding, if I quote you correctly is that if the qualifier, if so required relates to the selection of a preferred bidder and not to the use of the methodology.

**CHAIRPERSON:** Just repeat that.

**ADV MAHLAPE SELLO:** That a qualifier, if so required relates to the second portion of the statement which is regarding the selection of a preferred bidder so, if so required we will select a bidder. It does not relate to the first part of that statement regarding the use of methodology, as an interpretation it attaches to it, it's a question of sustainable...(intervention).

**CHAIRPERSON:** I'm not sure if I understand it because the criteria – the methodology and the criteria they are talking about are only  
10 applicable in selecting a service provider or the preferred service provider isn't it, that's the only time they use them, they don't use them for anything else isn't it?

**ADV MAHLAPE SELLO:** Correct Chair.

**CHAIRPERSON:** So if you remove the words, "if so required", then what you would understand & to mean is, in selecting the successful bidder this is the methodology and these are the criteria we will use.

**MR TSHIAMO MICHAEL SEDUMEDI:** Or if we follow this methodology we must take it to its logical conclusion and select a preferred bidder. Now as I'm saying, reading that thing in view of the disclaimer that they  
20 always put that there's no obligation to award, that's how I make – how we made the connection that it might be that they don't want to be tied to finishing the process up until...(intervention).

**CHAIRPERSON:** No that I understand but that's overall, they can follow the whole thing and then not appoint, you know, so that they should put somewhere where they, in effect they say we can follow this

process but still not appoint, all the different stages not necessarily 8, you know but anyway it might not be - it might not make any difference in regard to these transactions.

**ADV MAHLAPE SELLO:** Or even perhaps to similar transactions Chair because we know that there's a methodology prescribed we've dealt with that yesterday in the PPM's. So it's a question of whether or not they – Transnet may conduct any evaluation outside the prescribed methodology, that's the question to be debated and secondly then – then the second question that arises is whether or not in issuing a RFP  
10 Transnet may seek to absolve itself in position of the methodology in the PPM. So if we accept that they don't have scope to do so, then it may be argued that a proper reading, contextual reading of that sentence must be, if I am required to select a preferred service I shall do so having followed this methodology.

**CHAIRPERSON:** Yes maybe it might mean that, again if you have got that qualifier somewhere, where it says my following this process doesn't oblige me to appoint, then you don't need this in paragraph 8 but it's okay.

**ADV MAHLAPE SELLO:** But maybe when we talk to those who  
20 evaluated this tender maybe they will shed light and explain how they approached it and on what basis they did.

**CHAIRPERSON:** Yes that's fine.

**MR TSHIAMO MICHAEL SEDUMEDI:** Now for step 1 the test for administrative responsiveness the test for – I'm reading this on top of the table there Chair, the test for administrative responsiveness will

include the following, the relevant parties, second bullet...(intervention).

**ADV MAHLAPE SELLO:** Yes. You're reading at 8.1?

**MR TSHIAMO MICHAEL SEDUMEDI:** 8.1 Whether the bid has been lodged on time. Second bullet whether all returnable documents and or schedules were applicable were completed and returned by the closing date and time. And the last bullet whether the bid documentation has been duly signed by the respondent. The next table reads:

10                    "The test for administrative responsiveness it is step  
1 must be passed for a respondent's proposal to  
progress to step 2 for further evaluation."

If we now go to page 5647 because you will see Chair that on the returnable date it refers to Section 4 the returnable – starting on page 5647.

**ADV MAHLAPE SELLO:** Hm.

20                    **MR TSHIAMO MICHAEL SEDUMEDI:** They list the items that must be provided by the bid – by the bidders when they respond. And if you turn overleaf at the top of the table after [indistinct] there is audited financials for previous three years. And there is paragraph underneath that table to say:

"Failure to provide all the above referenced returnable documents married with a tick will result in a respondent's disqualification. Bidders are therefore urged to ensure that all and all is underlined – all these documents are returned with the proposals. And as you can see the financials at the top there has a tick. So it was mandatory for the

bidders to provide at least those documents that are listed there. Now when McKinsey submitted their proposal they ticked audited financial statements for the previous three years were not enclosed.

**CHAIRPERSON**: I am sorry in – at page 5637 oh okay now I see it is the second bullet point under 8.1 that must be read with 5648 – 5647 and 5648.

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

**CHAIRPERSON**: So – so one of the criteria was whether all of returnable documents were completed and returned by the closing date  
10 and 5648 makes it clear that failure to return all of them disqualifies a bidder.

**MR TSHIAMO MICHAEL SEDUMEDI**: Correct.

**CHAIRPERSON**: And what the returnable documents are is set out in the list at 5647 to 8.

**MR TSHIAMO MICHAEL SEDUMEDI**: Correct.

**CHAIRPERSON**: Okay right

**MR TSHIAMO MICHAEL SEDUMEDI**: And it is not – and there is no discretion that has been afforded to any person [indistinct].

**CHAIRPERSON**: Sorry.

20 **MR TSHIAMO MICHAEL SEDUMEDI**: There is no discretion

**CHAIRPERSON**: Yes.

**MR TSHIAMO MICHAEL SEDUMEDI**: As to whether you will be disqualified or not.

**CHAIRPERSON**: Ja, ja.

**MR TSHIAMO MICHAEL SEDUMEDI**: Apparently in a case that you

going to get disqualified.

**CHAIRPERSON**: Ja. And then you were dealing with – you were then – you were starting to move onto the point of showing that somebody did not return all the documents.

**MR TSHIAMO MICHAEL SEDUMEDI**: Correct Chair. The – on slide 69 we are referencing the letter from McKinsey contained in Volume 4 page 5336. 5336

**CHAIRPERSON**: Okay.

**MR TSHIAMO MICHAEL SEDUMEDI**: This letter

10 **ADV MAHLAPE SELLO**: Two seconds Mr Sedumedi.

**MR TSHIAMO MICHAEL SEDUMEDI**: Okay.

**CHAIRPERSON**: Yes.

**MR TSHIAMO MICHAEL SEDUMEDI**: It is from McKinsey.

**CHAIRPERSON**: Ja.

**MR TSHIAMO MICHAEL SEDUMEDI**: It is and part of the bid documents the heading there is policy on provision of annual financial statements.

20 “McKinsey Incorporated in the state of Delaware United States of America South African branch is a privately held entity. In terms of the internal governance regarding the provision of annual financial statements McKinsey provides such statements only in terms of statutory or regulatory requirements or when compelled to do so through any legal requirement. In order to provide details of



the financial bona fides of McKinsey an original statement from the auditors of the entity is provided. Please refer to the original report of factual findings as prepared by Price Waterhouse Coopers covering their financial period as required. In the event that McKinsey is successful in its submission and it remains a requirement to view the annual financial statements. The annual financial statements can be viewed through an onsite inspection.”

10 That was the letter that was enclosed in their bid documents.

**ADV MAHLAPE SELLO:** So the bid document required financial statements for three years, audited financial statements for three years and McKinsey found it fit to provide financial bona fides whatever that may mean instead?

**MR TSHIAMO MICHAEL SEDUMEDI:** Correct. Which for the record when you reviewed their bid that report that purports to indicate their financial bona fides was not enclosed in that bid.

**CHAIRPERSON:** But the starting point is that they failed to comply with the – with one of the bid requirements to furnish audited financial  
20 statements for the period that was indicated.

**MR TSHIAMO MICHAEL SEDUMEDI:** Correct.

**CHAIRPERSON:** And in terms of what we – you have referred us to in this bundle Exhibit – volume 4.

**ADV MAHLAPE SELLO:** Yes Chair.

**CHAIRPERSON:** They should have been disqualified? Is that right?

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

**CHAIRPERSON:** Is that right?

**MR TSHIAMO MICHAEL SEDUMEDI:** As per the requirements

**CHAIRPERSON:** Yes.

**MR TSHIAMO MICHAEL SEDUMEDI:** In the RFP.

**CHAIRPERSON:** Yes. Okay. Thank you.

**ADV MAHLAPE SELLO:** And we know they were not disqualified.

**MR TSHIAMO MICHAEL SEDUMEDI:** To cut a long – the – McKinsey was eventually the successful bidder on this transaction.

- 10 **ADV MAHLAPE SELLO:** Were you able to establish through your investigation the basis on which – whichever body decided this tender or this award why the requirements of the RFP were not upheld?

**MR TSHIAMO MICHAEL SEDUMEDI:** That is not apparent in the records that we reviewed. We assumed they just took McKinsey's word for it as contained in this specific letter.

**ADV MAHLAPE SELLO:** And in the absence – considering the purpose of the financial statements as [indistinct] in paragraph 13.2.6 of the PPM as you state in your slide 69. Such documentation is necessary to enable Transnet to test the financial stability of a bidder?

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

**ADV MAHLAPE SELLO:** We know that we do not have them now so are we to accept that McKinsey was awarded notwithstanding that Transnet could not test its financial stability

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

**ADV MAHLAPE SELLO:** Okay.

**CHAIRPERSON**: Did you – there would have been a team or body that would have determined whether McKinsey should go beyond stage 1. What was that body or team?

**MR TSHIAMO MICHAEL SEDUMEDI**: Ordinarily it should have been a cross-functional evaluating team.

**CHAIRPERSON**: Hm.

**MR TSHIAMO MICHAEL SEDUMEDI**: That would have had to evaluate.

**CHAIRPERSON**: YEs.

**MR TSHIAMO MICHAEL SEDUMEDI**: This part of the bid.

10 **CHAIRPERSON**: Yes.

**MR TSHIAMO MICHAEL SEDUMEDI**: Again ordinarily there would have been or they could – Transnet Internal Audit that would review such a process. So those structures at least would have been required to check if the evaluation of this bid was in line with the process. I mean ...

**CHAIRPERSON**: With the requirements of the RFP?

**MR TSHIAMO MICHAEL SEDUMEDI**: Correct. So that I mean the whole governance surely would have been required to test that this bid complied with the requirements of the RFP.

20 **CHAIRPERSON**: Would that team as you understand the position would that team have been a standard team that does this kind of job for stage 1 in regard to all tenders or does it composition change depending on the nature of the tender or transaction involved because the witness before you did give evidence in regard to Neotel and CSR and there was a team I think they were also called cross-functional.

**MR TSHIAMO MICHAEL SEDUMEDI**: Cross-functional yes.

**CHAIRPERSON**: Whatever, whatever team

**MR TSHIAMO MICHAEL SEDUMEDI**: Evaluation team.

**CHAIRPERSON**: Ja and if I recall correctly in regard to the transaction that the witness concerned was testifying about they changed or they recommended the changing of one of the evaluation criteria in that case.

**MR TSHIAMO MICHAEL SEDUMEDI**: Yes.

**CHAIRPERSON**: So it would appear that in regard to this transaction  
10 that you are testifying about to the extent that there may have been  
such a cross-functional evaluation team involved in evaluating whether  
McKinsey's bid should go beyond stage 1 it would appear that they  
either did not pick up that McKinsey did not comply with this  
requirement of financial statement or maybe they did pick that up but  
decided that there should be condonation or that this was not such an  
important requirement. Or maybe they also recommended that this  
requirement should be waived so it would be important to establish  
whether each time we are dealing with the same people who form that  
team or is it different people and whether there are certain  
20 personalities that appear in each such team if those teams are  
different? But you say you do not know the composition of such teams  
or such team?

**MR TSHIAMO MICHAEL SEDUMEDI**: What we can confirm Chair

**CHAIRPERSON**: Hm.

**MR TSHIAMO MICHAEL SEDUMEDI**: Is that the CFET would be

customised/

**CHAIRPERSON**: Hm.

**MR TSHIAMO MICHAEL SEDUMEDI**: In accordance with the bid at hand.

**CHAIRPERSON**: Yes.

**MR TSHIAMO MICHAEL SEDUMEDI**: So there is no generic CFET.

**CHAIRPERSON**: Ja. So it is put together each time there is a transaction.

**MR TSHIAMO MICHAEL SEDUMEDI**: There is a transaction...

10 **CHAIRPERSON**: Where they would – they would need to do this kind of evaluation.

**MR TSHIAMO MICHAEL SEDUMEDI**: Yes because you need to look at the expertise required.

**CHAIRPERSON**: Yes.

**MR TSHIAMO MICHAEL SEDUMEDI**: To assess the capabilities of the bidders.

**CHAIRPERSON**: Yes.

**MR TSHIAMO MICHAEL SEDUMEDI**: At that – they have submitted.

**CHAIRPERSON**: Yes.

20 **MR TSHIAMO MICHAEL SEDUMEDI**: As an example a CFET for – to evaluate the 1064 locomotives as an example.

**CHAIRPERSON**: Ja.

**MR TSHIAMO MICHAEL SEDUMEDI**: It would not be the same persons that will be evaluating a transaction like this.

**CHAIRPERSON**: Ja. Ja. But your team you did not seek to establish

who were the people who made up that team in this particular case?

**MR TSHIAMO MICHAEL SEDUMEDI:** Such record will be in our records in the office Chair.

**CHAIRPERSON:** Yes.

**MR TSHIAMO MICHAEL SEDUMEDI:** Even though it is not necessary get reflected.

**CHAIRPERSON:** Yes.

**MR TSHIAMO MICHAEL SEDUMEDI:** In the report.

**CHAIRPERSON:** Yes.

10 **MR TSHIAMO MICHAEL SEDUMEDI:** Because for us it was more to say

**CHAIRPERSON:** Yes.

**MR TSHIAMO MICHAEL SEDUMEDI:** Just an analysis of the documents at hand.

**CHAIRPERSON:** Yes.

**MR TSHIAMO MICHAEL SEDUMEDI:** The members

**CHAIRPERSON:** Ja.

**MR TSHIAMO MICHAEL SEDUMEDI:** whoever they are.

**CHAIRPERSON:** Ja.

20 **MR TSHIAMO MICHAEL SEDUMEDI:** That is not even an issue.

**CHAIRPERSON:** Yes.

**MR TSHIAMO MICHAEL SEDUMEDI:** Those persons failed

**CHAIRPERSON:** Yes.

**MR TSHIAMO MICHAEL SEDUMEDI:** To evaluate this bid in accordance with what was required from them.

**CHAIRPERSON:** Yes.

**MR TSHIAMO MICHAEL SEDUMEDI:** But to an extent that maybe that will [indistinct] we can provide information on who would have been the members of the CFET for this specific transaction.

**CHAIRPERSON:** Ja no that is important and in regard to the other transaction involving Neotel Ms Sello

**ADV MAHLAPE SELLO:** Yes Chair.

**CHAIRPERSON:** I think we must also check that. Just see whether there may be certain personalities that are common to both teams.

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

**CHAIRPERSON:** Thank you.

**ADV MAHLAPE SELLO:** And perhaps on this score Mr Sedumedi yesterday we dealt with a number of cross-functional evaluation team reports in respect of different transactions. Insofar as this transaction is concerned are you aware of one such report because if memory serves me well normally at the end of that report a couple of people sign the report and that might begin to answer the question that the Chair poses as to their identities of the members of that team?

20 **MR TSHIAMO MICHAEL SEDUMEDI:** Yes there would. For each and every phase you will recall even on the other transactions somebody will have to sign off to say this is an evaluation that we have done and these are the persons that must be appointed. So we will check in our records who are the persons that would have signed off on this specific phase.

**ADV MAHLAPE SELLO:** Now my question is do you have in your

record as it currently stands copies of the CFET reports regarding this transaction from your recollection. Are they part of the record?

**MR TSHIAMO MICHAEL SEDUMEDI**: From my recollection I do not remember that being part of our annexures.

**ADV MAHLAPE SELLO**: Okay.

**MR TSHIAMO MICHAEL SEDUMEDI**: Because like I was saying in the main we are looking at the documents and what transpired. We definitely do not come up in – come up or came up with a document that seemed to recommend any change or waiver of the evaluation  
10 criteria in this specific instance.

**ADV MAHLAPE SELLO**: Okay then as we have indicated to the Chair you will make a search of your records and see what reports you can unearth regarding the evaluation of this tender and then we will submit them to the commission.

**MR TSHIAMO MICHAEL SEDUMEDI**: Right.

**CHAIRPERSON**: The – it would be strange if McKinsey's omission of the audited financial statements was not picked up by that team because its sole function is to check whether those requirements are met. So I am very interested in seeing what the explanation is.

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

**CHAIRPERSON**: For McKinsey to be allowed to go to stage 2. Did they check all these requirements because it is like a list that you must tick? Yes we have seen this, yes we have seen this. This is not there.

**ADV MAHLAPE SELLO**: Yes Chair.

**CHAIRPERSON**: You know and then if it is not there why are they not



disqualified?

**ADV MAHLAPE SELLO:** Indeed Chair. We then...

**CHAIRPERSON:** So in particular it may be that the chairperson of that committee if it is established that it go through such a committee that committee may have to be called to explain.

**ADV MAHLAPE SELLO:** Shed light on this.

**CHAIRPERSON:** Ja.

**ADV MAHLAPE SELLO:** Yes Chair. We have made a note of that Chair and we shall revert. We then move onto page 70 if my order is still  
10 right of your slides.

**MR TSHIAMO MICHAEL SEDUMEDI:** It is correct. After the evaluation of those bids then on 26 July 2012.

**CHAIRPERSON:** I am sorry Mr Sedumedi. At a certain stage relevant people saw your report?

**MR TSHIAMO MICHAEL SEDUMEDI:** Yes.

**CHAIRPERSON:** What answer did you or comments did you get with regard to the fact that in terms of the RFP requirements any bidder who did not supply all the documents should not have gone beyond stage 1 but McKinsey proceeded beyond stage 1 despite the fact that they did  
20 not supply financial statements. Were you given any answers or – by all relevant authorities that were still within Transnet?

**MR TSHIAMO MICHAEL SEDUMEDI:** This report was submitted in March this year it was made available to Transnet so the same modus operandi where they will circulate that to the executives. The report was also availed or just the findings thereof to McKinsey because we

have been in engagements with McKinsey as well on some of the issues. They confirm that indeed – so there is no dispute about whether they did not provide. They did confirm it indeed they not provide the financials and this letter is the [indistinct] letter that they normally use when they respond to bids or request for proposals and it has not been an issue. So that is the furthest that we could...

**CHAIRPERSON**: They said there was no – this was never made an issue with them by Transnet?

**MR TSHIAMO MICHAEL SEDUMEDI**: Correct.

- 10 **CHAIRPERSON**: Yes. It is just that it is quite a serious thing because you know Transnet could end up giving a big contract to an entity that really does not have the financial strength and other abilities to carry it out. Ja okay alright.

**ADV MAHLAPE SELLO**: Thank you Chair. You move on then to the co-bidder.

**MR TSHIAMO MICHAEL SEDUMEDI**: Correct.

**ADV MAHLAPE SELLO**: At your slide 70.

**MR TSHIAMO MICHAEL SEDUMEDI**: Right. So on 26 July the Transnet acquisition council awarded this contract then to McKinsey.

- 20 **ADV MAHLAPE SELLO**: McKinsey Consortium to be exact?

**MR TSHIAMO MICHAEL SEDUMEDI**: McKinsey Consortium my apologies.

**ADV MAHLAPE SELLO**: Ja.

**MR TSHIAMO MICHAEL SEDUMEDI**: Now on 22 August 2012 there is a memorandum compiled by Mr Anoj Singh to the Group Chief Executive

who at that stage was Mr Brian Molefe. In one of the issues raised in that [indistinct] is that there is a conflict of interest between Letsema. Letsema was one of the consortium members of the McKinsey Consortium. He says there is a – seems to be a conflict of interest between Letsema and Barlow World so McKinsey will be required to replace Letsema with another entity of equal standing with Letsema or better. That is the phrase that they used in [indistinct] the risk conflict so that is all that we can input. But [indistinct] did not necessarily expand on the nature and extent of this conflict between Letsema and

10 Barlow World.

**ADV MAHLAPE SELLO:** Were you able to establish in the course of your investigations I appreciate that you – you have not had opportunity to interview Mr Brian Molefe or Mr Anoj Singh but from other employees within Transnet were you able to determine the nature of the supposed conflict between Letsema and Barlow World that necessitated Letsema to fall out of this consortium?

**MR TSHIAMO MICHAEL SEDUMEDI:** Various enquiries that we made with the [indistinct] been interviewed we could get the clear answer or explanation as to what is the nature of the conflict. It think it was just

20 accepted as a fait accompli that there seemed to have been some conflict of some sort which necessitated Transnet advising McKinsey Consortium that it would have to replace Letsema with a bidder or an entity of equal standing or better.

**ADV MAHLAPE SELLO:** And the Chair can accept that you have not – you have not interviewed Letsema or any of its directors.

**MR TSHIAMO MICHAEL SEDUMEDI:** We have not interviewed Letsema.

**ADV MAHLAPE SELLO:** Okay. Yes you may proceed.

**MR TSHIAMO MICHAEL SEDUMEDI:** Nor Barlow World.

**ADV MAHLAPE SELLO:** Nor Barlow World yes.

**MR TSHIAMO MICHAEL SEDUMEDI:** Now on the slide...

**CHAIRPERSON:** Well we will need to get to know exactly whether there was a genuine conflict of interest there and how it was handled. So – so the investigators can also do that.

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

**CHAIRPERSON:** Of the commission to...

**ADV MAHLAPE SELLO:** Yes Chair.

**CHAIRPERSON:** To talk to those people to try and establish what kind of intra – conflict of interest was that?

**ADV MAHLAPE SELLO:** Indeed Chair.

**CHAIRPERSON:** Ja.

**ADV MAHLAPE SELLO:** Yes Chair we will.

**CHAIRPERSON:** Okay.

**ADV MAHLAPE SELLO:** Yes Mr Sedumedi you may proceed.

20 **MR TSHIAMO MICHAEL SEDUMEDI:** Now in dealing with this whole replacement of Letsema we first analysed the – the bid submissions of McKinsey to establish what role would Letsema play within the consortium notwithstanding is it a minor role player or a key role player? These slides next two slides indicate the roles that the consortium itself are assigned to various members of the consortium.

**ADV MAHLAPE SELLO:** Hm.

**MR TSHIAMO MICHAEL SEDUMEDI:** So on the left those are the issues that would have been put in the RFP to say these are the requirements that Transnet have or the strengths or the skills of the members. And the Chair will note that Letsema played or at least when you look at the RFP submission or the bid submission Letsema played quite a key role compared to I mean just on slide 71 Nedbank has only one role for Nedbank they have been there ability in project deal structuring. Whereas Letsema and McKinsey played significant role on  
10 various items the same principle applies on the next slide. So that is the consistent pattern. In actual fact if – not necessary [indistinct] document the percentage that Letsema had was quite a significant one. The highest would have been McKinsey if my memory serves me [indistinct] 35 with Letsema being on 20 and the rest of the sub-paragraphs had a smaller portion of the cake. So Letsema was a key partner in this consortium. In actual fact you will recall that the bid said it was Letsema is a co-bidder. That is the word that was used in the proposal.

**ADV MAHLAPE SELLO:** And I do not know if you went to the actual  
20 report. Mr Singh's report you referred to at Volume 4 page 5528 this you have in your page 17. At 5530 actually sets out in percentage terms the work split amongst the various consortium members.

**MR TSHIAMO MICHAEL SEDUMEDI:** Correct. That will be ...

**ADV MAHLAPE SELLO:** Volume 4, 5530.

**MR TSHIAMO MICHAEL SEDUMEDI:** Yes.

**ADV MAHLAPE SELLO:** At item 17.

**MR TSHIAMO MICHAEL SEDUMEDI:** That is where I saw the split.

Page 5530.

**ADV MAHLAPE SELLO:** Yes.

**MR TSHIAMO MICHAEL SEDUMEDI:** The heading is Financial Implications. The estimated value for locomotive advisory services required is R50 million. The percentage split of the work is anticipated to be as follows: McKinsey 35%, Procurement Partner [Letsema] place two conflicts Barlow World is 20% so the stake for Letsema was 20%  
10 and then the Outa and Nedbank 10%. [indistinct] will recall Chair was not part of the consortium per se because they were – they submitted their bid for individually they had 20% and Advanced Rail Technologies was 15%. So that demonstrates the key role that Letsema played in the configuration of the consortium.

**CHAIRPERSON:** You might or might not be able to answer this question. When a tender has been awarded to a consortium or joint venture and there is a problem which results in the consortium or joint venture being able to continue with the contract as they are or as they – as they were when they were appointed. Are they free to just change  
20 partners and with – and continue without the employer having an opportunity to see who – to see the joint venture that will continue or to look for another one or is that something that you would not know?

**TSHIAMO MICHAEL SEDUMEDI:** A (indistinct) is contained in our report Chair.

**CHAIRPERSON:** Hm.

**TSHIAMO MICHAEL SEDUMEDI:** The view that we hold on the matter because we know that post this memorandum – let me just talk about what happened (indistinct) such as to properly answer the question that the Chair is asking. On 6 December 2012 Transnet then issues or concludes what is called a Letter of Intent and in that LOI – Letter of Intent – it describes the parties as McKinsey being the supplier and they list as well as other members of the consortium namely Regiments Capital, Advanced Rail Technologies, Nedbank and (indistinct). Now from this letter you could see now that Regiments is an entity that  
 10 would have replaced Letsema. So the view that we have in the report is that – and this – remember all this happens pre award. It is not like the (indistinct) happens ...

**CHAIRPERSON:** Oh yes, *ja*.

**TSHIAMO MICHAEL SEDUMEDI:** After the fact.

**CHAIRPERSON:** Hm.

**TSHIAMO MICHAEL SEDUMEDI:** This is at the stage we pick up this conflict before we award this bid and it says Letsema – sorry – McKinsey must find a replacement that is of the same value. The (indistinct) was that it cannot be up to McKinsey to make a  
 20 determination of who is of equal standing. They got the points that they got being the preferred bidder on the strength of the submissions that they have made and then informed by the expertise that various members of the consortium would have brought to the table. So it is that that would have enabled them to outscore the other bidders. So it then goes without saying that any person who substitutes Letsema or

any member for that matter should be put through at least the same process (indistinct) to a lesser extent to determine if with this entity is the McKinsey Consortium still meeting the requirement of being the preferred supplier. So from the records that we had we could not seem to find anything that suggests there was some re-evaluation of some sort to test the strength of Regiments. In actual fact the Letter of Intent it says McKinsey has agreed to partner with Regiments.

**CHAIRPERSON:** Suggesting maybe inadvertently that the new entity was suggested to McKinsey and McKinsey agreed? You need not say anything. Okay. Yes.

**ADV MAHLAPE SELLO:** Yes Mr Sedumedi.

**CHAIRPERSON:** I am just saying the language suggests that it did not come from McKinsey.

**TSHIAMO MICHAEL SEDUMEDI:** At the least the reading of that.

**CHAIRPERSON:** *Ja*, the language.

**ADV MAHLAPE SELLO:** It is a curious way of putting it in the LOI but ...

**CHAIRPERSON:** Hm.

**ADV MAHLAPE SELLO:** It is what it is.

20 **CHAIRPERSON:** Yes.

**ADV MAHLAPE SELLO:** You may proceed Mr Sedumedi. So now we know at this juncture the LOI already recognises Regiments Capital as a replacement for Letsema?

**TSHIAMO MICHAEL SEDUMEDI:** Correct.

**ADV MAHLAPE SELLO:** And the point you make at your 74 is that



Letsema – no – Regiments was not evaluated?

**TSHIAMO MICHAEL SEDUMEDI**: Yes.

**ADV MAHLAPE SELLO**: So there was just a direct replacement ...

**TSHIAMO MICHAEL SEDUMEDI**: Of ...

**ADV MAHLAPE SELLO**: Without assessing the impact of the loss of Letsema to the consortium relative to the other consortia ...

**TSHIAMO MICHAEL SEDUMEDI**: That is correct.

**ADV MAHLAPE SELLO**: And whether they still occupied the first position?

10 **TSHIAMO MICHAEL SEDUMEDI**: That is correct Chair. So that process we reckon it was irregular as well. Now we know – we now know that we are now at the stage where there is an LOI.

**ADV MAHLAPE SELLO**: Yes.

**TSHIAMO MICHAEL SEDUMEDI**: We felt it appropriate that we need to just highlight the key terms of this LOI because it becomes important as we go through the various phases of this process.

**ADV MAHLAPE SELLO**: We are now at your 76?

**TSHIAMO MICHAEL SEDUMEDI**: That is slide 76.

**ADV MAHLAPE SELLO**: Yes.

20 **TSHIAMO MICHAEL SEDUMEDI**: So one:

“The LOI even if the word says that of intent but for intents and purposes it regulates the relationship between Transnet and McKinsey Consortium pending the conclusion of a Master Services Agreement.”

So it was contemplated that this LOI will at some point be replaced by a proper Master Services Agreement as they called it in the document.

**ADV MAHLAPE SELLO:** Huh-uh.

**TSHIAMO MICHAEL SEDUMEDI:** And the LOI itself would be valid for 90 days or when the LSA was finalised whichever comes first. If the LSA is concluded prior to the expiration of 90 days then obviously – then it will then replace the LOI.

**ADV MAHLAPE SELLO:** Huh-uh.

**TSHIAMO MICHAEL SEDUMEDI:** It also specifies that the advisory  
10 services that will be performed under the LSA will be for nine months commencing 15 January 2013 to 15 October 2013. Any deliverables that will be completed – that are not completed by 15 October which being the 90 – the expiration of the 90 day period ...

**ADV MAHLAPE SELLO:** Yes.

**TSHIAMO MICHAEL SEDUMEDI:** Will continue at no cost to Transnet.

**ADV MAHLAPE SELLO:** If – if I may it may assist perhaps the Chair if we find the actual LOI. I do appreciate at your 76 that it is a summary of the LOI and on your previous slide you had ...

**TSHIAMO MICHAEL SEDUMEDI:** (Indistinct).

20 **ADV MAHLAPE SELLO:** Indicated that it is volume 7 - 6570 and it might help to have it close at hand because I – there are few questions I would like to get your view on or answers to from you.

**TSHIAMO MICHAEL SEDUMEDI:** Okay, (intervenes).

**ADV MAHLAPE SELLO:** Volume 7 – 6570.

**CHAIRPERSON:** Do you say volume 7?

**ADV MAHLAPE SELLO:** Seven Chair.

**CHAIRPERSON:** And what is the page?

**ADV MAHLAPE SELLO:** 6570 Chair.

**CHAIRPERSON:** *Ja*. Thank you.

**ADV MAHLAPE SELLO:** And I – I am – I am looking at page 6571 in particular under conditions precedent. You state in your slide that at item 3/bullet 3:

“The transaction advisory services were to be performed under the MSA for nine months.”

10 I just want to check this with you. Whether that is not meant to be under the LOI/MSA as the case may be and I say so with reference to paragraph 1.01 and its wording.

**TSHIAMO MICHAEL SEDUMEDI:** 1.1?

**ADV MAHLAPE SELLO:** Yes.

**TSHIAMO MICHAEL SEDUMEDI:** 1.1.

**ADV MAHLAPE SELLO:** Okay. So the extent that your slide may suggest that the nine months is – we start to compute from when the MSA is signed. That is not what you intend to communicate?

**TSHIAMO MICHAEL SEDUMEDI:** Yes. The point was just the  
20 relationship between Transnet and McKinsey would be for a nine month period but you will recall that at the LOI itself is supposed to ...

**ADV MAHLAPE SELLO:** Yes.

**TSHIAMO MICHAEL SEDUMEDI:** Endure for 90 days.

**ADV MAHLAPE SELLO:** 90 days. I am clarifying. Thank you, you may continue.

**TSHIAMO MICHAEL SEDUMEDI:** Okay and the point that I made earlier on that McKinsey agrees to contract with Regiments as a SD partner. SD being Supply Development partner and the LOI as well puts up the contract value to be 35.2 million ...

**ADV MAHLAPE SELLO:** Yes.

**TSHIAMO MICHAEL SEDUMEDI:** And the breakdown of how that figure should be split in terms of the various services is on slide 77.

**ADV MAHLAPE SELLO:** Yes.

10 **TSHIAMO MICHAEL SEDUMEDI:** That becomes key as you move what was – you know that there is a budget item for each of the services that the consortium will provide to Transnet. I just want to flag that because we will come back to that issue I think some six slides down the line. Now on 4 March 2013 ...

**ADV MAHLAPE SELLO:** Yes.

**TSHIAMO MICHAEL SEDUMEDI:** Because that was just before the 90 day period would expire the parties then conclude what they called a first addendum to the LOI to extend the duration of the LOI from 6 March to 15 October 2013.

**ADV MAHLAPE SELLO:** Okay.

20 **TSHIAMO MICHAEL SEDUMEDI:** Then again and that is contained in volume 7 page 65 – nothing much turns on that. On 14 October the parties then – I think because that is now before the date of 15 October – they conclude a second addendum to the LOI to extend the duration of this one from 15 October to 18 November 2013.

**ADV MAHLAPE SELLO:** And that now exceeds the term period of the

engagement?

**TSHIAMO MICHAEL SEDUMEDI:** That exceeds the nine month period that we referred to earlier.

**ADV MAHLAPE SELLO:** Okay.

**TSHIAMO MICHAEL SEDUMEDI:** Because that you will recall would have actually expired on 15 October ...

**ADV MAHLAPE SELLO:** Yes.

**TSHIAMO MICHAEL SEDUMEDI:** 2013.

**ADV MAHLAPE SELLO:** Yes.

- 10 **TSHIAMO MICHAEL SEDUMEDI:** Be that as it may 18 November comes and goes. By the time 18 November comes there is no further extension to this LOI meaning by this date there is no agreement between the parties and we further confirm that at least by this date McKinsey was paid a total amount – there were two invoices that they submitted. It was R11 000 300 to round it off. So beyond 1 October there was no (indistinct) contract between Transnet and McKinsey.

**ADV MAHLAPE SELLO:** You are on 1 December?

**TSHIAMO MICHAEL SEDUMEDI:** From 1 December 2013.

**ADV MAHLAPE SELLO:** Okay.

- 20 **TSHIAMO MICHAEL SEDUMEDI:** Remember 30 November 2013 that is when the period of the second addendum comes to an end. However on slide 79 we see an agreement signed by Mr Anoj Singh. The parties to that agreement is Transnet and Regiments ...

**ADV MAHLAPE SELLO:** Yes.

**TSHIAMO MICHAEL SEDUMEDI:** And the key issues of that agreement

is that it provides for Regiments to provide some of the transition advisory services which were part of the LOI. We know from our review of documents that at this time – 20 January 2014 – Nedbank had pulled out of the consortium and this was even though this was testified as well to by Mr Callard because Nedbank was saying they were going to or not Mr Callard. It was Mr – the GCE – Mr Mohamedy that Nedbank had wanted to provide downstream services when the SWATs and those things were concluded. So it is at this point were now this agreement to appoint Regiments to provide that service and the duration of this  
 10 agreement was supposed to be for 12 months commencing 24 January 2014 and the cost of the services was to be R15 million for this ring-fenced service ...

**ADV MAHLAPE SELLO:** Huh-uh.

**TSHIAMO MICHAEL SEDUMEDI:** Plus 10 percent proved expenses.

**ADV MAHLAPE SELLO:** Huh-uh. So now let us understand we know that there is an LOI ...

**TSHIAMO MICHAEL SEDUMEDI:** Yes.

**ADV MAHLAPE SELLO:** For a nine month contract for provision of certain services?

20 **TSHIAMO MICHAEL SEDUMEDI:** Yes.

**ADV MAHLAPE SELLO:** A first addendum is issued to extend the LOI. That is followed by a second addendum to extend the period of contract?

**TSHIAMO MICHAEL SEDUMEDI:** Correct.

**ADV MAHLAPE SELLO:** And no further addenda are issued thereafter.

The effect of that is by 1 December that contractual relationship has ended?

**TSHIAMO MICHAEL SEDUMEDI:** Correct.

**ADV MAHLAPE SELLO:** Two months later on 23 January 2014 Mr Singh signs an agreement with Regiments. What was the purpose – the purpose – main purpose of this agreement and what – how does it interrelate with the LOI?

**TSHIAMO MICHAEL SEDUMEDI:** At least the reading of this agreement ...

10 **ADV MAHLAPE SELLO:** Yes.

**TSHIAMO MICHAEL SEDUMEDI:** It makes reference to the services that are listed on the LOI ...

**ADV MAHLAPE SELLO:** Okay.

**TSHIAMO MICHAEL SEDUMEDI:** But we could not pick up and you will see when we look at the notes that because on its own - if viewed on its own there is no connection between these documents and the LOI because the LOI had lapsed in any event.

**ADV MAHLAPE SELLO:** Yes.

20 **TSHIAMO MICHAEL SEDUMEDI:** But strange enough the services that are referred to in this agreement are the services that are contained in the Letter of Intent.

**ADV MAHLAPE SELLO:** Okay.

**TSHIAMO MICHAEL SEDUMEDI:** Some of them at least. That is the only connection that one could make between this document and the LOI.

**ADV MAHLAPE SELLO:** For now can we accept based on the – the parties to the LOI that Regiments was not a direct party to that contract?

**TSHIAMO MICHAEL SEDUMEDI:** Correct which is – which is why I am saying that is the only connection between – because Regiments was not a party to the LOI ...

**ADV MAHLAPE SELLO:** Okay.

**TSHIAMO MICHAEL SEDUMEDI:** With Transnet. The only link is that this document seems to make reference to some service that is in the  
10 LOI.

**ADV MAHLAPE SELLO:** Alright, thank you. You may proceed.

**TSHIAMO MICHAEL SEDUMEDI:** Then when Mr Singh signs this document ...

**ADV MAHLAPE SELLO:** Huh-uh.

**TSHIAMO MICHAEL SEDUMEDI:** He makes the following notes that appear on page 6590 ...

**ADV MAHLAPE SELLO:** Yes.

**TSHIAMO MICHAEL SEDUMEDI:** Of the bundle. He says ...

**CHAIRPERSON:** That is EXHIBIT 4 - 6590?

20 **TSHIAMO MICHAEL SEDUMEDI:** 65 – okay but that document Chair EXHIBIT 4 starts on page 6587. This is the agreement that in the beginning ...

**ADV MAHLAPE SELLO:** Volume 7 page ...

**TSHIAMO MICHAEL SEDUMEDI:** Volume 7 page 6587.

**ADV MAHLAPE SELLO:** That is where the document starts?



**TSHIAMO MICHAEL SEDUMEDI:** That is where it starts.

**CHAIRPERSON:** Oh, it is volume 7?

**ADV MAHLAPE SELLO:** Yes Chair.

**CHAIRPERSON:** I think I am looking at volume 7 but we have been dealing with volume 4 for such a long time.

**ADV MAHLAPE SELLO:** That is right. We got stuck in volume 4.

**CHAIRPERSON:** *Ja*. So the page is 65 ...?

**ADV MAHLAPE SELLO:** 87.

**CHAIRPERSON:** 87?

- 10 **ADV MAHLAPE SELLO:** That is where the document starts and that is what Mr Sedumedi's slide suggested – slide 79 – and you wanted to refer us to a particular page of this document.

**TSHIAMO MICHAEL SEDUMEDI:** Correct.

**ADV MAHLAPE SELLO:** Yes.

**TSHIAMO MICHAEL SEDUMEDI:** It appears as page 6590.

**ADV MAHLAPE SELLO:** 6590.

**TSHIAMO MICHAEL SEDUMEDI:** You will see there where Mr Singh signs. He says subject to items listed below ...

**ADV MAHLAPE SELLO:** Yes.

- 20 **TSHIAMO MICHAEL SEDUMEDI:** And that is what is been paraphrased in the slide but in a sense he says ...

**ADV MAHLAPE SELLO:** Huh-uh.

**TSHIAMO MICHAEL SEDUMEDI:** “The contract for the supply of these services is with McKinsey and Regiments Capital is contracted to them.”

**ADV MAHLAPE SELLO:** To McKinsey?

**TSHIAMO MICHAEL SEDUMEDI:** To McKinsey.

**ADV MAHLAPE SELLO:** Yes.

**TSHIAMO MICHAEL SEDUMEDI:** Furthermore because in this document it envisaged a performance fee. So he says ...

**ADV MAHLAPE SELLO:** Payable to?

**TSHIAMO MICHAEL SEDUMEDI:** To – to Regiments.

**ADV MAHLAPE SELLO:** Okay.

**CHAIRPERSON:** Hm.

10 **TSHIAMO MICHAEL SEDUMEDI:** So he says:

“Regiments is not entitled to a performance fee.”

**ADV MAHLAPE SELLO:** Yes.

**TSHIAMO MICHAEL SEDUMEDI:** So that clause must be removed. He further says:

“The payments in term of this agreement remains to McKinsey ...”

Which is why I was making that link to the LOI.

**ADV MAHLAPE SELLO:** Huh-uh.

20 **TSHIAMO MICHAEL SEDUMEDI:** “...and the costs and payment in the scope may not be above R9 million without specific approval from Transnet.”

So it is – that is what Mr Singh notes on this agreement. The conclusions that we have reached is that this agreement is irregular in that it has no procurement event that – to this agreement if we get the parties. It is Regiments and Transnet and seeing who would have had

the authority to bind or appoint transaction advisors on behalf of Transnet because this was not falling within this delegated authority especially looking at the amount that they are talking about – R9 million.

**ADV MAHLAPE SELLO:** Yes.

**TSHIAMO MICHAEL SEDUMEDI:** That is insofar as it relates to this agreement.

**ADV MAHLAPE SELLO:** No I – I am at page 6590 which is the same page of that contract and I note the following that Mr Singh signed this  
10 contract on 14 January – no on the 23<sup>rd</sup> ...

**TSHIAMO MICHAEL SEDUMEDI:** On the 23<sup>rd</sup>.

**ADV MAHLAPE SELLO:** Of January 2014.

**TSHIAMO MICHAEL SEDUMEDI:** Yes.

**ADV MAHLAPE SELLO:** Oh and then Mr Niven Pillay on behalf of Regiments had signed it on 20 January 2014.

**TSHIAMO MICHAEL SEDUMEDI:** Correct.

**ADV MAHLAPE SELLO:** So Mr Pillay signs first and Mr Anoj Singh signs later. When Mr Pillay signed the contract the conditions set out there by Mr Singh were not there?

20 **TSHIAMO MICHAEL SEDUMEDI:** Correct.

**ADV MAHLAPE SELLO:** So when Mr Singh accepts the contract on its terms he then inserts the conditions?

**TSHIAMO MICHAEL SEDUMEDI:** It is correct.

**ADV MAHLAPE SELLO:** Do we have a record of whether or not Regiments agreed to – because effectively those conditions would

amend the terms of the contract.

**TSHIAMO MICHAEL SEDUMEDI:** This is – this amounts to a counter ...

**ADV MAHLAPE SELLO:** Counteroffer?

**TSHIAMO MICHAEL SEDUMEDI:** A counteroffer of some sort.

**ADV MAHLAPE SELLO:** Now do we know what the attitude was - of Regiments was regarding this counteroffer or suggested amendments to the contract. Were they acceptable or not?

**TSHIAMO MICHAEL SEDUMEDI:** We do not have any record ...

**ADV MAHLAPE SELLO:** Yes.

10 **TSHIAMO MICHAEL SEDUMEDI:** That stage of the fate of this agreement as to whether Mr Pillay on behalf of Regiments did accept the counter proposal coming from Transnet.

**ADV MAHLAPE SELLO:** Okay.

**TSHIAMO MICHAEL SEDUMEDI:** Which is why we had to assess this agreement based on what do we see on this document.

**ADV MAHLAPE SELLO:** Thank you. You may proceed.

**TSHIAMO MICHAEL SEDUMEDI:** So the point we make is that at least looking at the notes of Mr Singh he seems to acknowledge that Regiments has no contractual relationship with Transnet which is why  
20 he says this is with McKinsey and Regiments is their subcontractor and as of the (indistinct) when they will be made will be made to McKinsey not ...

**ADV MAHLAPE SELLO:** Regiments.

**TSHIAMO MICHAEL SEDUMEDI:** Regiments.

**ADV MAHLAPE SELLO:** Now based on what you just said what

Mr Singh notes on the document is an acknowledgement that Transnet has a contractual relationship with McKinsey?

**TSHIAMO MICHAEL SEDUMEDI:** At least that is what ...

**ADV MAHLAPE SELLO:** That is what he suggests.

**TSHIAMO MICHAEL SEDUMEDI:** That is what he suggested.

**ADV MAHLAPE SELLO:** Whether or not he is factually correct in that regard ...

**TSHIAMO MICHAEL SEDUMEDI:** It is another issue all together.

**ADV MAHLAPE SELLO:** It is another issue.

10 **TSHIAMO MICHAEL SEDUMEDI:** Correct.

**ADV MAHLAPE SELLO:** He appreciates though that this particular contract that requires his signature is – is with Regiments for services being provided by McKinsey?

**TSHIAMO MICHAEL SEDUMEDI:** Correct.

**ADV MAHLAPE SELLO:** And he proceeds to sign it?

**TSHIAMO MICHAEL SEDUMEDI:** He proceeds to sign the agreement.

**ADV MAHLAPE SELLO:** So what is the effect of the condition that the services you seek to provide to me are already being provided by McKinsey? Have you applied your mind to that? Do you have a – an  
20 opinion?

**TSHIAMO MICHAEL SEDUMEDI:** We just find it to be a very, very strange document Chair because like you said earlier on one, in these matters it makes reference to the LOI. The person who is signing is not even a party to the LOI. You tell Regiments that okay I agree to this – this is contained in the LOI. When I pay I will pay Regiments –

McKinsey but McKinsey is not even part – it is not like it is a tripartite of some sort. McKinsey is not even part of this document which is why (indistinct) that this document is just an irregular document more so because it cannot pick up any procurement event that would have culminated in the conclusion of this agreement.

**CHAIRPERSON:** But also why the need to include in an agreement with Regiments Services that are already provided for in an agreement in the agreement with McKinsey.

**TSHIAMO MICHAEL SEDUMEDI:** Correct.

- 10 **CHAIRPERSON:** What – what is the need and to – that does not appear to have been any compliance with any procurement requirements and procedures. Here it looks like Regiments was just identified. Is that right?

**TSHIAMO MICHAEL SEDUMEDI:** That is – that is what it seems. Like you ...

**CHAIRPERSON:** That is what it seems, yes.

**TSHIAMO MICHAEL SEDUMEDI:** That is the only conclusion that one can reach ...

**CHAIRPERSON:** Yes.

- 20 **TSHIAMO MICHAEL SEDUMEDI:** When we get this agreement ...

**CHAIRPERSON:** Yes.

**TSHIAMO MICHAEL SEDUMEDI:** Because it just sprouts from no you have got any procurement event that (intervenes).

**CHAIRPERSON:** Yes but you – you implied in your evidence here that in terms of that agreement there may have been other services that

Regiments was required to provide which were not covered by the agreement between Transnet and McKinsey.

**TSHIAMO MICHAEL SEDUMEDI:** Correct Chair because when you analysed the deliverables in terms of this document against the deliverables that were contained in the LOI there seem to have been some (indistinct) but even in the main you could see the scope relates to the financial advisory services that were conducted or supposed to be conducted by Nedbank in the main LOI. That is our observation when you just look at the – but in a way it was those things that were  
10 contained in the LOI.

**ADV MAHLAPE SELLO:** But then looking – sorry – looking at the agreement with McKinsey recognising the seeming overlap between that and the LOI are you saying the Regiments Agreement purported to extend the scope of the LOI insofar as the services to be rendered by Nedbank were concerned or it is replicating the same services that are contemplated in the LOI? I think that – that was the Chair's question. Does this contract award more services than were originally covered under the LOI or is it the same services albeit not all services contemplated in the LOI? Which is broader of the two as far as the  
20 services are concerned?

**TSHIAMO MICHAEL SEDUMEDI:** This agreement Chair expands or provides for more services ...

**ADV MAHLAPE SELLO:** Okay.

**TSHIAMO MICHAEL SEDUMEDI:** To – which is why as well you see them even allocating an amount for this to say this service will be R15

million but if you exceed R9 million you must seek Transnet's approval.

**ADV MAHLAPE SELLO:** Okay. Now have you found any documentation that would indicate whether or not firstly McKinsey was aware of this agreement considering that Regiments is a co-partner in its consortium on practically the same services and expressing McKinsey's view on this agreement?

**TSHIAMO MICHAEL SEDUMEDI:** We have not as yet engaged McKinsey on this agreement but it is one of the issues that as part of (indistinct) there are various issues that we are engaging McKinsey on.

10 So it is one – going to be one of the issues that we will be raising with McKinsey but to date we have not picked up any document that suggests that McKinsey was made aware of this agreement.

**ADV MAHLAPE SELLO:** Thank you. Chair my clock seems to indicate it is lunch time. I do not know if it is an opportune time for the Chair to take a lunch break.

**CHAIRPERSON:** (Indistinct).

**ADV MAHLAPE SELLO:** I was hoping to finish by lunch time but judging by what is left ...

**CHAIRPERSON:** *Ja.*

20 **ADV MAHLAPE SELLO:** I – I will finish both witnesses today.

**CHAIRPERSON:** *Ja.*

**ADV MAHLAPE SELLO:** Still by 5 o' clock. Yes Chair.

**CHAIRPERSON:** I think when we come back I would like to know whether through your investigation you established that there were services that Regiments actually did provide under this agreement that



they had separately from McKinsey with – with Transnet.

**TSHIAMO MICHAEL SEDUMEDI:** Chair that we covered with the (indistinct) slides.

**CHAIRPERSON:** Yes.

**TSHIAMO MICHAEL SEDUMEDI:** That might be still coming.

**CHAIRPERSON:** Okay, okay. We will take the lunch adjournment now and resume at two. We adjourn.

**ADV MAHLAPE SELLO:** Thank you Chair.

**REGISTRAR:** All rise.

10 **INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Are you ready Ms Sello?

**ADV MAHLAPE SELLO:** We are ready Chair thank you.

**CHAIRPERSON:** Thank you.

**ADV MAHLAPE SELLO:** Mr Sedumedi when we broke for lunch we were at your slide 79 and we had just gone through the agreement concluded by Mr Singh for Transnet and Regiment and the conditions that he inserted on the document by manuscript, then we continue then at slide 80 where you express a view that this constituted an irregular and unlawful extension of the Regiment scope, are you there?

**MR TSHIAMO MICHAEL SEDUMEDI:** (Inaudible – mic off)

**ADV MAHLAPE SELLO:** Thanks, if you may proceed. Your mic is off, thank you. You may proceed

**MR TSHIAMO MICHAEL SEDUMEDI:** What happens thereafter Chair this agreement is in February. On the 4<sup>th</sup> of February 2014 Transnet

and Regiment concluded an agreement, let's call it an agreement, purporting to extend the scope of the letter of intent that was concluded between Transnet and McKinsey and the title of this document or this agreement is titled Third Addendum for GSM12/0457 for transaction, for adversary services related to the acquisition of the 1064 locomotives so that reference Chair is a reference that is used for the 1064 locomotive transaction. So even the first LOI that was concluded between Transnet and McKinsey would have had this reference number. So this document as it says it's a third addendum to the LOI, you will recall  
 10 that there was a first and second addendum that was extending the duration of the initial LOI, so this now was titled the third addendum to extend both the scope and the value of the LOI. The document is contained in Volume 7 page 6605.

**ADV MAHLAPE SELLO:** Yes, so McKinsey and Transnet conclude an LOI.

**MR TSHIAMO MICHAEL SEDUMEDI:** Yes.

**ADV MAHLAPE SELLO:** There's a first addendum in 2013 to that LOI, there's a second addendum, following the second addendum there is a contract between Transnet and Regiment purporting to transfer, if I may  
 20 use that term, the functions of Nedbank contemplated in the LOI to Regiments, that's the 24<sup>th</sup> of January 2014.

**MR TSHIAMO MICHAEL SEDUMEDI:** That's correct.

**ADV MAHLAPE SELLO:** Thereafter you say in terms of page 6605 in Volume 7 there is now a third addendum to the original LOI.

**MR TSHIAMO MICHAEL SEDUMEDI:** Correct ma'am.

**ADV MAHLAPE SELLO:** Okay, you've got that, you may take us through it.

**MR TSHIAMO MICHAEL SEDUMEDI:** Alright. In this Addendum ...(intervention)

**ADV MAHLAPE SELLO:** Yes.

**MR TSHIAMO MICHAEL SEDUMEDI:** Like I said the parties thereto is McKinsey and Transnet, the essence of this addendum is to increase the scope of the LOI by incorporating the scope of work that was contained in that agreement that we spoke about before the lunch  
10 break, the 24 or 23 January 2013 agreement, so ...(intervention)

**ADV MAHLAPE SELLO:** Between Regiments and ...(intervention)

**MR TSHIAMO MICHAEL SEDUMEDI:** Between Regiments and Transnet, so that scope then finds expression in this document that we will now call the third addendum, so that's the first key issue about the third addendum and as well it then increased the contract value of the LOI, the Chair will recall that the contract value of the letter of intent was 25.2million, now this was now increased to 41.2million and the document, the third addendum let's call it, to the LOI does indicate that 15million will be reserved for this additional scope, so in a sense it  
20 mirrors the terms of that 24 January agreement, so that's what this document purports to do. We will later on deal with the effect, if any, of this document.

**CHAIRPERSON:** It's very strange isn't it that an agreement between Transnet and Regiments purports to extend and increase the scope and the value of an agreement between Transnet and McKinsey, isn't it, or

do I miss something?

**MR TSHIAMO MICHAEL SEDUMEDI:** No, no you are not missing anything Chair, it's quite – but along the line maybe the strangeness of that aspect we will come to later.

**CHAIRPERSON:** And it will be clarified.

**MR TSHIAMO MICHAEL SEDUMEDI:** Yes.

**CHAIRPERSON:** Okay.

**ADV MAHLAPE SELLO:** And this third addendum on the dates you have provided just 4<sup>th</sup> February 2014 is concluded three months after  
10 the lapse of the LOI?

**MR TSHIAMO MICHAEL SEDUMEDI:** That's correct, you will recall that the LOI lapsed on the 30<sup>th</sup> of November 2013.

**ADV MAHLAPE SELLO:** Okay. You may proceed.

**MR TSHIAMO MICHAEL SEDUMEDI:** And then the next activity is a conclusion on 21 February 2014 McKinsey signed a Master Service Agreement with Transnet, Chair you will recall that in terms of the LOI it was envisaged that on expiration of the LOI or before its expiration for that matter the parties would conclude a Masters Service Agreement. Now on 21 February McKinsey then signed a Masters  
20 Service Agreement contemplated in that LOI which we have just said now that it had lapsed on 6 December, Transnet countersigned this document on the 11<sup>th</sup> of August 2014.

**CHAIRPERSON:** So they signed it after more than a year had lapsed since the lapsing of the LOI?

**MR TSHIAMO MICHAEL SEDUMEDI:** Not a year because the LOI

lapsed ...(intervention)

**CHAIRPERSON:** Well your page 82 says it lapsed on 6 December 2012 and ...(intervention)

**MR TSHIAMO MICHAEL SEDUMEDI:** (Indistinct) the lapsed LOI dated, no, no the slide says the lapsed LOI dated 6 December.

**CHAIRPERSON:** Oh, okay, okay.

**MR TSHIAMO MICHAEL SEDUMEDI:** 6 December is the date of the LOI, but the LOI ...(intervention)

**CHAIRPERSON:** How much was the period after it had lapsed?

10 **MR TSHIAMO MICHAEL SEDUMEDI:** I beg your pardon Chair?

**CHAIRPERSON:** How much was the period that had lapsed between the lapsing of the LOI and the signing of this agreement between McKinsey and Transnet relating to the Masters Service Agreement?

**MR TSHIAMO MICHAEL SEDUMEDI:** That rounds to three months but to be precise two months and twenty days.

**CHAIRPERSON:** And some weeks, okay, alright. Thank you.

**MR TSHIAMO MICHAEL SEDUMEDI:** Yes, so all that this MSA did it simply recorded the terms of the LOI dated 6 December including the fact that the value of this agreement is 35.2million and as well it  
20 records that this agreement will lapse on 31<sup>st</sup> March 2013.

**ADV MAHLAPE SELLO:** So Transnet then signing on the 11<sup>th</sup> of August 2014 as it did signed after that very agreement itself had expired?

**MR TSHIAMO MICHAEL SEDUMEDI:** Correct, as you can see the signatures appearing on page 6632 of the document

**ADV MAHLAPE SELLO:** Okay.

**MR TSHIAMO MICHAEL SEDUMEDI:** But curious enough the MSA was silent, that is this one, was silent on that agreement that was concluded between Transnet and Regiments on 23 January and as well it does not make any reference to the third addendum, that was concluded two weeks earlier, being the third addendum or a document purporting to be a third addendum to the LOI concluded between Regiments and Transnet. It makes no reference to those two documents.

**CHAIRPERSON:** Was that date of 31 March 2014 deliberate,  
10 intentional as the date recorded as expiry date of the MSA, so does this mean that the MSA's life was about just over a month?

**MR TSHIAMO MICHAEL SEDUMEDI:** The commencement date  
...(intervention)

**CHAIRPERSON:** Is 21 February 2014 according to or at least your  
slide says 21 February 2014 is when it was signed ...(intervention)

**MR TSHIAMO MICHAEL SEDUMEDI:** That's when it was signed by  
...(intervention)

**CHAIRPERSON:** So maybe the commencement date is defined  
differently.

20 **MR TSHIAMO MICHAEL SEDUMEDI:** Correct, that's why it was  
important we must reflect the different dates, the Chair is quite correct  
on the actual document it says commencement date is 15 January  
2013, but it is signed 21 February even if the Chair can have regards to  
page 6332, it was signed by McKinsey, there's a table that indicates  
the signatories to the document.

**CHAIRPERSON:** Yes.

**MR TSHIAMO MICHAEL SEDUMEDI:** On the right that's for and on behalf of McKinsey signed by Mr David Fine, at 21 February 2014, and then on behalf of Transnet is Mr Anoj Singh on the 11<sup>th</sup> of August.

**CHAIRPERSON:** So the one, McKinsey signed it on the 21<sup>st</sup> February 2014, and Transnet signed it a number of months thereafter on 11 August 2014.

**MR TSHIAMO MICHAEL SEDUMEDI:** From the look of things Chair.

**CHAIRPERSON:** And it was said to be the commencement date was  
10 said to be what date? That's in the definition section?

**MR TSHIAMO MICHAEL SEDUMEDI:** 15 January 2013.

**CHAIRPERSON:** Where do I find that?

**MR TSHIAMO MICHAEL SEDUMEDI:** That is on page 6609, the front page of the document, of the agreement.

**CHAIRPERSON:** Oh okay, right. Is that all that they did put the commencement date there on the cover page and did not include it in the definition section or did they do that as well?

**MR TSHIAMO MICHAEL SEDUMEDI:** On the definition section actually on page 6611 paragraph 2.5, the commencement date means 5 January  
20 notwithstanding the signature date of this agreement.

**ADV MAHLAPE SELLO:** Please indicate the full date.

**MR TSHIAMO MICHAEL SEDUMEDI:** 5 January 2013.

**ADV MAHLAPE SELLO:** Thank you.

**CHAIRPERSON:** So there would be no agreement ...(intervention)

**ADV MAHLAPE SELLO:** Your mic Chair.

**CHAIRPERSON:** There had been no agreement for the best part this period but the agreement was signed much later and then they say it would start much earlier, ja okay.

**ADV MAHLAPE SELLO:** And just to check Mr Sedumedi you – have you had opportunity to compare the terms of LOI with this agreement?

**MR TSHIAMO MICHAEL SEDUMEDI:** We have definitely the terms of the LOI we did compare the two.

**ADV MAHLAPE SELLO:** And is it so that the MSA reflects to a large extent the LOI, it's not in conflict therewith, save in this respect the  
10 period of the agreement itself.

**MR TSHIAMO MICHAEL SEDUMEDI:** That's correct, Chair will recall that in terms of the LOI the duration of the relationship was a nine month period and in the event that the services go beyond nine months then that will be at no cost to Transnet, so to an extent that this agreement, at least it's expiry date goes beyond nine months from January that will be in conflict with what the letter of intent had specified on 6 December 2012.

**ADV MAHLAPE SELLO:** Okay, alright, so now we have the MOI which we know was due to expire on the 31<sup>st</sup> March 2014.

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

**ADV MAHLAPE SELLO:** The Master Services Agreement, I apologise, the MSA.

**MR TSHIAMO MICHAEL SEDUMEDI:** That's correct ja.

**ADV MAHLAPE SELLO:** You can take it from there.

**MR TSHIAMO MICHAEL SEDUMEDI:** Well the next milestone if I can



use that word ...(intervention)

**CHAIRPERSON:** Well before you go to it of course this thing of signing an agreement today and saying its commencement date is sometime last year is just a physical impossibility. This is something you might not be able to comment on because you – but I'm wondering whether as you were appointed to investigate you sought to investigate why it was necessary to have an agreement that sought to do the impossible. What was sought to be the value for Transnet?

**MR TSHIAMO MICHAEL SEDUMEDI:** If I can posit a view, maybe it  
10 might be simply to record the terms of the LOI but for what purpose I am not quite sure because in any event the LOI had lapsed, it is not like this MSA came before the lapsing, it was something else maybe it came before the lapsing but the (indistinct) came after, in fact three months after its expiration one would not understand the rationale. I am aware though Chair, and this was not part, this happened in the past few weeks. We have received correspondence from I think it Norton Rose, they are the legal representatives of McKinsey, to say that was just to record what was also being recorded already before in terms of the LOI, so it's more of a regularisation, that is just my  
20 interpretation of how they envisaged this issue, (indistinct) that you got in the last few weeks as you were engaging on this matter.

**CHAIRPERSON:** Well it's – it would be important to find out what those, particularly from the side of Transnet who agreed to such a thing what they sought to achieve for Transnet because if there's something that was supposed to have been done and it wasn't done if they acted

transparently all they needed to do is to record that the following things were supposed to have been done and they were not done, or the following things were done, they should have been done after the agreement had been concluded but were done without an agreement and they are hereby, by agreement between the parties accepted to be – they must be dealt with as if the agreement was in existence at that time if there's something transparent but when you say you sign an agreement today and you say it's commencement date is a year ago it's very, very strange, I mean when both parties were conducting  
 10 themselves in a certain way during that time they didn't have any contractual obligations, so when can you say they were in breach of this agreement that didn't exist, what purpose does it serve, it just makes you wonder whether there is something hidden that it was supposed to cover but okay, alright.

**ADV MAHLAPE SELLO:** Thank you Chair. We then go onto the next slide, Mr Sedumedi your slide 83.

**MR TSHIAMO MICHAEL SEDUMEDI:** 83?

**ADV MAHLAPE SELLO:** Yes Chair.

**MR TSHIAMO MICHAEL SEDUMEDI:** On 16 April 2014 McKinsey  
 20 addressed a letter to Transnet advising that it had ceded its advisory rights and obligations to Regiments on 5 February 2014.

**ADV MAHLAPE SELLO:** And the rights and obligations being – sought to be ceded arise from which document or which contract?

**MR TSHIAMO MICHAEL SEDUMEDI:** It could only be the rights and obligations in terms of the letter of intent.

**ADV MAHLAPE SELLO:** So would the following be a correct understanding of that letter, Transnet is advised, albeit on the 16<sup>th</sup> of April 2014 that as early as the 5<sup>th</sup> of February 2014 McKinsey had ceded all its rights and obligations to Regiments arising from the LOI.

**MR TSHIAMO MICHAEL SEDUMEDI:** Correct.

**ADV MAHLAPE SELLO:** Notwithstanding such cession on the 14<sup>th</sup> of March McKinsey concludes an MSA deriving from the same LOI with Transnet and Regiment doesn't feature there as a cedent.

**MR TSHIAMO MICHAEL SEDUMEDI:** That's what seems to be the case  
10 (indistinct) I know legally speaking it does not make sense but at least  
...(intervention)

**ADV MAHLAPE SELLO:** But that's a correct understanding on our part if we take ...(intervention)

**MR TSHIAMO MICHAEL SEDUMEDI:** That is a correct understanding of what that letter says.

**ADV MAHLAPE SELLO:** Okay.

**MR TSHIAMO MICHAEL SEDUMEDI:** Which then the following week or so on the 24<sup>th</sup> of April Transnet and Regiments conclude a first addendum to the Master Service Agreement. The purpose of that  
20 addenda amongst others was to vary the MSA, to add additional scope and as well amend the price that was in the MSA. The Chair will recall that the MSA we refer to just embodied the terms of the LOI concluded in December, so this document, the first addendum then sought to amend that document by amongst others and in terms of the scope it says:

“The scope was varied by the additional scope such as to assist Transnet with own negotiations on accelerated delivery of the 1064 locomotives, compute the effects of hedging and escalation, optimise and reduce foreign exchange hedge costs and the value of the contract you will recall that the LOI and the MSA was 35.2, then this it records it has been increased to 78.4million.”

**ADV MAHLAPE SELLO:** Again so we don't get our dates mixed up we know the MSA tells us at the front page that the commencement date is  
10 15 January 2013 and the expiry date is 31<sup>st</sup> March 2014. The addendum you refer to as the first addendum to the MSA is concluded 24<sup>th</sup> April 2014, three weeks after on the terms of the MSA itself the MSA has expired.

**MR TSHIAMO MICHAEL SEDUMEDI:** That's correct.

**ADV MAHLAPE SELLO:** And that first addendum now is concluded between Transnet and Regiments and no longer McKinsey.

**MR TSHIAMO MICHAEL SEDUMEDI:** Correct.

**ADV MAHLAPE SELLO:** We follow, you may continue.

**MR TSHIAMO MICHAEL SEDUMEDI:** Then on 16 July 2015 Transnet  
20 and Regiments conclude a second addendum to the MSA and the essence of that MSA to summarise again it was to amend the scope of service, to change the remuneration model and as well to extend the duration of the MSA.

Amongst the serves that were now included in varying the original terms was to provide tinker support including the building cost

escalation, models and total cost of ownerships, to develop a detailed funding plan for the acquisition of the 1064 locomotive from GE, Bombardier, CNR and in a sense from (indistinct) saying we will provide a funding plan on how you fund the acquisition of the locomotives from the four EOM's.

The value was then increased to an amount not exceeding R265 000 500, that's the cap and as well the contract was now extended to 18 May 2016 or until such time that Transnet notifies Regiments that its deliverables have been successfully completed.

- 10 **ADV MAHLAPE SELLO:** And that could presumably take ten years, two, five, have your pick.

**MR TSHIAMO MICHAEL SEDUMEDI:** Whichever comes first.

**ADV MAHLAPE SELLO:** And now again I go back, we are now in the original LOI/MSA read them together, the original contract amount is R35million, the first addendum to the MSA increases that value to R78million.

**MR TSHIAMO MICHAEL SEDUMEDI:** Correct.

**ADV MAHLAPE SELLO:** And that happens April 2014?

**MR TSHIAMO MICHAEL SEDUMEDI:** Correct.

- 20 **ADV MAHLAPE SELLO:** July 2015 that 78 further increases to a figure not exceeding R265million.

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

**ADV MAHLAPE SELLO:** That is now the latest contract value.

**MR TSHIAMO MICHAEL SEDUMEDI:** That's the latest contract value.

**ADV MAHLAPE SELLO:** Okay, please continue.

**MR TSHIAMO MICHAEL SEDUMEDI:** Now in the slide we then bring all these agreements together to see from a legal point of view whether is there any sense that one can make of the agreements, we then sat with the third addendum to the LOI, or the purported third addendum dated 24<sup>th</sup> February, our conclusion was that the LOI had only lapsed on 13 November 2013, that is the first issue.

So any attempt by anyone to extend the LOI is an attempt to do the impossible.

Secondly Regiments was not even a party to the LOI, because  
10 that LOI was between Transnet and McKinsey.

**ADV MAHLAPE SELLO:** Yes.

**MR TSHIAMO MICHAEL SEDUMEDI:** So even if that lapsed it was impossible for Regiments in any event to conclude this agreement because they were not a party to that LOI. So that's the first issue that we address with the third addendum.

We then looked at – because you will recall that there's a letter that we got, that Transnet got on the 16<sup>th</sup> of April being advised that there was a cession that occurred on the 5<sup>th</sup> of February. We have not been able to locate, despite numerous searches and enquiries we  
20 could not locate this cession.

Now again even if McKinsey ceded as their letter suggests there was nothing to cede, because the LOI, whatever rights that they had they ceased to exist at least on the morning of the 1<sup>st</sup> of November 2013.

**ADV MAHLAPE SELLO:** 1<sup>st</sup> December 2013?

**MR TSHIAMO MICHAEL SEDUMEDI:** Yes.

**ADV MAHLAPE SELLO:** Yes.

**MR TSHIAMO MICHAEL SEDUMEDI:** So it was legally and practically impossible to cede rights that do not exist. We looked at the MSA that was concluded on the 21 February. That MSA as well suffers the very same fate that the preceding document suffered in a sense that the [indistinct] lapsed on the 30 November and besides on the 21 February McKinsey had already ceded his rights on the 5 February to or in favour of Regiments. So it could not have concluded this MSA because it did  
10 not have any rights notwithstanding the fact that the LOI had not lapsed but they had already on their own version ceded the rights in terms of the LOI to Regiments on the 5 February.

**ADV MAHLAPE SELLO:** Hm.

**MR TSHIAMO MICHAEL SEDUMEDI:** The first addendum between Transnet and Regiments the 24 April addendum same issue. The first addendum to the MSA derives its [indistinct] from an invalid MSA. So if the MSA is invalid it goes without saying that even this first addendum as well is invalid and in any event Regiments was not a party to that MSA because the session that they made reference to on the 5  
20 February occurred when LOI had already lapsed. A similar fate bedevils the second addendum to the MSA between Regiments and Transnet for the same reasons that we have used for the previous ones equally apply to this second addendum.

**ADV MAHLAPE SELLO:** Yes.

**MR TSHIAMO MICHAEL SEDUMEDI:** So that is insofar as the fate of

these agreements come to.

**ADV MAHLAPE SELLO:** Okay. You may continue. We follow.

**MR TSHIAMO MICHAEL SEDUMEDI:** Now in the next slide we then said that was now insofar as agreements are concerned. We then tried to on the left column put up all these agreements and attempt to compare them with the payments that we know Transnet paid to both McKinsey and Regiments. By 1 – 18 November 2013 I did [indistinct] already that McKinsey was already paid an amount of R11 003 000,00. So at least we can safely say these payments arose as a result of the –

10 the LOI and their respective – that is the first two addendi.

**ADV MAHLAPE SELLO:** Hm.

**MR TSHIAMO MICHAEL SEDUMEDI:** We then pick up when we analysed the spreadsheets was this came from – we analysed the invoices that were submitted to Transnet and appearing on a payment records of Transnet for these periods. We are not necessarily attaching these payments to these agreements but we are simply saying these payments seem to have occurred at least during the period of the purported existence of these agreements. By – between 18 February and 20 – 18 February 2014 and 7 April 2014 Regiments

20 was already paid an amount of R36 765 000,00 that is by 7 April. As well during the period of the first addendum there was a payment of R79 230 000,00 because there was an invoice that Regiments raised on the 27 March for services that they have already rendered. Lastly the second addendum that period we know that Regiments raised an invoice in March which was paid on – in June on the 11 June 2015 that



was 6 March 2015 for an amount of R189 240 000,00. So those are the payments that we could group in relation to the agreements that we have analysed.

**ADV MAHLAPE SELLO:** But what you point out to the Chair is notwithstanding how you present this information. We should not understand the payments to Regiments the respective payments to derive from the contracts that are placed next to the payment.

**MR TSHIAMO MICHAEL SEDUMEDI:** Correct.

**ADV MAHLAPE SELLO:** All you tried to do is you highlight the dates  
10 on which certain contracts came into being purportedly.

**MR TSHIAMO MICHAEL SEDUMEDI:** Correct.

**ADV MAHLAPE SELLO:** And you – you consider in that period whether Regiments was paid.

**MR TSHIAMO MICHAEL SEDUMEDI:** Correct.

**ADV MAHLAPE SELLO:** And you determined that?

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

**ADV MAHLAPE SELLO:** But we cannot go so far as to say that they claimed the R36 million on the basis of the third addendum or the MSA?

**MR TSHIAMO MICHAEL SEDUMEDI:** Correct.

20 **ADV MAHLAPE SELLO:** We understand. Yes you may continue.

**MR TSHIAMO MICHAEL SEDUMEDI:** Chair the – and this speaks to – this slide speaks to the payment of R79 208 000,00.

**ADV MAHLAPE SELLO:** That is your pay – slide 87?

**MR TSHIAMO MICHAEL SEDUMEDI:** Slide 87.

**ADV MAHLAPE SELLO:** Yes.

**MR TSHIAMO MICHAEL SEDUMEDI:** You recall earlier when we put up the table of the amounts in the letter of intent.

**ADV MAHLAPE SELLO:** Yes.

**MR TSHIAMO MICHAEL SEDUMEDI:** And the MSA albeit concluded a year later those two documents allocated an amount of R13.5 million for the technical evaluation and execution services. So this in a sense was the assistance or advisory services that was going to be provided to Transnet in the evaluation of the bids that were received and ultimate conclusion of the locomotive supply agreements with the four  
10 OEM's. Now on the 16 April 2014 there is a memorandum prepared by Mr Anoj Singh to the then Group Chief Executive Mr Brian Molefe requesting approval of an amount of R78.4 million excluding VAT as a success fee to Regiments on the basis that Regiments as part of their scope in evaluating – assisting in the evaluation of the bids they achieved some services for Transnet. So on that basis Regiments ought to be paid an amount of R78.4 million for that work. And we now know that on the 17 April that memorandum was approved. This approval in actual fact that culminated in the signing of the first addendum to the MSA where that amount of R79 million was paid. The  
20 view that we held and still hold is that this approval of this amount was irregular because the LOI when the McKinsey Consortium won the bid there was a specific allocation for this very savings that Regiments had just provided and the amount that was allocated for that service was R13.5 million. So it cannot be that now there must be a memorandum that purports or creates an impression that as a result of Regiments

intervention on the work that in any event was awarded to the Consortium and budgeted for that Regiments must now be paid R78.4 million.

**ADV MAHLAPE SELLO:** Now this memorandum you speak of you say it emanated from this then Group CFO Mr Singh to Mr Molefe. In that memorandum does Mr Singh support payment of this R78 million? Does he argue for its payment?

**MR TSHIAMO MICHAEL SEDUMEDI:** Yes he does argue for the payment of this amount.

- 10 **ADV MAHLAPE SELLO:** Does he make reference to any document presumably emanating from Regiments as to how that amount of R78 million was arrived at and how it directly – how that – whatever particular service directly resulted in the savings that is claimed?

- MR TSHIAMO MICHAEL SEDUMEDI:** Chair in that memorandum we know when we conducted our investigations that there was actually a proposal coming from Regiments where they were motivating that due to the hard work that have conducted as part of assisting Transnet in evaluation they obtained some savings for Transnet and as a result of that saving they were motivating that they must be paid a success fee
- 20 for that savings. So that we picked up that document was coming initially from Regiments. It was for a higher figure but we know that when the memorandum was prepared it was for this figure by the very same reasoning that was advanced by Regiments in their letter were captured in this specific memorandum.

**ADV MAHLAPE SELLO:** Now do either document speak to the original

R13.5 budgeted amount for the very same service? So is this a payment of 78 over and above the 13.5 or is the 13.5 now included in the 78? Do any of the two documents speak to this issue?

**MR TSHIAMO MICHAEL SEDUMEDI:** From my recollection Chair I do not have the document in front of me now but the 78.4 was not a top up from the look of things. This was now just a self-standing amount that is supposed to be paid to Regiments.

**ADV MAHLAPE SELLO:** Okay. You may proceed.

**MR TSHIAMO MICHAEL SEDUMEDI:** So that is...

10 **CHAIRPERSON:** Well that 78.4 is not 78 around the 78.4 million?

**MR TSHIAMO MICHAEL SEDUMEDI:** It is 78 million.

**CHAIRPERSON:** ,4?

**MR TSHIAMO MICHAEL SEDUMEDI:** 400

**CHAIRPERSON:** Yes.

**MR TSHIAMO MICHAEL SEDUMEDI:** Thousand. 78.4 million.

**CHAIRPERSON:** Ja. Your slide does not have – it just have R78.4.

**MR TSHIAMO MICHAEL SEDUMEDI:** 78 – 78.4 million.

**CHAIRPERSON:** Million?

**MR TSHIAMO MICHAEL SEDUMEDI:** Yes. There is it.

20 **CHAIRPERSON:** Yes.

**MR TSHIAMO MICHAEL SEDUMEDI:** Is that on the projection it says 68.4?

**CHAIRPERSON:** Oh well...

**ADV MAHLAPE SELLO:** The 4 is very close to the comma.

**CHAIRPERSON:** Well the one on the hard copy at page 87 ...

**ADV MAHLAPE SELLO:** The last bullet point.

**CHAIRPERSON:** I think that was has got a million on the screen.

**MR TSHIAMO MICHAEL SEDUMEDI:** Okay.

**ADV MAHLAPE SELLO:** Yes Chair.

**CHAIRPERSON:** This one does not have that on the hard cover.

**ADV MAHLAPE SELLO:** That is correct Chair.

**CHAIRPERSON:** Ja.

**ADV MAHLAPE SELLO:** The last bullet point reference to 78.4 – the last bullet on the hard copy does not have the m.

10 **CHAIRPERSON:** Yes.

**ADV MAHLAPE SELLO:** Indicating that it is millions

**MR TSHIAMO MICHAEL SEDUMEDI:** Correct.

**CHAIRPERSON:** Yes.

**MR TSHIAMO MICHAEL SEDUMEDI:** Because that was changed – that...

**CHAIRPERSON:** That was subsequently corrected.

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

**CHAIRPERSON:** Okay. Okay.

**MR TSHIAMO MICHAEL SEDUMEDI:** When I became wiser on figures.

20 **ADV MAHLAPE SELLO:** Thank you Chair.

**CHAIRPERSON:** Okay.

**ADV MAHLAPE SELLO:** Okay please proceed.

**MR TSHIAMO MICHAEL SEDUMEDI:** On the slides Chair it is just to reiterate the point that we made earlier when we looked at the – to explain to the Chair that the difference between Volume 2A and 2B to

say there will be a witness that will in detail now analyse some of these transactions including this very same 78.4 but the point that we – the overall point that we make is that and it will also be demonstrated when that witness testifies that there was just no legal basis for Transnet to conclude an agreement to pay Regiments on any other figure that was not provided for in the MSA or at least even the LOI when it was still alive. And that is – that work is contained in Volume 2B and the testimony will be led Friday morning.

**CHAIRPERSON:** Was there – were there common personalities on the  
10 part of Transnet that were involved in all of these addenda and agreements?

**MR TSHIAMO MICHAEL SEDUMEDI:** Yes on this one I think one can safely say I know as a matter of fact that Mr Anoj Singh was there. On Mr Gama was around. There is a Mr Phetolo Ramosebudi the head of treasury but he came just shortly after the conclusion of the first 79 million but this specific one I know he was involved and he was quite appraised of the previous memorandum. So it is those are the two that come to mind if I [indistinct].

**CHAIRPERSON:** To the extent that this might not have been covered it  
20 would be important to see who signed on each one of the agreements and the addenda and apart from just signing if possible to see who was otherwise involved in the negotiations of these agreements and addenda even if they did not sign from Transnet's side.

**MR TSHIAMO MICHAEL SEDUMEDI:** Correct.

**CHAIRPERSON:** Obviously it would be important also to see from

either McKinsey's side or Regiment's side for what it is worth but particularly from Transnet it might be important to see who signed and who was involved in the negotiations or discussions apart from those who signed.

**ADV MAHLAPE SELLO:** Chair I – I believe that the first question can be immediately answered.

**CHAIRPERSON:** Yes.

**ADV MAHLAPE SELLO:** With reference to a Mr Sedumedi can check my – whether I am correct it would appear from the LOI the first  
10 addendum to the LOI and the second addendum to the LOI all were signed on behalf of Transnet by Mr Anoj Singh.

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

**ADV MAHLAPE SELLO:** It would also appear from the records as well that agreement went through between Transnet and Regiments of January 2014.

**MR TSHIAMO MICHAEL SEDUMEDI:** Yes.

**ADV MAHLAPE SELLO:** That that signed by Mr Anoj Singh on behalf of Transnet.

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

20 **ADV MAHLAPE SELLO:** So to was the MSA concluded between Transnet and McKinsey in March of 2014 it was likewise signed by Mr Anoj Singh.

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

**ADV MAHLAPE SELLO:** And the two – the third alleged addendum to the LOI signed between Regiments and Transnet was once again signed

by Mr Anoj Singh for Transnet and the last two addenda to the MSA now concluded between Transnet and Regiments were signed on behalf of Transnet by Mr Anoj Singh.

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

**ADV MAHLAPE SELLO**: Am I correct?

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

**ADV MAHLAPE SELLO**: So at least that – Mr Anoj Singh's signature appears in all of them.

**CHAIRPERSON**: Is common in all of them.

10 **ADV MAHLAPE SELLO**: It is a question of are there any other signature?

**CHAIRPERSON**: Yes.

**ADV MAHLAPE SELLO**: That are appearing?

**CHAIRPERSON**: Yes and are there any other Transnet people that were involved in the discussions or negotiations even if they did not sign?

**ADV MAHLAPE SELLO**: Chair may I make a correction. My junior points out to me that in fact the first addendum between McKinsey and Transnet are indicated was signed by Mr Anoj Singh for Transnet no it  
20 appears at page 6582 to have been signed by Mr Garry Pita.

**CHAIRPERSON**: Okay ja.

**ADV MAHLAPE SELLO**: Yes.

**CHAIRPERSON**: Thank you.

**ADV MAHLAPE SELLO**: Thank you Chair. But we will prepare a full list based on the documentation made available to us indicating who signed



on behalf of Transnet and whether there were any witnesses to such signatures.

**CHAIRPERSON:** Yes.

**ADV MAHLAPE SELLO:** And then that would then go to answering the next question that the Chair had posed.

**CHAIRPERSON:** Ja.

**MR TSHIAMO MICHAEL SEDUMEDI:** Because I think over and above the agreements we must look at the various memoranda.

**ADV MAHLAPE SELLO:** Yes.

10 **MR TSHIAMO MICHAEL SEDUMEDI:** How [indistinct] internally.

**ADV MAHLAPE SELLO:** Yes.

**MR TSHIAMO MICHAEL SEDUMEDI:** Which approved or motivated for the conclusion of these transactions.

**ADV MAHLAPE SELLO:** We will do so Chair and revert. Thank you. You may continue Mr Sedumedi.

**MR TSHIAMO MICHAEL SEDUMEDI:** But the – this is – on slide 89 speaks about in volume 4 page 5579. It is a memorandum dated 28 April 2015 by Mr Siyabonga Gama addressed to the board Acquisition And Disposal Committee requesting an approval to confine an  
20 appointment of G P Morgan to hedge the financial risks arising out of the 1064 transaction. Secondly ...

**ADV MAHLAPE SELLO:** Sorry just to clarify. We are finished on the topic now of the LOI's and the MSA now changed topics we are now talking about J P Morgan and Trillian and the appointment.

**MR TSHIAMO MICHAEL SEDUMEDI:** Correct.

**ADV MAHLAPE SELLO:** Of [indistinct].

**MR TSHIAMO MICHAEL SEDUMEDI:** Correct.

**ADV MAHLAPE SELLO:** Okay.

**MR TSHIAMO MICHAEL SEDUMEDI:** My apologies for not

**ADV MAHLAPE SELLO:** Thank you.

**MR TSHIAMO MICHAEL SEDUMEDI:** For not concluding properly on that topic.

**ADV MAHLAPE SELLO:** Thanks.

**MR TSHIAMO MICHAEL SEDUMEDI:** So in this memorandum Mr Gama  
10 requests approval that J P Morgan must be appointed to hedge the financial risks. That is the first assignment. The second assignment is for J P Morgan to lead arrange and under-ride the ZAR Secret Club Loan. What – and you will hear more about the club loan on Friday but in essence it was a syndication of various lenders for them to combine and provide the load because individually was – they could not [indistinct] the big amount that was requested so various lenders then considering their efforts each one contributing a specific amount that is why it is called a club loan. It is a club of lenders. So obviously then we will need a lead arranger to co-ordinate and show that all these  
20 participants are able to or synchronise their terms and conditions. So those are the two mandates that Mr Gama sought approval for. And as well that very same memorandum as well increased the extension of contract for Regiments from 99.5 million to 265.5 million. But for now nothing [indistinct] on this specific third bullet. The focus is about the two bullets above. Confinement for hedging and lead arranging two

separate mandates.

**ADV MAHLAPE SELLO:** Hm.

**MR TSHIAMO MICHAEL SEDUMEDI:** Indeed on 29 April the BADC considered the matter and J P Morgan was only appointed to hedge the financial risks not a [indistinct]. So – and as well for record purposes it also confirmed this extension of contract for Regiments. From the reading of the minutes there is no indication whatsoever that the BADC ever considered the other second request to appoint J P Morgan to lead and arrange the club loan as requested. But it confirms that J P  
10 Morgan can be appointed to hedge the financial risks.

**ADV MAHLAPE SELLO:** Okay.

**MR TSHIAMO MICHAEL SEDUMEDI:** Now that is what it is. However five months after that appointment on the 17 September Mr Gama prepares another memorandum requesting the BADC to approve the substitution of J P Morgan by a company called Trillian Asset Managers for the lead arranger role for the club loan. Chair will recall that Advocate said that the BADC never or J P Morgan at least from the approval of the BADC never had the mandate to perform the lead arranger role. However this memorandum now requests that Trillian  
20 must replace J P Morgan on that role. And indeed.

**CHAIRPERSON:** Did you say that - I am sorry. Did you say that you had regard to the minutes of the BADC meeting and there is nothing reflected in those minutes that indicates that they considered this part of the request?

**MR TSHIAMO MICHAEL SEDUMEDI:** Correct. The minutes appear on

Volume 4 page 5515 of the record.

**CHAIRPERSON**: Hm.

**ADV MAHLAPE SELLO**: Yes.

**MR TSHIAMO MICHAEL SEDUMEDI**: Alright.

**CHAIRPERSON**: Yes.

**MR TSHIAMO MICHAEL SEDUMEDI**: So that memorandum indeed was approved on 1 October where at Trillian replaced J P Morgan for the lead arranger role in the ZAR Club Loan. So it was our finding that the entry of Trillian into the system was irregular in the sense that that  
10 function was never assigned to J P Morgan in a very first place so it could not have been that then Trillian could then step into the shoes of J P Morgan to lead and arrange the ZAR Club Loan. And for that service Trillian was paid an amount of R93 million.

**CHAIRPERSON**: Did the resolution of the – of the BD

**MR TSHIAMO MICHAEL SEDUMEDI**: The BADC.

**CHAIRPERSON**: Of the BADC – did the resolution also say nothing about this part?

**MR TSHIAMO MICHAEL SEDUMEDI**: It was quiet Chair. We can refer to ...

20 **ADV MAHLAPE SELLO**: Mr Sedumedi perhaps let us take it in turn. Chair unfortunately for that we are going to have to make you pull out Volume 4.

**CHAIRPERSON**: You do not have to deal with it now. If you want to deal with it later. I just wanted to have an idea because you said from the minutes it does not appear that they – that committee considered

and I wondered whether they might have resolved without considering.  
So...

**ADV MAHLAPE SELLO:** It is our [indistinct] to consider the documents  
now Chair. It is the right time.

**CHAIRPERSON:** Ja no that is fine. Ja.

**ADV MAHLAPE SELLO:** Yes. So and for that we need to go to Volume  
4 Chair.

**CHAIRPERSON:** Okay.

**ADV MAHLAPE SELLO:** If I may request you to pull it out.

10 **CHAIRPERSON:** Okay. Am I still going to need Volume 7?

**ADV MAHLAPE SELLO:** No Chair.

**CHAIRPERSON:** Or Volume 1?

**ADV MAHLAPE SELLO:** No Chair we are done with Volume 7.

**CHAIRPERSON:** Volume 1?

**ADV MAHLAPE SELLO:** We need – Volume 4 is our last volume.

**CHAIRPERSON:** Only Volume 4?

**ADV MAHLAPE SELLO:** Only Volume 4 Chair.

**CHAIRPERSON:** Okay. What page?

20 **ADV MAHLAPE SELLO:** Let us start with the memorandum by Mr Gama  
to BADC that is at 5579.

**MR TSHIAMO MICHAEL SEDUMEDI:** Okay.

**ADV MAHLAPE SELLO:** Is that the memorandum you referred to Mr  
Sedumedi?

**MR TSHIAMO MICHAEL SEDUMEDI:** Correct dated 28 April 2015.

**ADV MAHLAPE SELLO:** Okay.

**MR TSHIAMO MICHAEL SEDUMEDI:** It is addressed to the Acquisition Disposal Committee from Mr Siyabonga Gama.

**ADV MAHLAPE SELLO:** Yes.

**MR TSHIAMO MICHAEL SEDUMEDI:**

“The purpose of the submission is to request the Acquisitions and Disposals Committee to:

1. Approve the confined appointment of J P Morgan.”

**ADV MAHLAPE SELLO:** Hm.

**MR TSHIAMO MICHAEL SEDUMEDI:**

- 10 “To hedge the financial risks emanating from the 1.5 billion US dollar see D below back into ZAR South African Rands.

2. Approved the confined appointment of J P Morgan to lead and underwrite the equivalent syndicated ZAR loan of 1.5 billion dollars.”

**ADV MAHLAPE SELLO:** Yes.

**MR TSHIAMO MICHAEL SEDUMEDI:** So those were the two approvals that were sought by this memorandum.

**ADV MAHLAPE SELLO:** Before you leave that page there is a third one regarding Regiments now.

- 20 **MR TSHIAMO MICHAEL SEDUMEDI:** Okay oh that is the one that we spoke about earlier on.

“To approve the contract extension from 99.5 million to 265.5 million for the appointment of Regiments for transaction advisory services and support to Transnet on the 1064 locomotive transaction.”

You will recall Chair we spoke of the second – no that is not the one. Let me just ignore that one ja. So this was that one does not appear so this is the approvals.

**ADV MAHLAPE SELLO:** Yes.

**MR TSHIAMO MICHAEL SEDUMEDI:** That were then sought by Mr Gama from the BADC.

**ADV MAHLAPE SELLO:** Yes.

**TSHIAMO MICHAEL SEDUMEDI:** And then if you look at volume 4 page 5515 that is the resolution. No not this one. My apologies - 5515.

10 **ADV MAHLAPE SELLO:** Yes.

**TSHIAMO MICHAEL SEDUMEDI:** I had – I had the wrong document.

**ADV MAHLAPE SELLO:** Hm.

**TSHIAMO MICHAEL SEDUMEDI:** Paragraph 5.4.

**ADV MAHLAPE SELLO:** Before you say can I just confirm what that document is?

**TSHIAMO MICHAEL SEDUMEDI:** This document ...

**ADV MAHLAPE SELLO:** Is a resolution by ...

**TSHIAMO MICHAEL SEDUMEDI:** It is ...

**ADV MAHLAPE SELLO:** Of the ...

20 **TSHIAMO MICHAEL SEDUMEDI:** It is a certified extract from minutes of the meeting of the Acquisitions and Disposals Committee held on 9 April 2015 and item 5.4 ...

**ADV MAHLAPE SELLO:** Yes.

**TSHIAMO MICHAEL SEDUMEDI:** Management distributed the documentation in the meeting. This will be that memorandum that we

spoke about earlier.

**ADV MAHLAPE SELLO:** Yes.

**TSHIAMO MICHAEL SEDUMEDI:** The documentation was taken as read.

“The purpose of a submission was to request the Committee to approve the following: the confinement appoint of JP Morgan to hedge the financial risks emanating from the US\$1.5 billion.”

**ADV MAHLAPE SELLO:** Hm.

- 10 **TSHIAMO MICHAEL SEDUMEDI:** “The contract extension for the appointment of Regiments for transaction advisory services and support to the company on the 1 064 locomotive transaction from 99 million to (indistinct) million.”

You will note from this Chair that the only reference that the minutes refer to is the hedging component. Not that second element that I spoke about regarding the lead arrangements and this – if you look at the resolution then that appears on the next page how did it then resolve on this matter.

- 20 “Resolve that the Committee approved the following: the confined appointment of JP Morgan to hedge the financial risks emanating from the US\$1.5 billion CDB loan into South African Rands and as well to complete the point to the contract extension for the appointment of Regiments for



transaction advisory services and support the company on the 1 064 locomotive and as well that the delegation of authority to the (indistinct) GCE to approve the documentation relation to the confined process.”

**ADV MAHLAPE SELLO:** Okay.

**TSHIAMO MICHAEL SEDUMEDI:** So that is what the BADC resolved on this issue which is we had said in our point that a review of these minutes indicate that there was no consideration of that request to lead  
10 arrange which is why it becomes strange that on 1 October the very same day received or at least before the day received there is a memorandum that is prepared by Mr Gama requesting a substitution of JP Morgan for this with Regiments for this service and that is then subsequently approved by BADC.

**ADV MAHLAPE SELLO:** Trillian not Regiments.

**CHAIRPERSON:** Did you ...?

**ADV MAHLAPE SELLO:** Sorry.

**CHAIRPERSON:** Did you get to know whether the agenda or whether the supporting documents that were actually placed before the BADC  
20 Committee included this part that was not reflected in the resolution. Did the – did it reach that point – was it ever before them? Do – do you know about that?

**TSHIAMO MICHAEL SEDUMEDI:** Chair ...

**CHAIRPERSON:** Or whether what was ultimately before them might not have included this – that part?

**TSHIAMO MICHAEL SEDUMEDI:** From the look of things Chair – look this specific one we know it was signed off by all the relevant parties that are required to sign and the next activity on the 28<sup>th</sup> is the actual sitting of this meeting. There is no other meeting of BADC. So the only issue pertaining to JP Morgan would have been entertained at this specific meeting. What we are obviously not privy to is whether maybe either in the morning of the meeting maybe that component would have been withdrawn but the point that we wanted to advance ...

**CHAIRPERSON:** Yes.

10 **TSHIAMO MICHAEL SEDUMEDI:** Was simply to say ...

**CHAIRPERSON:** Hm.

**TSHIAMO MICHAEL SEDUMEDI:** The subsequent appointment of Trillian purporting to replace JP Morgan cannot be correct ...

**CHAIRPERSON:** Yes.

**TSHIAMO MICHAEL SEDUMEDI:** Because there was never any approval ...

**CHAIRPERSON:** Yes.

**TSHIAMO MICHAEL SEDUMEDI:** Of that specific act.

**CHAIRPERSON:** Yes.

20 **TSHIAMO MICHAEL SEDUMEDI:** That is the point that we ...

**CHAIRPERSON:** No, no I understand that point. I am going beyond that. I am – I am – because you said the minutes do not reflect that the Committee ever discussed that component – you know. What I am wondering is whether when the Committee was considering this issue what was before them included that component or not because if it did

include them – if – if the – if what was before them did include that component one could have looked to them to say what happened to that component but if one does not know whether that component did reach them that might be a different issue. Now the memorandum that had been prepared did include – include it but the question is whether we know that that memorandum ...

**TSHIAMO MICHAEL SEDUMEDI**: Ever ...

**CHAIRPERSON**: Was left before the Committee as we see it.

**TSHIAMO MICHAEL SEDUMEDI**: As we see it.

10 **CHAIRPERSON**: *Ja*.

**TSHIAMO MICHAEL SEDUMEDI**: I think I have got some (intervenes).

**ADV MAHLAPE SELLO**: Although Chair I must say the minute of the – of BADC ...

**CHAIRPERSON**: Hm.

**ADV MAHLAPE SELLO**: At the opening page of that ...

**CHAIRPERSON**: Hm.

**ADV MAHLAPE SELLO**: It quotes verbatim ...

**CHAIRPERSON**: Hm.

20 **ADV MAHLAPE SELLO**: What is set out under purpose in the memorandum.

**CHAIRPERSON**: Oh.

**ADV MAHLAPE SELLO**: So it repeats precisely ...

**CHAIRPERSON**: Yes.

**ADV MAHLAPE SELLO**: What has – has been sought to be approved ...

**CHAIRPERSON:** Oh.

**ADV MAHLAPE SELLO:** And that reads exactly the same way as the memorandum reads ...

**CHAIRPERSON:** Okay.

**ADV MAHLAPE SELLO:** But that however does not answer the question whether the memorandum itself physically served before ...

**CHAIRPERSON:** Hm.

**ADV MAHLAPE SELLO:** Or whether it was quoted from but we know ...

**CHAIRPERSON:** Yes, but ...

10 **ADV MAHLAPE SELLO:** We know that the minute does record the three specific approvals that were been sought at that meeting.

**CHAIRPERSON:** Well no that – that does help.

**ADV MAHLAPE SELLO:** Yes.

**CHAIRPERSON:** In the sense that if the minutes reflect that – reflect that ...

**ADV MAHLAPE SELLO:** Yes Chair.

**CHAIRPERSON:** What it means is that the – the Committee at least at a certain stage of the meeting was aware ...

**ADV MAHLAPE SELLO:** Indeed Chair.

20 **CHAIRPERSON:** That among other things they were required to approve that component as well ...

**ADV MAHLAPE SELLO:** In fact Chair ...

**CHAIRPERSON:** And then we see at the – when we look at the resolution that it is not there.

**ADV MAHLAPE SELLO:** Indeed Chair.

**CHAIRPERSON:** Hm.

**ADV MAHLAPE SELLO:** When we look at page 5515 volume 4 that is the extract of the minute. At 5515 ...

**CHAIRPERSON:** Yes.

**ADV MAHLAPE SELLO:** It starts off precisely with the approvals being sought from the Committee.

**CHAIRPERSON:** Yes.

**ADV MAHLAPE SELLO:** At 5516 ...

**CHAIRPERSON:** Yes.

10 **ADV MAHLAPE SELLO:** It then lists the resolutions taken by the Committee ...

**CHAIRPERSON:** Yes.

**ADV MAHLAPE SELLO:** And the resolutions exclude ...

**CHAIRPERSON:** Yes.

**ADV MAHLAPE SELLO:** One of the requested approvals being in respect of the appointment of “lead arranger”.

**CHAIRPERSON:** Yes.

**ADV MAHLAPE SELLO:** Yes.

20 **CHAIRPERSON:** I am – did you receive comments from those concerned to this criticism on your part of how this issue was handled and what – what their comments as to how they could have Regiments take the place of JP Morgan in regard to an issue that had never been approved by the Committee?

**TSHIAMO MICHAEL SEDUMEDI:** Chair by the time we completed this portion of our investigation Mr Gama was no longer part of Transnet.

So we could not (indistinct) him on this aspect but I know when we interviewed Mr Phetolo Ramosebudi because he was a compiler of this document as it appears on the memorandum. He could not provide a coherent answer on this issue because there were other queries that we raised that were not making any sense including the subsequent memorandum to appoint Trillian to substitute JP Morgan. We were hoping that at his disciplinary hearing he was going to be able to answer that but when he received a letter intending to suspend him he resigned from Transnet.

10 **CHAIRPERSON**: And you did not – you did not try to get any answers from members of the BA – B ...

**TSHIAMO MICHAEL SEDUMEDI**: ADC.

**CHAIRPERSON**: ADC *ja* – that Committee – BADC?

**TSHIAMO MICHAEL SEDUMEDI**: No. The BADC Members – you must remember BADC is comprised of Board Members.

**CHAIRPERSON**: Yes. No, I accept that.

**TSHIAMO MICHAEL SEDUMEDI**: So we did – we did not ...

**CHAIRPERSON**: Yes. I ...

**TSHIAMO MICHAEL SEDUMEDI**: The modus operandi of the  
20 investigation was ...

**CHAIRPERSON**: Yes.

**TSHIAMO MICHAEL SEDUMEDI**: Internally focused ...

**CHAIRPERSON**: It is – it is ...

**TSHIAMO MICHAEL SEDUMEDI**: Something that ...

**CHAIRPERSON**: And part of it is regrettable because some of those

people would not – I assume - I am sure there would have been some who would have been quite happy to cooperate ...

**TSHIAMO MICHAEL SEDUMEDI**: Correct.

**CHAIRPERSON**: And give answers and those answers could have been helpful – you know?

**TSHIAMO MICHAEL SEDUMEDI**: Hm.

**CHAIRPERSON**: To say how come – what happened here and they might have been able to say well as among ourselves as Members of the Committee there was – here are of the things that were happening  
10 and so on and so on. So that part is regrettable.

**ADV MAHLAPE SELLO**: Chair perhaps not ...

**CHAIRPERSON**: Hm.

**ADV MAHLAPE SELLO**: Because that is a role that can be played by this Commission.

**TSHIAMO MICHAEL SEDUMEDI**: Correct.

**CHAIRPERSON**: Well ...

**ADV MAHLAPE SELLO**: MNS assists us insofar as it managed to do investigations up to a certain point.

**CHAIRPERSON**: Well ...

20 **ADV MAHLAPE SELLO**: Any gaps that ...

**CHAIRPERSON**: No, no, no, no. If I was in charge of Transnet and I paid money for people to investigate I would not want them to investigate and not interview people who could have important information because some time later a Commission might look into that.

**ADV MAHLAPE SELLO**: No, no Chair it is ...

**CHAIRPERSON:** I would want them to – I would want them to do their best interview those people. If they refuse and they do not have power to force them that is another story.

**ADV MAHLAPE SELLO:** Indeed Chair.

**CHAIRPERSON:** But all those who are happy to assist because maybe they were not party to any agendas – you know – should be interviewed. I want to know what they know.

**ADV MAHLAPE SELLO:** No, no Chair. I absolutely agree. I do not take issue with that. I was just saying when the Chair says it is  
10 regrettable my point was as far as the Commission is concerned not all is lost yet ...

**CHAIRPERSON:** No, no that I accept.

**ADV MAHLAPE SELLO:** Because the Commission can still do that.

**CHAIRPERSON:** No that I accept. It is just that if they had been able to do that we might not have had to – to do that because we might have answers already.

**TSHIAMO MICHAEL SEDUMEDI:** But Chair you will recollect ours – this was – is a legal analysis. The documents as they stand they speak for themselves right. It is clear whether there is a view that a BADC  
20 Member had now we did not think JP Morgan was (indistinct). It is immaterial. The point is JP Morgan as applying for item 1. So therefore it is impossible for anybody to substitute item 2 which JP Morgan never had in the very place. So the documents in our view they spoke for themselves to be able to be ...

**CHAIRPERSON:** I do not think that – that would have satisfied me and



I do not think that Transnet authorities should be satisfied with that. Actually the fact that that happened should want Transnet authorities to want to understand how it happened. Were there – what was the role of various members of the ...

**TSHIAMO MICHAEL SEDUMEDI:** BADC.

**CHAIRPERSON:** Committee. Were there elements within the Committee who were pushing a certain agenda or not and you cannot know that without talking to people – you see. Documents are not going to tell you everything. So that is my point and there maybe  
10 people who were members of that Committee who might say to you if you approach them as an investigator I will tell you what happened. So and so was saying this or saying this who have been put under pressure by so and so and so and so. You get that information. That is useful information for Transnet authorities. That is useful information for us as a taxpayers. Okay, alright.

**TSHIAMO MICHAEL SEDUMEDI:** Thank you again Chair.

**CHAIRPERSON:** Okay but as I said to the extent that people might not have cooperated and you did not have power to force them. That is understandable. The part that I am saying regrettable is not try. Okay,  
20 thank you.

**ADV MAHLAPE SELLO:** Thank you Chair.

**TSHIAMO MICHAEL SEDUMEDI:** Thank you again Chair.

**CHAIRPERSON:** Hm.

**ADV MAHLAPE SELLO:** So then getting to your last point the substation of Trillian and the lead arrange role.

**TSHIAMO MICHAEL SEDUMEDI:** Correct.

**ADV MAHLAPE SELLO:** You expressed the view that JP Morgan was never appointed in the first place in that role so therefore Trillian could not have replaced it.

**TSHIAMO MICHAEL SEDUMEDI:** Trillian could not have replaced JP Morgan for that function and we know they were actually paid an amount of – that is Trillian – they were paid an amount of 93 million for lead arranging in (indistinct). The reason that the phrase “lead arranger” is in quotes is that you will hear in the testimony that in  
10 actual fact that service was never rendered by Trillian. It was performed by Regiments. The documents that were reviewed indicate that that was the function that was actually performed by Regiments not even Trillian and that is part of litigation that Transnet has instituted against Trillian to recover this amount and as well there is litigation between Trillian and Regiments where they are having a dispute over this (indistinct). Regiments correctly so indicates that they have performed this service. That is why the “lead arranger” was put in quotes for that purpose.

**ADV MAHLAPE SELLO:** You may continue.

20 **TSHIAMO MICHAEL SEDUMEDI:** And that Chair will be the conclusion of my testimony.

**CHAIRPERSON:** No thank you very much. If a need arises you will be asked to come back but thank you very much for – for your evidence.

**TSHIAMO MICHAEL SEDUMEDI:** Thank you Chair.

**ADV MAHLAPE SELLO:** Chair before you excuse Mr Sedumedi two

things. First is the Chair had posed certain questions to Mr Sedumedi yesterday regarding in particular Ms Tshepe's ...

**TSHIAMO MICHAEL SEDUMEDI:** Oh yes.

**ADV MAHLAPE SELLO:** Attendance at the BADC Meeting ...

**CHAIRPERSON:** Yes, yes.

**ADV MAHLAPE SELLO:** And regarding the question of delegation of authority whether firstly Mr Gama had the authority to change the evaluation criteria and secondly whether Mr Jiyane had the power and authority to authorise the payment of 1.3 billion to CSR. Mr Sedumedi  
10 has found certain documentation and has prepared a statement he must still sign and we shall submit that it is a small bundle together with supporting documentation.

**CHAIRPERSON:** Yes.

**ADV MAHLAPE SELLO:** I think it is self-explanatory and will not require Mr Sedumedi's presence in the witness box. With permission Chair we may do so.

**CHAIRPERSON:** Yes. Will it be an affidavit or just a statement?

**ADV MAHLAPE SELLO:** Just a statement currently.

**CHAIRPERSON:** Yes. Well ...

20 **ADV MAHLAPE SELLO:** Unless the Chair has a preference.

**CHAIRPERSON:** I do not know what the contents are but if it is an affidavit and there is nothing controversial he will not need to come back and testify about – about it really but if it is a statement that is not an affidavit and it remains as a statement that might not have the right status. So preferably it should be an affidavit but it just depends

on its contents.

**ADV MAHLAPE SELLO:** On the contents.

**CHAIRPERSON:** If – I will let you exercise your – your judgment ...

**ADV MAHLAPE SELLO:** Thank you Chair we shall.

**CHAIRPERSON:** In terms of its contents. It may be a statement and still be just as fine. I just do not know until I see (intervenes).

**ADV MAHLAPE SELLO:** We will reapply our mind ...

**CHAIRPERSON:** *Ja.*

**ADV MAHLAPE SELLO:** Minds to it and see what works best Chair ...

10 **CHAIRPERSON:** *Ja.*

**ADV MAHLAPE SELLO:** And – and then we shall revert.

**CHAIRPERSON:** *Ja.*

**ADV MAHLAPE SELLO:** Secondly Mr Sedumedi you – you have testified as to certain aspects of the MNS investigation?

**TSHIAMO MICHAEL SEDUMEDI:** Correct Chair.

**ADV MAHLAPE SELLO:** Could you advise the Chair how MNS proposes to take the rest of the outstanding issues forward?

20 **TSHIAMO MICHAEL SEDUMEDI:** Okay. The Chair would recall that if you – if one had – you regard to slide 62. The slides must not go too far back. It is just indicates – it is a diagram indicating the various transactions that we investigated. My testimony touched on 95, 100, some parts of 1 064. I also touched a little bit on the procurement of transaction advisors but on 95 – sorry – on 100 and 1 064 we did – I did not elaborate much on the reasons that were advanced for the increase in ATC because even on 100 there was an increase in the

ATC. So Mr Alister Chabi will come and testify about that aspect. Secondly the issue of the relocation of the two (indistinct) to Durban. A colleague Mr Thobani Mnyandu who is a Director at the firm focusing on construction engineering role will come and testify about that. Lastly on Friday Dr Jonathan Bloom will then unpack the various transactions that were concluded by Transnet on the advice of the transaction advisors. So that will be the evidence that will be led by MNS on those two days.

**CHAIRPERSON:** Okay, thank you.

- 10 **ADV MAHLAPE SELLO:** And lastly Chair the Chair will recall that yesterday Mr Sedumedi indicated that they have a list of people they have interviewed in the course of investigations on these transactions. Chair if I may ...

**CHAIRPERSON:** About 20 or I think that is ...

**ADV MAHLAPE SELLO:** If they are ...

**CHAIRPERSON:** That is what he said I think, *ja*.

**ADV MAHLAPE SELLO:** May I enquire Chair if somebody managed to slip the following into your bundle while the Chair was probably not aware.

- 20 **CHAIRPERSON:** I have not seen anything.

**ADV MAHLAPE SELLO:** An EXHIBIT BB8A after the thank you page is there no documentation the Chair's ...

**CHAIRPERSON:** After?

**ADV MAHLAPE SELLO:** The thank you page of Mr Sedumedi's slide presentation.

**CHAIRPERSON:** No, no that I have seen.

**ADV MAHLAPE SELLO:** And that – the thank you page is at slide 92.

**CHAIRPERSON:** Let me see. No they did not follow your instructions.

**ADV MAHLAPE SELLO:** Clearly not Chair ...

**CHAIRPERSON:** *Ja*.

**ADV MAHLAPE SELLO:** But I confirm that a list has been provided ...

**CHAIRPERSON:** Yes.

**ADV MAHLAPE SELLO:** And your BB8A shall be updated accordingly.

**CHAIRPERSON:** Yes. By the way in regard to each one of those 20 or  
10 so people who you interviewed there will be a transcript of the  
interview?

**TSHIAMO MICHAEL SEDUMEDI:** Correct Chair I can confirm that.

**CHAIRPERSON:** Yes.

**TSHIAMO MICHAEL SEDUMEDI:** In actual fact ...

**CHAIRPERSON:** Yes.

**TSHIAMO MICHAEL SEDUMEDI:** By last night when I left the office ...

**CHAIRPERSON:** Yes.

**TSHIAMO MICHAEL SEDUMEDI:** The colleagues were already  
photocopying ...

20 **CHAIRPERSON:** Okay.

**TSHIAMO MICHAEL SEDUMEDI:** All the transcripts.

**CHAIRPERSON:** All – okay.

**TSHIAMO MICHAEL SEDUMEDI:** So we hope that ...

**CHAIRPERSON:** Okay. That would be very helpful.

**TSHIAMO MICHAEL SEDUMEDI:** Correct.

**CHAIRPERSON:** And basically the transcripts take the place of statements or there will also be additional – there will be statements from each one of them or just the ...

**TSHIAMO MICHAEL SEDUMEDI:** No.

**CHAIRPERSON:** Transcript of interviews?

**TSHIAMO MICHAEL SEDUMEDI:** These were the transcripts of interviews ...

**CHAIRPERSON:** Of the interviews.

**TSHIAMO MICHAEL SEDUMEDI:** And professionally transcribed ...

10 **CHAIRPERSON:** Yes, okay.

**TSHIAMO MICHAEL SEDUMEDI:** By the ...

**CHAIRPERSON:** Okay.

**TSHIAMO MICHAEL SEDUMEDI:** Those who are qualified transcribers.

**CHAIRPERSON:** Yes, okay. No that is fine.

**ADV MAHLAPE SELLO:** Thank you Chair.

**CHAIRPERSON:** Thank you very much. You are excused.

**TSHIAMO MICHAEL SEDUMEDI:** Thank you.

**CHAIRPERSON:** Thank you, thank you.

20 **ADV MAHLAPE SELLO:** Chair as the Chair indicated yesterday we are running till five today – pm.

**CHAIRPERSON:** Yes.

**ADV MAHLAPE SELLO:** The next witness is ready ...

**CHAIRPERSON:** Yes.

**ADV MAHLAPE SELLO:** And I think yesterday the Chair took a 10 minute break at half past three.

**CHAIRPERSON:** Huh-uh.

**ADV MAHLAPE SELLO:** I see it is now 25 past three. May I request that we take that break now? That would allow for a changing of the guard. We need to set up the next witness ...

**CHAIRPERSON:** Yes.

**ADV MAHLAPE SELLO:** Because he also is working off slides and we will couple that with a comfort break and we might be back at 20 to four and run until five if that would suit the Chair.

**CHAIRPERSON:** Yes, okay. No let us take a 10 minute break then.

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

**CHAIRPERSON:** And we will resume at did you say – no it would be 15 if you said 20 to.

**ADV MAHLAPE SELLO:** I would like about 15 minutes.

**CHAIRPERSON:** 15 minutes?

**ADV MAHLAPE SELLO:** Yes Chair.

**CHAIRPERSON:** Okay. It will be a 15 minute break. We will resume at 20 to four.

**ADV MAHLAPE SELLO:** Thank you Chair.

**CHAIRPERSON:** We adjourn.

20 **REGISTRAR:** All rise.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Are you ready Ms Sello?

**ADV MAHLAPE SELLO:** We are ready thank you Chair. Chair we call the next witness, also involved in the MNS Investigation, we have



cleared your table Chair of all files and as the previous witness this witness will present evidence by way of slides. We have prepared the Chair a copy which we beg to hand in and Chair we have taken the liberty of marking that one EXHIBIT BB8B and Chair it has the same problem as the previous, the 8 is very close to B and they shall all be corrected at the same time.

**CHAIRPERSON:** Okay. B5 that has been handed up now dealing with Origin 1064 review of estimated total cost of R38.6billion evaluation of a R15.6billion increase in estimated total cost, will be marked EXHIBIT  
10 BB8B.

**ADV MAHLAPE SELLO:** Thank you Chair.

**CHAIRPERSON:** I almost said BBB, because the 8 looks almost like a B.

**ADV MAHLAPE SELLO:** I hasten to add an error Chair hoping you will not point that out but nonetheless yes, it shall also be corrected as with the first pack of slides.

**CHAIRPERSON:** Yes.

**ADV MAHLAPE SELLO:** Chair before we proceed 888B is mainly in two parts, the slide one up to slide 32 deal with the review of the  
20 increase of the approved ETC of R38.6billion and that relates to the 1064. From page 33 the witness will deal with an evaluation of the increase of the 100 locomotives and well it's a very brief set of slides that one, the issues are not as significant as in the 1064. In the course of this presentation the witness will refer to a document that is in the MNS exhibits, just one document. To avoid too many files we have

taken the liberty of extracting that document from the relevant files and we have attached to the slides and it will appear after the tab in Volume one 4532 to 4370. With this at hand we need not refer to any other file Chair.

**CHAIRPERSON:** Okay that's fine.

**ADV MAHLAPE SELLO:** On that basis may I request that the witness be sworn in.

**CHAIRPERSON:** Yes, swear in the witness.

**REGISTRAR:** Please state your full names for the record.

10 **ALISTER CHABI:** (duly sworn, states)

**CHAIRPERSON:** Thank you, Ms Sello you will have to repeat the witnesses name in full.

**ADV MAHLAPE SELLO:** Yes I will repeat the name in full Chair, I know the first name to be Alister, one "I", surname Chabi, C-h-a-b-i. Thank you Chair. Mr Chabi could you tell the Chair about yourself, insofar as your professional life and qualifications are concerned.

**MR ALISTER CHABI:** Okay as I have already mentioned my name is Alister Chabi, I am an actuary in terms of qualifications, I am a Fellow of the Faculty of Actuaries, that's a United Kingdom body. I am also a  
20 Chartered Enterprise Risk Actuary and that's a global association that grants actuarial associations across the world the right to confer designations on actuaries, the CER designation Actuary, sorry. I also hold a Masters in Business Administration from the University of – from Gibbs sorry and I also hold a Bachelors in Economic Science from the University of Wits – Witwatersrand.

**ADV MAHLAPE SELLO:** Thank You and what do you currently do and where are you employed, if at all?

**MR ALISTER CHABI:** Okay for the better part of my 12 year working career I have been advising Trustee Boards on their pensions and investments, in particular formulating investment policies and strategies and evaluating pension funds along with that opening on the salvage of those retirement funds, largely for corporates. I currently – well the bulk of my time currently, besides working on this project has been taken up by the counsel for medical schemes which is the  
10 regulatory body for medical schemes in South Africa, I sit on the costing committees and technical expert on that committee assisting in evaluating financial models and developing them.

**ADV MAHLAPE SELLO:** And are you attached to any firm in particular currently and if so what firm?

**MR ALISTER CHABI:** I am All5 Holding Company I am a founding member and employee of the entity.

**ADV MAHLAPE SELLO:** Now you come at a time, or you appear before the Chair at a time when we are considering investigations conducted by MNS into certain transactions within Transnet, can you inform the  
20 Chair what role you played in that regard and how you came to be involved?

**MR ALISTER CHABI:** So in May of 2018 MNS, that is Mncedisi Ndlovu & Sedumedi Attorneys approached our entity All5 Holding Company to assist it with the financial aspects of the acquisition of the 1064 locomotives.

**ADV MAHLAPE SELLO:** And it's correct that the company then appointed you to lead the team to undertake the work?

**MR ALISTER CHABI:** Indeed.

**ADV MAHLAPE SELLO:** You deal with the mandate you received from MNS in your slides.

**MR ALISTER CHABI:** Agreed.

**ADV MAHLAPE SELLO:** So if we could then turn to your second slide, page 2 of your slides and then you can take the Chair through the mandate that you had received from MNS.

- 10 **MR ALISTER CHABI:** Okay, thank you Chair, so as we have it overhead, essentially when MNS approached us in May of 2018, they wanted assistance with the aspects involved in the 1064 acquisition and they were investigating alleged irregularities within the acquisition of the 1064 locomotives and what they'd asked us to do at the time was to assess, basically analyse the financial model back in the business case that led to the transaction going ahead (indistinct) Board (indistinct) transaction, in particular the evaluating on the 38.6billion that was approved in 2013 by the Board was indeed an acceptable estimated total cost for the transaction and then thereafter to look at
- 20 the reasons put forward for the increase in the (indistinct) cost from 38.6billion to 545billion and give an opinion as to whether those increases are valid and were they not provide (indistinct) a reasonable increase.

**ADV MAHLAPE SELLO:** Okay I see you have listed the mandate you have broken it up to three, 1, 2 and 3 and 3 has got 3 further sub-

sections and you propose to deal with each in turn.

**MR ALISTER CHABI:** I do advocate, so the presentation is structured in 3 parts, the first part deals with the assumptions on the identified variables okay, assessing whether those assumptions were indeed reasonable. The second part of the presentation looks at the 38.6billion so in other words the accuracy of that ETC. The last part looks into the increase the plausibility that those reasons put forward for the increase and our being what a reasonable increase should have been at the time.

10 **ADV MAHLAPE SELLO:** Okay when you're ready then you may take us through the first issue, the reasonability of variables and assumptions.

**MR ALISTER CHABI:** Okay thank you advocate. So the approach we have taken is will they have the mandate and will they have the fund finding and then we go into detail on the methodology taken to arrive at the finding. So starting with the first which is the business case, in other words looking at the variables and the assumptions around the variables and determining whether they were reasonable at the time we conclude that the assumptions in relation to those variables were reasonable and we will touch on why we felt that they were reasonable  
20 when we...(intervention).

**ADV MAHLAPE SELLO:** And for that you'd like us to turn over to slide 4?

**MR ALISTER CHABI:** Let me just look at the slide number here, slide 4...(intervention).

**ADV MAHLAPE SELLO:** I use the page numbering as the slide

numbering if that's okay with you.

**MR ALISTER CHABI:** So I'm still on slide 3 but we'll carry on with slide 4.

**ADV MAHLAPE SELLO:** Whenever you're ready.

**MR ALISTER CHABI:** Thank you, okay advocate so we felt it's important before getting into the variable and assumptions to explain to you Chair, how the model actually worked, okay, in other words how the revenue was projected, how the costs were projected, what the profitability was around the project at the time and then, of course, 10 conclude with the assumptions and backing, those projections. Now two measures were, in particular, which is in the business case and actually arriving at – in our (indistinct) the business case okay and those are the net present value and estimated total cost now. At the risk of stating the obvious Chair I think I will take the time to explain what the net present value is in this instance. It essentially represents the expected profit in current money terms and that would have been April 2013 at the time and if that was positive, of course the project would go ahead if it met the requirements of the Board at the time. So you would of course discount your revenue to current terms – discount 20 your cost to current terms take the difference of the two and if that was a positive figure then the project was a – would be deemed viable. The estimated total cost, on the other hand, is a very simple summation of the cost of acquiring the locomotives in the various years, we'll look at the delivery schedule in a bit and that was over a seven-year period starting 2013 to 2019, we'll touch on that in a short while. But going

back to the net present value modelling that was over a 39-year period and I bring this up because it will become relevant when we look at the memorandum in a bit more detail later on in later slides.

**ADV MAHLAPE SELLO:** Okay.

**MR ALISTER CHABI:** I'm moving on to slide 5, how is the revenue models at the time in the business case essentially. The revenue was a tariff per ton per kilometre, okay. So revenue is essentially taken as the product of the volume to be transported by these wagon okay by these locomotives at the time and the average distance to be travelled  
10 over the year by the tariff okay and that was over a 39-year period okay from 2013 all the way to 2049, thereabout. You had a number of costs in this instance, you had locomotive costs, you had wagon costs, infrastructure costs and so forth. Your ETC actually sits within the locomotive costs so your ETC which is your estimated total cost is actually a part of the locomotive costs and I think we'll look a bit later at what component or what percentage your ETC made of the first bullet there. The first bullet is actually the total cost and ownership of the locomotive in other words everything relating to the operation of that locomotive, the direct cost of the operating of the locomotive and  
20 those include personnel, maintenance, insurance, emission costs are also included in that.

**ADV MAHLAPE SELLO:** Okay.

**MR ALISTER CHABI:** We then look at the net present value and we've already touched on the revenue and on the cost components okay, what you have – what you see there, basically is what the present

value of your costs were at the time, what the present value of your revenue was at the time. The revenue was 109billion, you can see the net present value, which is the expected profit in current money terms as at April 2013 was just about two and a half percent of your revenue, that's a very thin margin to say the least. Your costs were in the region of 107odd billion rands, okay and as I've already mentioned your ETC forms part of your total costs for ownership as you can see that there's diesel TCO and then there's electric TCO, TCO standing for total cost for ownership, okay and the ETC made up just over 47% of those costs.

10 **ADV MAHLAPE SELLO:** Yes.

**MR ALISTER CHABI:** The present value that you're looking at about 20billion so your ETC in April 2013 was about 20odd billion rands and then we talk of 38.6billion but as I said the ETC of 38.6billion is just a summation over the 7-year period, when you discount that, using that hurdle rate that you see there of 18.56 percent you get about 20odd billion. Of the total cost your ETC made up about 20 percent of your total cost. Like I say in the grander scheme of things it was a very - a small part of your overall cost.

**ADV MAHLAPE SELLO:** And net present value calculated 2.7billion as  
20 calculated on the basis of a hurdle rate of 18.56 firstly, if you could just remind us what the hurdle rate is and secondly why you used 18.56.

**MR ALISTER CHABI:** Okay so – this is not what I used this is what was employed in the business case and everything that you see here is actually taken from the business case.

**ADV MAHLAPE SELLO:** Indeed.



**MR ALISTER CHABI:** Okay that was put together for the Board at the time now the hurdle rate is essentially what your shareholders – generally what shareholders would want from a project before they go ahead with the investment. We talk hurdle rate, we talk discount rate. The discount rate is, by definition quite different to what you would – to the hurdle rate in the sense that your discount rate is what you would, essentially value the project at, it reflects the risks inherent in the project whereas your hurdle rate is essentially what the shareholders want before they can go ahead with the project. Your hurdle rate would

10 obviously be slightly more than your weight average cost of capital and what that is essentially, what it costs the entity to – what the capital cost within the entity, I mean within the organisation. You would obviously have equity, you would obviously have debt okay, the weighted average of those two would give you the weighted average cost of capital. Your hurdle rate would sit slightly above that to, of course, account for the cost of that capital. 18.56 was used in the business case as a reflection of the risk inherent in this particular project, okay there's a policy of course that backs this number up, a very detailed process in actually arriving at this discount rate a lot of

20 his is actually an evidence based approach that was taken to arrive at this discounted rate 18.56 okay. It is one of the variables we have looked at and we thought it was reasonable given that this project was a Green Fields project, Green Fields, meaning it's something that Transnet was undertaking for the first time, it had no history of having undertaken such a project in time passed. So discount of 18.56 was

deemed appropriate.

**ADV MAHLAPE SELLO:** At the time.

**MR ALISTER CHABI:** At the time.

**ADV MAHLAPE SELLO:** So the hurdle rate of 18.56 is prescribed by the policy?

**MR ALISTER CHABI:** It is prescribed by the policy yes.

**ADV MAHLAPE SELLO:** And all the drafters of the business case had to do in determining the NPV is to go to the policy see what the applicable hurdle rate was at the time and apply to the calculations in order to arrive at a correct – at an actual net present value?

**MR ALISTER CHABI:** Indeed correct.

**ADV MAHLAPE SELLO:** Thank you, you may proceed.

**MR ALISTER CHABI:** Now the next slide basically tries to show you Chair what the impact is on the net present value as you change the discount rate which happens to be the hurdle rate here. As you can see that net present value actually increases as the discount rate decreases as I've already mentioned the discount rate is a reflection of the risk inherent within the project. So this analysis that you have here shows that dropping the discount rate from 18.6 percent to 12.6 percent increases your profit from 27billion, your net present value, sorry, to 34billion, that's a huge increase, just a side note that the 12.6 was actually the weight average cost of capital for Transnet. Now we have there what is called the internal rate of return it's essentially what the project is expected – was expected at the time to give you over the investment term which was 39 years in this instance and that was 19.6

percent and we've already spoken about how thin that profit margin was, it was sitting – it sat at 2.5 percent, very thin and if you look at that internal rate of return it is not too far from the risk discount rate. Bearing in mind the risk discount rate is a reflection of the risk inherent within that project so if the risk had to increase slightly this project could easily go from a profit position to a loss making position.

**ADV MAHLAPE SELLO:** Yes thank you.

**MR ALISTER CHABI:** So that is essentially the business case as I have presented to you there it's a very, very high level summary of what would have been put forward to the Board at the time. Now when I look at some of the variables and assumptions around those variables and what we looked at was the inflation assumption used in the modelling, we've actually just pulled up the key variables without – are worth discussing given that the context is – well we're talking about escalations and Forex okay so we restricted what we were discussing here to economic financial variables as opposed to the engineering aspects, the 1064 locomotives and so forth. Now starting with the assumption that was used for SA inflation PPI was used and I guess the question that would come up is, was PPI the right index to use, you're looking at locomotives, you're looking at the manufacturing sector, produce a price inflation would ideally be the right index to use and not the consumer price inflation which is a different index to the producer price inflation. Now what was assumed in the business case for PPI was a rate of 5.3 all the way to 5.9 percent okay, we were pretty happy with that given what – well where inflation was in the past and going

forward what the Reserve Bank tries to talk in terms of inflation the upper bound is 6 percent, it's an assumption pretty close to that for us was – we felt was pretty reasonable. Okay foreign currency, we'll talk about that in a bit, the hurdle rate we have spoken about it was a 6 percent margin over the weighted average cost of capital and we have mentioned as well that it was evidenced based. The approach taken to a (indistinct) 18.56 was an evidenced based approach. Okay so a lot of work went into arriving at that rate including researching over 160 companies across the globe.

- 10 **ADV MAHLAPE SELLO:** Okay and you conclude on that, that they had already (indistinct) of 18.6 was reasonable in the circumstances.

**MR ALISTER CHABI:** It was reasonable ja.

**ADV MAHLAPE SELLO:** Thank you.

- MR ALISTER CHABI:** When we compared the US – what they assumed, so SA PPI was of course for the local content inflation, there was a foreign content or a foreign component to the locomotives and you had to allow for inflation on that side as well on that part and what was assumed the business case was CPI, the consumer price index as opposed to the producer price index. We felt that the producer price
- 20 index would have been more appropriate however they've assumed a consumer price index. What we have put before you there is the correlation between US CPI and US PPI and you can see they are highly correlated and positively so, in fact when you look at the long-term average for US CPI and US PPI the difference is about 0.27 percent on the yearly basis, 3.26 versus 301 we felt using US, I mean

CPI as opposed to PPI was therefore more conservative, being a higher figure. That of course would have the impact of reducing the net present value but then of course erring of the side of caution, so were pretty comfortable with that.

**ADV MAHLAPE SELLO:** So then the use of PPI would actually have given better results.

**MR ALISTER CHABI:** If you had used PPI correct because you would have used a lower rate of inflation or riskalation, it's termed riskalation here but ...(intervention).

10 **ADV MAHLAPE SELLO:** So the use of CPI reflect a conservative approach.

**MR ALISTER CHABI:** Indeed yes

**ADV MAHLAPE SELLO:** Thank you.

**MR ALISTER CHABI:** We thought it would be important to show the impact of the local content assumptions employed in the model given that it's quite a contentious issue – was or still is actually. What was assumed the model was a 50 percent local content an assumption and a 50 percent foreign content assumption. We do know that at some point National Treasurer came out with a note stating that for diesels you had  
20 to have a local content of 55 percent at a minimum and for electrics 60 percent at a minimum, however what was employed in the business case at the time and my understanding from the legal expert is that the note was not out at the time.

**ADV MAHLAPE SELLO:** Okay.

**MR ALISTER CHABI:** However, what was the impact of that, was it

material enough to evaluate the business case so what we show you there is that an increase from 50 percent to 60 percent for the local content component would have resulted in a slight drop in your ETC as you can see there from 38.6billion to 38.555, I think that's about 0. – negative 0.12 percent. The NPV would have increased slightly as you would expect from a drop in ETC.

**ADV MAHLAPE SELLO:** Yes.

**MR ALISTER CHABI:** Your costs drop, your expected profits increase – would have increased from 2.739billion to 2.75billion and that's a 0.4  
10 percent increase. You can see that the assumption was conservative in this instance therefore acceptable and the difference is negligible in our view.

**ADV MAHLAPE SELLO:** Okay.

**MR ALISTER CHABI:** So we accepted it and especially that it doesn't invalidate the business case.

**ADV MAHLAPE SELLO:** Okay.

**MR ALISTER CHABI:** So at a very high level, Chair, those are the assumptions that we thought would be important to bring to the fore and discuss with you.

20 **CHAIRPERSON:** Yes.

**ADV MAHLAPE SELLO:** So up to this point you do not take any serious issue with the assumptions and variables you used for the business case?

**MR ALISTER CHABI:** No we don't take any issue with those...(intervention).

**ADV MAHLAPE SELLO:** You deem them reasonable?

**MR ALISTER CHABI:** Correct.

**ADV MAHLAPE SELLO:** Then we can go to the second item of your opinion.

**MR ALISTER CHABI:** Okay so we now move to the second part of the presentation which looks at the estimate total cost of 38.6billion. the mandate here was essentially to determine whether this amount was an acceptable estimated total cost. In addition to that, to address the contentious issue of whether that ETC included Forex hedging and  
10 whether it included escalations. The finding on that was the 38.6billion was an acceptable ETC...(intervention).

**ADV MAHLAPE SELLO:** Did you say was or wasn't?

**MR ALISTER CHABI:** Was an acceptable ETC and it did indeed include Forex hedging and escalation which we will try to demonstrate a little further down as we continue.

**ADV MAHLAPE SELLO:** Alright.

**MR ALISTER CHABI:** So that was essentially the original delivery schedule as you see there, we've spoken about already so 465 diesel locomotives were predicated and 599 electric and as you can see there  
20 the schedule shows a hundred for each year starting 2014 to 2017 and then 65 in the last year, that's what the business case model, the delivery on and for electrics starting off with 65 in 2015, 130 in between and ending off with 144 in 2019, 7 year because it started in 2013 ending in 2019. Now the first delivery for diesels, as per the business case would have been in April 2013.

**ADV MAHLAPE SELLO:** Yes.

**MR ALISTER CHABI:** Okay but allowing for a four month testing period that means your locomotives started operating round about August 2013 and that's when you start to generate revenue essentially. For your electric locomotives delivery would have started in April 2014 okay, same testing period of four months meaning you started generating revenue for electric locomotives in August 2014. Now at some point we felt that four months was a little – well not us but the engineers we worked with at the time felt that four months was a little too short a  
10 period for testing, they felt that an average was about nine months. We did not have an issue with that particular assumption being in the business case again, why because it was conservative you're essentially bringing your costs forward and lowering your net present value, so we were okay with that. If it had been a testing period of 15 months, let's say that would have been concerning.

**ADV MAHLAPE SELLO:** Okay.

**MR ALISTER CHABI:** So what we show you there, basically is the breakdown of 38.6billion in ETC its split by diesels and electric you can see the total of 38.6 with the bulk of that ETC coming from the electric  
20 locomotives nationally so because you had more electric locomotives and the price for electric locomotives was a lot higher than that of diesel. As a matter of fact, the cheapest electric locomotive was more expensive than the most expensive diesel locomotive hence that significant difference between the two. We broke it down into escalation costs as we've already mentioned it's escalation here



essentially is inflation so on the South African side you had PPI on the foreign side you had CPI in particular US because the business case gets actually modelled – was modelled on US Dollar locomotive or US Dollar price locomotives and contingents also make up part of the ETC as you can see there roughly at about 6.51 percent of your total cost okay 2.2billion.

**ADV MAHLAPE SELLO:** So when you look at the extreme right column total we get the 38.6billion, that is the total cost of acquisition of both diesels and electrics.

10 **MR ALISTER CHABI:** It is.

**ADV MAHLAPE SELLO:** And do we understand your slide to mean the 38.6billion is made up of the five components listed above which at a very simplistic level can be broken down into the cost of acquiring the – the cost of the locomotive itself at 30billion, the escalation cost based on the PPI and the CPI so they are factored in at 1.8 and 713.

**MR ALISTER CHABI:** Correct.

**ADV MAHLAPE SELLO:** And these inflation costs are over a period of 7 years.

**MR ALISTER CHABI:** They are over a period of 7 years.

20 **CHAIRPERSON:** Is it hot Mr Chabi are you feeling hot

**MR ALISTER CHABI:** I'm still trying to calm the nerves down Chair.

**CHAIRPERSON:** Okay, alright.

**ADV MAHLAPE SELLO:** Thank you Chair, and that is then followed by the hedging costs of 3.3billion.

**MR ALISTER CHABI:** Correct.

**ADV MAHLAPE SELLO:** And equally so the hedging is over a 7-year period.

**MR ALISTER CHABI:** It is over the delivery period which is 7 years.

**ADV MAHLAPE SELLO:** Yes.

**MR ALISTER CHABI:** That's right.

**ADV MAHLAPE SELLO:** And you have contingencies at 2.2billion and that is just a function of a percentage of ...(intervention).

**MR ALISTER CHABI:** Of the total cost – of the cost you see above so 6 percent of the cost you see above roughly 8 percent of the locomotive  
10 costs.

**ADV MAHLAPE SELLO:** And that gives us 38.6billion.

**MR ALISTER CHABI:** It does.

**ADV MAHLAPE SELLO:** So if we say that the Board approved an ETC of 38.6billion on the basis of this slide, that 38.6billion included both escalation and hedging over a period of 7 years.

**MR ALISTER CHABI:** It did yes.

**ADV MAHLAPE SELLO:** Thank you.

**MR ALISTER CHABI:** I suppose there's not enough to show on a slide that these costs are included so we thought it important to actually  
20 demonstrate that, okay if the Chair will allow.

**ADV MAHLAPE SELLO:** Yes.

**CHAIRPERSON:** Yes go ahead.

**ADV MAHLAPE SELLO:** And just to explain, in order to do that you have to get out of your slides and go into excel.

**MR ALISTER CHABI:** Into the model itself yes. It's quite a diesel

model, it's taking time to upload.

**ADV MAHLAPE SELLO:** Okay, while it uploads could you at least give us a sense of what you expect when it comes up?

**MR ALISTER CHABI:** So what you will see before you Chair is the model that was used to back the business case. It's a 49 sheet model, very detailed, a number of different aspects per models there including the MDS the Market Demand Strategy just with the volumes that they were targeting at the time. We'll have our focus on two sheets in this instance and that's the sheet that's actually labelled The Transnet  
10 Hedged Curve. Hedge rate curve as well as the main control input sheet. But the main control input sheet- it's not showing so right.

**CHAIRPERSON:** Is it coming up?

**MR ALISTER CHABI:** I think I'll need- can you see it there?

**ADV MAHLAPE SELLO:** No, your computer is connected because I can see your screen. What is not coming up is the actual worksheet that you want to work to demonstrate on.

**MR ALISTER CHABI:** Duplicator input.

**ADV MAHLAPE SELLO:** Okay?

**MR ALISTER CHABI:** Sorry.

20 **ADV MAHLAPE SELLO:** Yes.

**MR ALISTER CHABI:** Apologies. So this was actually the model used at the time its Transnet models not one that we developed.

**ADV MAHLAPE SELLO:** Okay.

**MR ALISTER CHABI:** So as mentioned, we will look at sheets in particular. That's the main control sheet which is where your 38.6

billion rand output is situated.

**ADV MAHLAPE SELLO:** Yes.

**MR ALISTER CHABI:** As you can see that's what you have right there.

It's a bit-

**ADV MAHLAPE SELLO:** Can you enlarge it a bit perhaps?

**MR ALISTER CHABI:** I'll try and enlarge that.

**ADV MAHLAPE SELLO:** And you perhaps might want to use your pointer to direct us.

**MR ALISTER CHABI:** Okay. On the screen, okay. So there's your  
10 38.6 billion there, your Nett present value is just right beneath it at 2.7 billion as you can see. Now what you would expect of course is when you look at the FX curve. As you change the FX curve assumptions, you should be able to see the 38.6 billion rand change because the sheets are intellect.

**ADV MAHLAPE SELLO:** And with the FX curve, do you mean the Forex curve?

**MR ALISTER CHABI:** The Forex curve.

**ADV MAHLAPE SELLO:** Thank you.

**MR ALISTER CHABI:** The foreign currency.

20 **ADV MAHLAPE SELLO:** The language must be that of lawyers to the extent possible. Thank you

**MR ALISTER CHABI:** Pleasure advocate. Okay, so Chair what you have there, essentially that sequence of numbers is what is called the FX curve. So essentially it's what you expect to purchase each dollar at in the future. And if you can see as at 18 April 2013, the spot rate

was 9.1285. Exactly a year after that you would have expected to purchase the dollar at 9.5854 as you can see there. 2014/15 at 10 rand to the dollar, you get 10.04 10.5 and so forth. And so you can see that curve is actually an increasing curve. So you expect the rand to depreciate over time. And essentially that's where the cost actually comes in. Your cost is essentially the difference between your forward rate and your current rate. So in other words, it's not that different to inflation this instance. Now as I mentioned Chair, if you change any of these numbers here you should be able to see a change on the 38.6  
 10 billion. So I'll give it to the Chair, I'll let you decide which number you want to change and which one to change it to. Its if-

**CHAIRPERSON:** I think I'm trying to understand the principles.

**MR ALISTER CHABI:** The principle behind it.

**CHAIRPERSON:** Rather than the actual figures.

**MR ALISTER CHABI:** Okay.

**CHAIRPERSON:** Ja, but I think the principle is you make an estimate of what the for example rand dollar exchange likely to be in two years time three years time.

**MR ALISTER CHABI:** And so forth each year going forward.

20 **CHAIRPERSON:** You work around your price on that basis. Is that right?

**MR ALISTER CHABI:** Correct. So essentially you're modelling your price, your dollar price on that curve. So in other words to get the price in three years time, you get the forward rate in three years time plus what you expect to equals an expense in three years time in dollar

terms you mock up until you get the rand value.

**CHAIRPERSON:** Yes, with an appreciation that your estimate might be wrong, might ultimately be wrong.

**MR ALISTER CHABI:** Well, maybe then I should explain what Forex hedging is in the sense that-

**CHAIRPERSON:** Ja okay.

**MR ALISTER CHABI:** So essentially it's an agreement between you and... [intervenes]

**CHAIRPERSON:** But that the estimate you will use.

10 **MR ALISTER CHABI:** That's the rate you're going to buy with. Well not an estimate, it's actually the amount at which you're going to buy the rand and the dollar in the future.

**CHAIRPERSON:** Okay.

**MR ALISTER CHABI:** So you agree with the part? And that's what hedging essentially is. If you look at Transnet's policy on hedging, it actually does say the objective is to eliminate the currency risk.

**CHAIRPERSON:** Oh okay.

**MR ALISTER CHABI:** So essentially Transnet wants to be certain today what it will have to pay in rand terms in the future be it a year,  
20 two years, three years and so forth.

**CHAIRPERSON:** So it's not to have any uncertainty.

**MR ALISTER CHABI:** Exactly.

**CHAIRPERSON:** Ja okay.

**MR ALISTER CHABI:** It's very different from a forecast. A forecast would be an estimate. Different entities different bodies, the World

Bank, the IMF would give what is essentially a forecast. But in this instance-

**CHAIRPERSON**: Okay. No, that's fine.

**ADV MAHLAPE SELLO**: Thank you Chair. On that basis I will change a figure and let's see what happens. I'm good at guessing figures.  
12.2

**MR ALISTER CHABI**: For which year advocate?

**ADV MAHLAPE SELLO**: Make your pick, sir.

**MR ALISTER CHABI**: Okay. That's an increase.

10 **ADV MAHLAPE SELLO**: That's an increase, yeah.

**MR ALISTER CHABI**: So you expect the price to- okay.

**ADV MAHLAPE SELLO**: Yes. And the idea- you wanted to demonstrate to us how that exchange rate, the anticipated exchange rate if it changes how it impacts the 38.6 billion approved ETC.

**MR ALISTER CHABI**: Correct.

**ADV MAHLAPE SELLO**: So and you had asked the Chair for a figure, I'm offering you one.

**MR ALISTER CHABI**: Okay. So I'll use 12 and I'll use that in the year 2015 tax year 2016.

20 **ADV MAHLAPE SELLO**: Okay.

**MR ALISTER CHABI**: And if we go back to the main control sheet.

**ADV MAHLAPE SELLO**: Yes.

**MR ALISTER CHABI**: You can see there it's actually gone up to 39 billion.

**ADV MAHLAPE SELLO**: Just zoom in to your screen again. That

estimated KPAX of 39.152.

**MR ALISTER CHABI:** Correct.

**ADV MAHLAPE SELLO:** Originally before you tempered with the number and introduced my 12 that stood at 38.6.

**MR ALISTER CHABI:** Correct.

**ADV MAHLAPE SELLO:** Okay.

**MR ALISTER CHABI:** And now it's gone up to 39 billion obviously because your rand- you expect your rand to depreciate by more than projected on the curve.

10 **ADV MAHLAPE SELLO:** Okay. So and the same principle would apply through all the seven-year period. Should those numbers begin to change, this ETC will automatically change?

**MR ALISTER CHABI:** It will.

**ADV MAHLAPE SELLO:** In line with the changes that are effected on that Forex fluctuation.

**MR ALISTER CHABI:** Correct. So it's quite an internally consistent model as you can see the MPV also changed this since it came down. So your cost went up your profitability, your profit position actually worsened. It came down to 2.5 billion. So we can do this with any  
20 number and you can you will see the difference. You reduce that the red going forward, you can expect the price to also come down from 38 billion to a different figure and the MPV to increase.

**ADV MAHLAPE SELLO:** Okay.

**MR ALISTER CHABI:** I'll now go back to the presentation that...  
[intervention]



**ADV MAHLAPE SELLO:** Absolutely. And we were at your page 13 when you had that demonstration for us.

**MR ALISTER CHABI:** Correct.

**ADV MAHLAPE SELLO:** Thanks. Okay.

**MR ALISTER CHABI:** Okay Chair, so it's not enough to show that because a change in those rates results in the change in ETC that you essentially had hedging include in there. It essentially shows that, tells us that those numbers were numbers going forward that had an impact on the price. The argument could be well all well and good, you have  
10 that numbers but are they hedged rates? Okay, so what we then did is we approached a number of entities. We pulled out the Forex forward curve from a terminal called Bloomberg and that's accessible to. It's wide it's an international porthole that's accessible to banks asset managers, any entity. It is the formula used to determine what the forward curve is on any currency is objective. So it does not matter where you are in the world, if you want to get a forward curve at a particular point in time for the rand against the dollar it will be the same regardless where you pull it in the world and who pulls it out. So it's quite and objective number. We approached a few banks as well to  
20 understand what they were charged to actually offer that guarantee to anybody willing to enter into an agreement on the currency. And this is essentially what we got. So what you have on that slide essentially is what Transnet used in its modelling at the time and what we obtained from the market at the time. So as at 18 April 2013 on the day if you had to go and hedge all this cash flow from the business case, that's

what the market would have given to you at. And you can see there's actually not much difference between the two 9.5 99.59 2014 10.04 10.05 in 2015. So you would expect price differences depending on who actually gives you gets the contract with you at 10.5 to compared to 10.53 and so forth. The biggest variants come in 2020 at 12.55 compared to 12.42. However just remember that this the delivery sheet was up in 2019. So the 2020 forward rate had no impact on the business case.

**ADV MAHLAPE SELLO:** And now if we look at your graph and we look  
10 at the blue starting from 2014 right through to 2020. The numbers indicated in respect of each, do those correspond with the numbers you showed us on the Excel what which you said was the workbook for the computation of the 38.6 billion.

**MR ALISTER CHABI:** Yes, they do. We can go back and check that if.

**ADV MAHLAPE SELLO:** Okay. So you extracted those numbers, put them on a chart? And then you introduced the red or pink columns whatever that colour may be which are the figures you obtained from Bloomberg?

**MR ALISTER CHABI:** Correct.

20 **ADV MAHLAPE SELLO:** And you are comparing on an annual basis and you reach a conclusion that the difference in any given year is insignificant.

**MR ALISTER CHABI:** Indeed.

**ADV MAHLAPE SELLO:** And what must the Chair draw from that exercise?

**MR ALISTER CHABI:** That the 38.6 billion included hedging and we have demonstrated that the figures here were actually forward curve foreign currency hedged rates.

**ADV MAHLAPE SELLO:** And the Chair had asked whether it will not be said they were mere estimates. Does this help clarify the issue in any manner?

**MR ALISTER CHABI:** Well, what we have following that essentially is what we've just looked at on the spreadsheet which were the rates Transnet used at the time for the currency hedge. In the same  
10 spreadsheet one of the 49 sheets has forecast rates and those are used to model maintenance costs. And just maintenance costs in the model and that's what you have there in they will obtain from global insight. You can see there's quite a marked difference between the hedged rate and the forecast rate. Okay, so 9.59 compared to 8.62, 10.04 compared to 8.89 and so forth all the way. In fact that variance increases as you go out into the years.

**ADV MAHLAPE SELLO:** And so slide 15 the red indications are the forecast rates.

**MR ALISTER CHABI:** Forecasted rates, yes yeah.

20 **ADV MAHLAPE SELLO:** The blue is the hedged rates?

**MR ALISTER CHABI:** Yeah.

**ADV MAHLAPE SELLO:** And what we should understand from this slide is Transnet from your analysis, Transnet and the development of the business case used the actual hedged rates not the forecast rates.

**MR ALISTER CHABI:** And we've actually seen that because as we

changed the rates the hedged rates, we saw a change in the ETC.

**ADV MAHLAPE SELLO:** So then addressing the question of hedging, Transnet used the correct figures to work out their Forex curve?

**MR ALISTER CHABI:** It did.

**ADV MAHLAPE SELLO:** Okay.

**MR ALISTER CHABI:** So there is no doubt foreign currency was included. I guess the argument would have been then were those foreign currency assumptions going forward hedged rates or just or mere assumptions mere forecasts. And I think we have demonstrated  
10 that they were not mere forecasts they were hedged rates.

**ADV MAHLAPE SELLO:** Okay, thank you. You may proceed.

**MR ALISTER CHABI:** We now deal with the escalation bit, I think there was also a question not that I think I know. There was a question around whether escalation costs were included. We can the same way we've demonstrated with the foreign currency hedge show that escalation was also included.

**ADV MAHLAPE SELLO:** So then if we go back to your slide 6, sorry not 6, apologies. I'm looking for slide 13. 13 please, yes. So in slide 13 provides for Forex hedging costs at 3.3 billion. This are real and  
20 properly hedged for hedging cost of the Forex.

**MR ALISTER CHABI:** Indeed, yes.

**ADV MAHLAPE SELLO:** And equally so you suggest when we do a similar exercise for escalation and we look at the figures appearing as against SA PPI and US CPI of 1.8 billion and 713 million respectively. That those two are properly calculated, their real escalation rates and

it's just not mere guess work, if I can put it that way.

**MR ALISTER CHABI:** It isn't, yes. So the assumption of local PPI I already mentioned was in the original 5.5%. Okay, 5.3 going to 5.9% and on the US side was 2.3% going into the future.

**ADV MAHLAPE SELLO:** Okay. Then on that understanding you may proceed with escalation costs at slide 16, that's where we were.

**MR ALISTER CHABI:** Okay, so I'm not sure if you want me to actually go and demonstrate this. I could. Okay. I think I will need your assistance again in this regard download. Okay, it should come up.

10 **MR ALISTER CHABI:** Alright, I'll just reset that and get back to 38.6 billion.

**ADV MAHLAPE SELLO:** Which means I must go correct my 12.

**MR ALISTER CHABI:** Indeed. Okay, so there we are. We're back to the original assumptions. What we will then look at here now is the main control input sheet and the sheet in which the cost of the diesel and locomotives were completed.

**ADV MAHLAPE SELLO:** Yes.

**MR ALISTER CHABI:** And that's under total cost of ownership locals capital expenditure.

**ADV MAHLAPE SELLO:** Yes.

20 **MR ALISTER CHABI:** As we go down you can see the forward rates up here and there as well going forward, that you can see.

**ADV MAHLAPE SELLO:** Mm-hmm.

**MR ALISTER CHABI:** What you have beneath that are your PPI and CPI, SA PPI and US CPI assumptions.

**ADV MAHLAPE SELLO:** You might want to enlarge your screen a bit.

**MR ALISTER CHABI:** Okay.

**ADV MAHLAPE SELLO:** Thank you.

**MR ALISTER CHABI:** There we go. Shall we try a figure, advocate?

**ADV MAHLAPE SELLO:** No, I know it works. I know the system works, so it's good this way. So from that worksheet you seek to demonstrate that both the SA PPI and US inflation were taken into account once again over the period of seven years?

**MR ALISTER CHABI:** Correct.

**ADV MAHLAPE SELLO:** And that it is and those were the actual rates  
10 of inflation anticipated what?

**MR ALISTER CHABI:** Expected at the time.

**ADV MAHLAPE SELLO:** Expected rates of inflation going forward.

**MR ALISTER CHABI:** Going forward.

**ADV MAHLAPE SELLO:** They are then factored into the calculation and they give us certain numbers which we then reflect on our page 13 under both inflations?

**MR ALISTER CHABI:** Correct.

**ADV MAHLAPE SELLO:** And this is to demonstrate that they are taken into consideration in the computation of the 38.6 billion?

20 **MR ALISTER CHABI:** Correct. So essentially if you had to change this numbers, you should see a changing at 38.6 billion.

**ADV MAHLAPE SELLO:** Once again as we did with the Forex?

**MR ALISTER CHABI:** With the Forex, yes.

**ADV MAHLAPE SELLO:** Understood, thank you.

**CHAIRPERSON:** Thank you.

**MR ALISTER CHABI:** Okay.

**ADV MAHLAPE SELLO:** Yes, we may proceed.

**MR ALISTER CHABI:** For the demonstration or? Okay, I will pick a number. I'll just zeroise the first and zeroise the second.

**ADV MAHLAPE SELLO:** Okay.

**MR ALISTER CHABI:** So we expect no inflation in 2014 and 2015.

**ADV MAHLAPE SELLO:** Mm-hmm.

**MR ALISTER CHABI:** If you look at the main control input sheet you can see your costs have actually changed there.

10 **ADV MAHLAPE SELLO:** It's gone up to 37.

**MR ALISTER CHABI:** It's actually changed to 37.269 billion.

**ADV MAHLAPE SELLO:** Okay.

**MR ALISTER CHABI:** Zeroised, remember here I'm sure you're ask yourself why is it going down and not up.

**ADV MAHLAPE SELLO:** You are a mind reader Mr Chabi.

**MR ALISTER CHABI:** Okay alright. So if you have a local content component and not a foreign component in this instance, your cost of hedging would have gone up and so would your foreign inflation in this instance. So as you can see there is actually change as a result.

20 **ADV MAHLAPE SELLO:** And if we retain the percentages as we had and we change in the second row. What would happen then? Would that ETC go up or down? What should we expect?

**MR ALISTER CHABI:** Okay. Actually, just a second, advocate. It actually comes on slight to 38.008 billion.

**ADV MAHLAPE SELLO:** It goes up again?

**MR ALISTER CHABI:** No, it comes down. 38 comes down to?

**ADV MAHLAPE SELLO:** Oh from 38.6

**MR ALISTER CHABI:** 6 billion comes down to 38 billion.

**ADV MAHLAPE SELLO:** Of course.

**MR ALISTER CHABI:** And your MPV goes up.

**ADV MAHLAPE SELLO:** Okay.

**MR ALISTER CHABI:** So those costs were allowed for.

**ADV MAHLAPE SELLO:** Okay, so and the MVP has changed now from 2.7 billion to 2.9?

10 **MR ALISTER CHABI:** Correct.

**ADV MAHLAPE SELLO:** Okay. I think the demonstration is clear at least for me. You may proceed.

**MR ALISTER CHABI:** Okay. So Chair, we have seen a escalation was included okay. Not just on the local sub but also on the foreign side and we've just demonstrated that if you change the figures the numbers as well changes the results.

**ADV MAHLAPE SELLO:** Yes. Okay.

20 **MR ALISTER CHABI:** And we know one if you zeroise it actually comes down because you're assuming there's no inflation going forward. The same way if you had increased inflation amounts, it would have gone up in costs.

**ADV MAHLAPE SELLO:** Yes, as we saw it happen.

**MR ALISTER CHABI:** As the drop from 38.6 billion to the figures that we had seen.

**ADV MAHLAPE SELLO:** Okay.



**MR ALISTER CHABI:** You can say in concluding that as I've already mentioned escalation was included, Forex was include and the 38.6 billion was a reasonable and acceptable estimate after total cost of acquiring the locomotives at the time.

**ADV MAHLAPE SELLO:** Inclusive of escalation and Forex.

**MR ALISTER CHABI:** And Forex hedging, yes.

**ADV MAHLAPE SELLO:** Thank you.

**MR ALISTER CHABI:** Okay, so the next part of the presentation takes us to the increase in the ETC from 38.6 billion to 54.5 billion, the 15.9  
10 billion spoken of. And our mandate there was of course to determine whether that 15.9 billion was a reasonable increase in the ETC or not. The former JSE is slightly different because of the- well, we could not put the opinion upfront and then give the detail later because looking at the three aspect following they are interlinked. So what we'll do is we'll then turn to the memorandum and take you through that.

**ADV MAHLAPE SELLO:** Okay. And for the record if your BBHB has got a tab, I won't give it a colour because the colours may differ. But what's original on the tab is volume 145 4352 to 4370. Chair it is in BBHB.

20 **CHAIRPERSON:** It's here?

**ADV MAHLAPE SELLO:** Yes, it's the document after the tab.

**CHAIRPERSON:** On what page?

**ADV MAHLAPE SELLO:** The Chairs bundle has got a tab like that. Yeah, yours is green.

**CHAIRPERSON:** Yeah, okay.

**ADV MAHLAPE SELLO:** And the green, Chair is marked volume 14 352 to 4370.

**CHAIRPERSON:** Yes.

**ADV MAHLAPE SELLO:** That is the memo that Mr Chabi would like us to consider.

**MR ALISTER CHABI:** Correct.

**ADV MAHLAPE SELLO:** And what's region on the tab is just for reference purposes where that document was extracted from in the record. This is just for ease of reference.

10 **CHAIRPERSON:** Is that a document that was supposed to be here or? There's volume 14352 to 4370.

**ADV MAHLAPE SELLO:** Yes Chair.

**CHAIRPERSON:** And then after that there is part C. And then there is a document which is, that's the next document... [intervenes]

**ADV MAHLAPE SELLO:** Yes, then thereafter then it's the Transnet document headed Memorandum. That's the correct document Chair. If I may just confirm it has at the top. Yes Chair.

**CHAIRPERSON:** Okay, headed Memorandum.

**ADV MAHLAPE SELLO:** Yes Chair.

20 **CHAIRPERSON:** To transport board of Directors from Brian Molefe.

**ADV MAHLAPE SELLO:** Indeed.

**CHAIRPERSON:** Okay.

**ADV MAHLAPE SELLO:** That's a document you'd like us to have regard to know.

**MR ALISTER CHABI:** Correct.

**ADV MAHLAPE SELLO:** Okay.

**MR ALISTER CHABI:** Thanks [inaudible]

**ADV MAHLAPE SELLO:** We are at that document.

**MR ALISTER CHABI:** Okay. So just to highlight what our men did here was I think in the words of the Chairman from MNS. His words were, we want to deconstruct the memorandum and look at every component cost and tell us if each of those costs make sense. And if where they don't, give us what you think is a reasonable cost. Okay, now this was a memo of course presented [inaudible] 23rd of May 2014 by the then  
10 JSE group of executive of Transnet.

**ADV MAHLAPE SELLO:** Yes.

**MR ALISTER CHABI:** Just to find the increase in ETC. What you have before you under the excerpt two summery, bullet point number two are the reasons we put forward for the increase in ETC.

**ADV MAHLAPE SELLO:** Before you do that for the record at 4353, the document states the purpose of the document and states as follows. The purpose of this memo is firstly for the BOD to note the reasons for the increase in ETC. B to request that the BOD approve an increase in the estimated total cost ETC for the accusation of 10 64 locomotives for  
20 the general freight business of Transnet Freight Rail from 38.6 billion to 54.5 billion. And before you deal with the content, I will then refer us to the last page of that document which would be at 4370 and it is signed by Mr Arnold Singh, recommended by Mr Arnold Singh, recommended by Mr Siyabonga Gama and recommended by Mr Brian Molefe. Mr Molefe on the 14th of May- no on the 23rd of May 2014. Mr

Gama on the 21st of May 2014 and Mr Singh on the 22nd of May 2014. So that's when the memo was generated and I have stated its purpose. You now wanted to deal with the Executive summary. So you may proceed.

**MR ALISTER CHABI:** Thank you. Okay, so what I've put before you are the reasons essentially table two on the slide. What you have in red of course are the memo values and what you have in blue are the recalculated values. So let me just explain each of those reasons that he put forward in the memo. So there's an [inaudible app link] for the  
10 business case. After business case four updated economic factors. That's how it reads, update of business case four, updated economic factors. Now we will understand what that means essentially when we get to table two where he starts off with a locomotive price but essentially it's a backward looking adjustment for inflation and the depreciation in the rand. Okay, from March 2014 going back to what he terms the close of tender date which we believe to be 30 April 2018. In certain instances he goes back two years where he should have gone back one year. But we'll touch on the actual numbers a bit later. 5.4 billion compared to 4.4 billion so we felt it was a 1 billion rand over  
20 estimation in that regard. He then talks about risk mitigation and that's for Forex and inflation going forward. Okay and he pecks that at 9.5 billion. We have come to a cost of 6.2 billion over that period. Okay, that's along the foreign currency hedging going forward as well as the escalation going forward. At Transnet Engineering and Scope is also introduced in the increase. Now in the business case no allowance was

made for TE Scope. There was however as you'd have noticed on the slides at 2% localisation premium. We have asked the engineers what that was for and the financial team what that was for and they said it had nothing to do with TE Scope, it was an assumption around the premium you would have expected to pay if you had to obtain certain services locally. He talks about contingencies as well, perk that are 10% off the total cost which are 49.5 billion. In fact in the 4.95 billion to the 49.5 you get the 54.5 billion. And then if you look at the table on the memorandum, it's actually not showing there. The last entry is

10 lower capital acquisition cost of the locomotive obtained through the competitive tender and negotiation process, latch the best price adjustment of 2.7 billion. And he claims a 6.5 billion rand saving. We will speak to that as well a bit later.

**ADV MAHLAPE SELLO:** Yes.

**MR ALISTER CHABI:** Okay but essentially we felt that the contingencies were quite high at 4.95 billion. We had it at 2.8 billion. We will get into that shortly. The bench pricing at 2.7 billion. We felt it was a cost that was not reasonable and we pack that at zero as you can see there. Following that we have a – and a slide 20 a more

20 detailed breakdown of those risks – I mean – of those reasons put forward. Now the update of the business case for updated economic factors – sorry – what you have in red Chair are what we took exception to and what you have in blue is what we are comfortable with, okay. So we were not comfortable with the escalation from the tender closing – close date all the way to March 2014. We were also not comfortable

with the bench price. I have just – I have just spoken to that and the cost of fixed escalation going forward. We were not comfortable with those costs either but just to tie in what you are seeing on this slide to the table on the executive summary under bullet point two that we have just spoken to. So your update ...

**ADV MAHLAPE SELLO:** Sorry – Mr Chabi before we go into the detail. You have listed there the various elements and except for the BAFO after each you have denoted with an alphabet in brackets.

**MR ALISTER CHABI:** Correct.

10 **ADV MAHLAPE SELLO:** So help us understand

**MR ALISTER CHABI:** Understand what those are. Okay, so ...

**ADV MAHLAPE SELLO:** The logic, *ja*.

**MR ALISTER CHABI:** Sure advocate. So the BAFO is there. It is the first bullet ...

**ADV MAHLAPE SELLO:** Yes.

**MR ALISTER CHABI:** Best And Final Offer prices.

**ADV MAHLAPE SELLO:** Yes, okay.

**MR ALISTER CHABI:** This essentially if you turn to Table 2 in the memorandum ...

20 **ADV MAHLAPE SELLO:** And that Chair will be at that bundle page 48. For the moment please ignore the reference bundle. Just the bundle number. Please use the bold double digit page numbering. It is for purposes of this. Now at 48 that is Table 2. However we do acknowledge that it is completely unreadable Chair. If you go overleaf we have reproduced it and printed on landscape hoping that it will

become more readable.

**CHAIRPERSON:** Yes.

**ADV MAHLAPE SELLO:** Yes. We are there Mr Chabi.

**MR ALISTER CHABI:** Thank you. So the alphabets simply mirror what the GCE put in the memorandum and you can see from that table that he labels escalation up to signature date which is March 2014 as A. The original T as B. You will see B appearing there twice on the slide and in the memorandum okay and those two relate to Transnet's Engineering Scope.

10 **ADV MAHLAPE SELLO:** Yes.

**MR ALISTER CHABI:** We carry down all the way to contingencies labelled G.

**ADV MAHLAPE SELLO:** Okay. So if we are looking we wonder what C is we know it is for forex adjustment from April 2013 to March 2014 and it will be listed as such in our page 48 and Table 2.

**MR ALISTER CHABI:** Correct.

**ADV MAHLAPE SELLO:** Okay.

**MR ALISTER CHABI:** It is for ease of reference when you look at Table 2.

20 **ADV MAHLAPE SELLO:** Now secondly before we unpack the detail you have some listed in red and some in blue – not black – blue.

**MR ALISTER CHABI:** In blue.

**ADV MAHLAPE SELLO:** On your slide. Can you talk us through that?

**MR ALISTER CHABI:** Okay. So I was still going through the time (indistinct) the reasons he put forward in the summary ...

**ADV MAHLAPE SELLO:** Yes sir.

**MR ALISTER CHABI:** And explaining the – the breakdown. So as mentioned it is a more detailed breakdown of the reasons he put if you look at Table 2. It is basically about four reasons barring the saving that has been claimed. The bench pricing is included in the last bullet there. If you – update of business case for updated economic factors is essentially the backward looking adjustment and looks at escalation from the close of tender to March 2014 and it also includes the forex adjustment from the close of tender all the way to March 2014. Okay.

10 So that is the update that the memorandum is speaking to – backward looking. Okay, so forex and escalation. Risk mitigation the same – the same items the same factors. However forward looking and as you can see there it is broken down into cost of fixed escalation to the end of the contract and the cost of hedging to the other contract.

**ADV MAHLAPE SELLO:** Yes.

**MR ALISTER CHABI:** Okay. You do not have TE Scope and that is just the addition of the original Transnet TE Scope and the additional TE Scope. It is just the sum of those two items there and you have got hedging and you have got bench pricing of course.

20 **ADV MAHLAPE SELLO:** Yes.

**MR ALISTER CHABI:** We will discuss this particular table a little later in the slide. What we have done on the slide to follow is we have actually put the numbers from the memorandum we have juxtaposed thereto our calculation and to the business case. Okay, just for ease of comparison.



**ADV MAHLAPE SELLO:** So what you have at slide 21 but for the numbers under business case and under assessed value that is a reflection of Table 2 of the memorandum?

**MR ALISTER CHABI:** Correct.

**ADV MAHLAPE SELLO:** The May 2014 memorandum?

**MR ALISTER CHABI:** Agreed.

**ADV MAHLAPE SELLO:** So in order to do a comparison you remind us what the business case had budgeted for in respect of each item and then you introduce the assessed value which is the result of your  
10 calculations?

**MR ALISTER CHABI:** Correct.

**ADV MAHLAPE SELLO:** Okay. You may then lead us through it.

**MR ALISTER CHABI:** Okay. Thank you advocate. Okay. So as mentioned we have put the numbers right next to the list that we have just discussed, okay and as you can see just going back to the business as we try to break it down just to show you how those costs actually come in. Starts with the locomotive price. You will remember it was sitting at 30.476 billion when discussed it initially on the earlier slide. When we broke down the ETC of 38.6 billion.

20 **ADV MAHLAPE SELLO:** Yes.

**MR ALISTER CHABI:** That by the way includes a 2 percent localisation premium. So I think if you remove that you are looking at about 29.8 billion thereabout. Now there is no backward escalation on that, okay. In other words I adjust them because remember this business case was actually developed at the time when the tenders were closed, okay. So

everything from that point is actually forward looking. There is no backward adjustment. The prices then reflect the prices that you will pay for locomotives at that time.

**ADV MAHLAPE SELLO:** Okay.

**MR ALISTER CHABI:** So that is left blank. There is no TE Scope as mentioned. The financial team that developed the model said to us that they did not allow for Transnet Engineering Scope in the modelling of the business case.

**ADV MAHLAPE SELLO:** Yes.

- 10 **MR ALISTER CHABI:** (Indistinct) however you have in there because the weight used was the forward rate one year later.

**ADV MAHLAPE SELLO:** Yes.

**MR ALISTER CHABI:** Okay. Assuming that you were actually going to acquire the locomotives in Dollars at that forward rate and not at the support weight of 9.1285.

**ADV MAHLAPE SELLO:** Yes.

**MR ALISTER CHABI:** Okay. So the weight used to actually convert from US Dollars to Rands was 9.5854 as you looked at – as we saw earlier.

- 20 **ADV MAHLAPE SELLO:** Huh-uh.

**MR ALISTER CHABI:** Okay. There was no bench price adjustment in that scenario. I suppose for obvious reasons, okay. Additional TE Scope no TE Scope. However ...

**ADV MAHLAPE SELLO:** Sorry.

**MR ALISTER CHABI:** Sorry.

**ADV MAHLAPE SELLO:** Before we do that let us take bench pricing as an – bench price adjustment as an example. Under business case you say it was not catered for.

**MR ALISTER CHABI:** Yes.

**ADV MAHLAPE SELLO:** So it was not ...

**MR ALISTER CHABI:** It was not catered for in the business case.

**ADV MAHLAPE SELLO:** The memorandum suggests that it is going to cost 2.7 billion?

**MR ALISTER CHABI:** Correct.

10 **ADV MAHLAPE SELLO:** And if we look at the assess value which is your recalculation you say there should not be a provision for bench pricing?

**MR ALISTER CHABI:** For bench pricing correct. I suppose we will get to the ...

**ADV MAHLAPE SELLO:** Yes. No, no.

**MR ALISTER CHABI:** Detail at a later time.

**ADV MAHLAPE SELLO:** Just we follow the logic of – of this table.

**MR ALISTER CHABI:** Okay. There was forward escalation and there was forward hedging as mentioned you are looking ahead. So  
20 everything is forward looking.

**ADV MAHLAPE SELLO:** Huh-uh.

**MR ALISTER CHABI:** And contingency is there. We have already spoken to that 2.2 billion ...

**ADV MAHLAPE SELLO:** Huh-uh.

**MR ALISTER CHABI:** And that made up 6 percent of all the costs we

see before or 8 percent of the locomotive costs depending on how you want to look at it, okay. Next to that are the memorandum figures and in this instance you can see how the GCE at the time takes us from the 29 billion all the way to the 54 billion.

**ADV MAHLAPE SELLO:** Yes.

**MR ALISTER CHABI:** Okay. You can see the numbers reflected there. The backward looking escalation was bagged at 2.3 billion. We came to 1.3-odd billion there.

**ADV MAHLAPE SELLO:** No it – it will not show on – on your screen.

10 **ADV MAHLAPE SELLO:** Does your mouse show when you run it on the slide? No it does not.

**MR ALISTER CHABI:** It does not.

**ADV MAHLAPE SELLO:** Okay. The numbers get to be too many and then we get – easy to get lost.

**MR ALISTER CHABI:** You are going to get lost okay.

**ADV MAHLAPE SELLO:** So I am trying to find a better way in which you can refer us to a specific number you want to speak to. Then we can find it on the slide. Then we can follow what you are saying.

**MR ALISTER CHABI:** Okay. So let me get the overall conclusion at this point ...

20 **ADV MAHLAPE SELLO:** Ja.

**MR ALISTER CHABI:** And then we will go into the detail later.

**ADV MAHLAPE SELLO:** Alright.

**MR ALISTER CHABI:** So essentially the 15.9 billion was a 41 percent increase from the business case to the memorandum.

**ADV MAHLAPE SELLO:** Yes.

**MR ALISTER CHABI:** What we have come to and we actually do say allowing for TE Scope. Now we will discuss that later. At the time we felt that we did not have enough information to arrive – to draw a conclusion on TE Scope and MNS is still working on that and once that – once there is an outcome on that we will be able to reflect a figure here based on what they come up with.

**ADV MAHLAPE SELLO:** So before you leave ...

**MR ALISTER CHABI:** So ...

**ADV MAHLAPE SELLO:** That point the increase on the business case  
10 – business case in terms of the memorandum suggests a 41 percent increase?

**MR ALISTER CHABI:** Correct.

**ADV MAHLAPE SELLO:** That is what you said that 15.9 increase. Your calculation – on your calculation you conclude that the reasonable increase from the business case scenario to date or to the time that the increase – the approval for the increase was being sought ought to be 6.8 billion?

**MR ALISTER CHABI:** Correct.

**ADV MAHLAPE SELLO:** Which then would reflect 18 percent?

20 **MR ALISTER CHABI:** An 18 percent increase correct allowing for TE Scope.

**ADV MAHLAPE SELLO:** Yes. Allowing for TE Scope which on your slide you have put an asterisk next to?

**MR ALISTER CHABI:** Agreed.

**ADV MAHLAPE SELLO:** For both TE Scope and additional TE Scope.

Now if following a further investigations or conclusion of investigations by MNS on the TE Scope a finding is made that TE Scope ought not to be costed in the manner that it is or at all would that have an impact on the increase that you would say is reasonable?

**MR ALISTER CHABI:** You would and we show it on the next slide and essentially that would result in an 11 percent increase.

**ADV MAHLAPE SELLO:** As opposed to the current 18 percent that you hold?

**MR ALISTER CHABI:** 18 percent increase.

- 10 **ADV MAHLAPE SELLO:** So whereas now with the TE – taking TE into consideration you arrive – arrive at a 6.8 billion increase as a reasonable increase but if you take out TE Scope both original TE and additional the increase out to have been 4.2 billion above 38.6?

**MR ALISTER CHABI:** Correct.

**ADV MAHLAPE SELLO:** And that would be mathematically leading us – what to 42?

**MR ALISTER CHABI:** 42.7 ...

**ADV MAHLAPE SELLO:** (Intervenes).

**MR ALISTER CHABI:** 48 billion.

- 20 **ADV MAHLAPE SELLO:** 40?

**MR ALISTER CHABI:** 42.8 billion rounded up.

**ADV MAHLAPE SELLO:** 42.8 billion.

**MR ALISTER CHABI:** Allowing for TE Scope has 45.4 billion.

**ADV MAHLAPE SELLO:** Okay. We are with you.

**MR ALISTER CHABI:** The next pair of slides takes us into the diesel of

each of the items that we have put there.

**ADV MAHLAPE SELLO:** Yes.

**MR ALISTER CHABI:** So starting with the BAFO price the base price for locomotive we consider that reasonable and how did the – why do we do that? We looked at the last Best And Final Offer prices provided by the bidders at the time and that as at 14 January 2014.

**ADV MAHLAPE SELLO:** Okay.

**MR ALISTER CHABI:** Now as you can see on the slide CNR's BAFO price at the time was 28-odd million. GE is 24.

10 **ADV MAHLAPE SELLO:** And that is your ...

**MR ALISTER CHABI:** Sorry.

**ADV MAHLAPE SELLO:** Row three.

**MR ALISTER CHABI:** That is row

**ADV MAHLAPE SELLO:** If you look at the ...

**MR ALISTER CHABI:** Four.

**ADV MAHLAPE SELLO:** Extreme left corner at the top you – at the heading you identify each bidder. Then you have a row that shows number of locomotives (indistinct), right?

**MR ALISTER CHABI:** Correct.

20 **ADV MAHLAPE SELLO:** Then that is followed in the next row price per locomotive CFET? That is the Cross Functional Evaluation Team.

**MR ALISTER CHABI:** Correct.

**ADV MAHLAPE SELLO:** And that is then lastly followed by price by locomotive BAFO and that is the price you are talking to now – you are speaking to now?

**MR ALISTER CHABI:** Agreed.

**ADV MAHLAPE SELLO:** Okay.

**MR ALISTER CHABI:** Now we have included price per locomotive CFECT here just to show you what the drop was between December 2013 and January 2014 after BAFO letters were sent out to each bidder to ask for the Best And Final Offer price – to quote on the Best And Final Offer price.

**ADV MAHLAPE SELLO:** So then on that understanding let us take CNR indicates price per locomotive at point of evaluation was 48.5 million per locomotive?

**MR ALISTER CHABI:** Per locomotive.

**ADV MAHLAPE SELLO:** Their final – their BAFO price being their final – Best And Final Offer. It came down to 28 million?

**MR ALISTER CHABI:** Correct.

**ADV MAHLAPE SELLO:** Okay.

**MR ALISTER CHABI:** That is roughly 30 percent.

**ADV MAHLAPE SELLO:** Hm.

**MR ALISTER CHABI:** 30 percent discount *ja*.

**ADV MAHLAPE SELLO:** And then it is – we follow that logic in respect of all the bidders?

**MR ALISTER CHABI:** Correct.

**ADV MAHLAPE SELLO:** Okay.

**MR ALISTER CHABI:** So GEBT's discount comes in the region of 5/6 percent. CNR's discount was in the region of 16 percent. So CNR and CSR had the largest drop between December 2013 and January 2014



as you can see there. However we are basing the calculation the BAFO price which is the last price they put forward to ...

**ADV MAHLAPE SELLO:** Okay. Now ...

**MR ALISTER CHABI:** (Intervenes) at the time.

**ADV MAHLAPE SELLO:** Proceed.

**MR ALISTER CHABI:** Okay. So on that basis we considering number of locomotive each bidder was contracted to provide to – to deliver we came to a price of – a total price of 29.5 billion.

**ADV MAHLAPE SELLO:** Now let us just find it on the slide.

10 **MR ALISTER CHABI:** It us under (intervenes).

**ADV MAHLAPE SELLO:** You have as your last row total and in respect of each bidder you have a total starting with CNR at 6.5 billion and work our way across and your second last column is headed assessed value and you have 29.532 and then the memorandum you have 29.355?

**MR ALISTER CHABI:** Correct.

**ADV MAHLAPE SELLO:** Which – which 29 were you speaking to now?

**MR ALISTER CHABI:** So the 29.532.

**ADV MAHLAPE SELLO:** The 532 which is the assessed value?

20 **MR ALISTER CHABI:** The assessed value.

**ADV MAHLAPE SELLO:** And that is the total of all BAFOs?

**MR ALISTER CHABI:** Correct.

**ADV MAHLAPE SELLO:** From CNR, GEBT, CSR collectively?

**MR ALISTER CHABI:** Combined, yes.

**ADV MAHLAPE SELLO:** Okay.

**MR ALISTER CHABI:** What you have in the memorandum - the starting price in the memorandum is 29.355 billion. Now we consider it – we took the memorandum value accepted that value on the basis that the negotiation should have yielded – sorry – results because the price that we were seeing as a starting price in the memorandum is slightly lower than the price we arrived at – at the BAFO stage. There were no documents to substantiate the 29.355 billion in the million. So we accepted the price as reasonable. It is also considered that the business case was in the region of 30 billion. This is a decrease from  
10 what you had assumed in the business case and what you have at the negotiation stage.

**ADV MAHLAPE SELLO:** Hm.

**MR ALISTER CHABI:** So the starting price of 29.355 billion was a reasonable starting price in our view. Had it been higher we would have had a contrast because then we would have meant that the negotiation did not yield the results they should have yielded.

**ADV MAHLAPE SELLO:** So whereas collectively the bidders offered a cost per locomotive at 30 billion the evaluation process ran its course and negotiations and at the end of negotiations Transnet was able to  
20 negotiate them collectively down to a total locomotive cost of 29.3 billion?

**MR ALISTER CHABI:** 29.3 billion. That is R177 million difference.

**ADV MAHLAPE SELLO:** 177 million?

**MR ALISTER CHABI:** Yes.

**ADV MAHLAPE SELLO:** Thank you.

**MR ALISTER CHABI:** Now we highlight this because it takes us back to Table 2 under the executive summary of the memorandum where a saving of R6.5 billion was claimed for lower capital acquisition costs. Now in all our assessment we could not come to that figure. In fact we have reproduced that same table there overhead and I will read that again.

**ADV MAHLAPE SELLO:** Yes.

**MR ALISTER CHABI:** It says:

10                   “Lower capital acquisition costs of the locomotive  
                      obtained through the competitive tender and  
                      negotiation process yielded a saving of 6.5 billion.”

Now remember he actually mentions in the less the batch price adjustment it is unclear why we have a less the best price adjustment because it is one of the factors that led to the increase. So essentially the saving being claimed is roughly R9.2 billion.

**ADV MAHLAPE SELLO:** Before you move on then please go back to your 23. We just spoke on this slide and if I heard you correctly you said under the – at the row total under memorandum the 29.3 billion that you have listed there – set out there under total was the final  
20   negotiated position by Transnet?

**MR ALISTER CHABI:** Correct.

**ADV MAHLAPE SELLO:** And we know from previous slides that when the bids were first evaluated that cost was at 30-odd billion, ja.

**MR ALISTER CHABI:** 20 and a half billion. The 30 comes from the business case.

**ADV MAHLAPE SELLO:** Okay, the business case and you indicated to the Chair that the difference between the total as per the bids and the negotiated position is 177 million?

**MR ALISTER CHABI:** Correct.

**ADV MAHLAPE SELLO:** So if we are to talk of any savings it is R177 million saving from the bid position?

**MR ALISTER CHABI:** Well if you talk of savings ...

**ADV MAHLAPE SELLO:** Per ...

**MR ALISTER CHABI:** From lower capital acquisition costs.

10 **ADV MAHLAPE SELLO:** Exactly.

**MR ALISTER CHABI:** Yes.

**ADV MAHLAPE SELLO:** So it is 177?

**MR ALISTER CHABI:** Correct.

**ADV MAHLAPE SELLO:** So if you go forward to your 24 the memorandum suggest that there was a lower capital acquisition cost of locomotive that was obtained through the competitive tender and negotiation process and indicates that as a 6.5 billion.

**MR ALISTER CHABI:** Correct.

20 **ADV MAHLAPE SELLO:** How do I reconcile the 177 million you just spoke of now and the 6.5 billion?

**MR ALISTER CHABI:** I suppose you cannot reconcile them.

**ADV MAHLAPE SELLO:** On the worksheets you worked through are you able to determine – are you able to validate that 6.5 billion? Have you been able to?

**MR ALISTER CHABI:** Well we ...

**ADV MAHLAPE SELLO:** From the worksheets and any other documentation provided you?

**MR ALISTER CHABI:** No. Well we know how the 6.5 billion was arrived yes and we can demonstrate that if need be.

**ADV MAHLAPE SELLO:** But my question was is there any documentation that I can turn to that will show me a 6.5 billion saving?

**MR ALISTER CHABI:** Not to our knowledge.

**ADV MAHLAPE SELLO:** Okay. Chair I see it is 5 o' clock.

**CHAIRPERSON:** Yes. We are going to adjourn but before we adjourn I  
10 think that my ability to follow Mr Chabi's very technical evidence ...

**ADV MAHLAPE SELLO:** Yes.

**CHAIRPERSON:** Would have been enhanced if I had had a statement or affidavit from him telling me exactly what he would be testifying ahead of his evidence because then I would have looked at that in advance, tried to understand it before he comes to the witness stand rather than try to understand it while he is talking.

**ADV MAHLAPE SELLO:** As he presents.

**CHAIRPERSON:** So one I think it is going to be important that you arrange - the legal team arranges that he prepares an affidavit ...

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

**CHAIRPERSON:** That deals with his evidence from beginning up to the end as you would do with an expert.

**ADV MAHLAPE SELLO:** I will.

**CHAIRPERSON:** You know – because ...

**ADV MAHLAPE SELLO:** We will sir.

**CHAIRPERSON:** The – the need to try and understand and prepare is much more greater with a – with technical evidence than with factual evidence.

**ADV MAHLAPE SELLO:** Evidence.

**CHAIRPERSON:** So I would like you to do that before we can continue and finish with him.

**ADV MAHLAPE SELLO:** May I propose then Chair?

**CHAIRPERSON:** *Ja.*

**ADV MAHLAPE SELLO:** Accepting that ...

10 **CHAIRPERSON:** *Ja.*

**ADV MAHLAPE SELLO:** That we stop with – it is 5 o'clock now. We are going to stop.

**CHAIRPERSON:** *Ja, ja.*

**ADV MAHLAPE SELLO:** Mr Chabi would have returned tomorrow morning to complete his evidence.

**CHAIRPERSON:** Yes.

**ADV MAHLAPE SELLO:** It is absolutely critical that the Chair understands this piece of evidence.

**CHAIRPERSON:** It is very important, *ja.*

20 **ADV MAHLAPE SELLO:** And I request that we then stand Mr Chabi down.

**CHAIRPERSON:** *Ja.*

**ADV MAHLAPE SELLO:** We sort out a proper expert report.

**CHAIRPERSON:** *Ja.*

**ADV MAHLAPE SELLO:** To be handed in under affidavit.

**CHAIRPERSON:** *Ja.*

**ADV MAHLAPE SELLO:** And we will recall Mr Chabi.

**CHAIRPERSON:** Yes.

**ADV MAHLAPE SELLO:** He will have to go through the evidence he has led but then I suppose then it will be quicker because the Chair would have had an opportunity ...

**CHAIRPERSON:** It will be quicker.

**ADV MAHLAPE SELLO:** To consider his expert report ...

**CHAIRPERSON:** *Ja.*

10 **ADV MAHLAPE SELLO:** And then we deal with the remainder of his evidence.

**CHAIRPERSON:** Yes. *Ja*, no that is ...

**ADV MAHLAPE SELLO:** If – if that would be acceptable to Chair.

**CHAIRPERSON:** We can do it that way. Mr Chabi I am sorry about that but your evidence is quite technical and it would be much better if ahead of you coming to testify I have read it and I have identified areas that need clarification because in the end also we can keep you in the witness stand for a shorter time if you just come to clarify certain aspects that might need clarification.

20 **MR ALISTER CHABI:** Understood Chair.

**CHAIRPERSON:** So – so Ms Sello will liaise with you – the legal team will liaise with you for that affidavit to be prepared and in due course we will ask you to come back. You understand?

**MR ALISTER CHABI:** Thank you Chair.

**CHAIRPERSON:** Okay.

**ADV MAHLAPE SELLO:** And Chair I confirm that approach would work.  
It worked for me. So ...

**CHAIRPERSON:** Yes, yes.

**ADV MAHLAPE SELLO:** And I know nothing about figures.

**CHAIRPERSON:** But also I can just say for the benefit of members of the legal team in regard to witnesses that may come – you know – with every witness it is important that I have the statement ahead. I know that in this case it might have been thought that it should be fine but I think it is critical to have that ahead of the witness but also with other  
10 witnesses. I have already spoken to you with regard Mr Sedumedi's evidence and ...

**ADV MAHLAPE SELLO:** Yes we have communicated your position Chair.

**CHAIRPERSON:** Will you make arrangements.

**ADV MAHLAPE SELLO:** Yes Chair.

**CHAIRPERSON:** His evidence was quite important but of course his – his was not technical so his could be followed easily but it would be convenient to have a full statement/affidavit that covers his evidence but certainly Mr Chabi's one is – it is important to have it ahead of him  
20 giving evidence so that one can follow it after having started the affidavit in advance.

**ADV MAHLAPE SELLO:** We shall – we shall do so and reschedule Mr Chabi.

**CHAIRPERSON:** Yes.

**ADV MAHLAPE SELLO:** If I may just point out the next witness for



tomorrow ...

**CHAIRPERSON:** Hm.

**ADV MAHLAPE SELLO:** I am not leading Dr Bloom. He comes on Friday. I do not know what arrangements Mr Pretorius has made.

**CHAIRPERSON:** Huh-uh.

**ADV MAHLAPE SELLO:** But maybe I can communicate your views to him and see if he would be ready with an affidavit by then.

**CHAIRPERSON:** He is hearing you. He hears you.

**ADV MAHLAPE SELLO:** I was not expecting him so close to me.

10 **CHAIRPERSON:** *Ja*, so.

**ADV MAHLAPE SELLO:** But he heard me.

**CHAIRPERSON:** I am sure he will talk to you, *ja*.

**ADV MAHLAPE SELLO:** The issue though I want them to address Chair is we had a prepared on this basis of slides.

**CHAIRPERSON:** Hm.

**ADV MAHLAPE SELLO:** We have the last witness tomorrow.

**CHAIRPERSON:** Hm.

**ADV MAHLAPE SELLO:** It is not a technical witness. We are back now to the ...

20 **CHAIRPERSON:** Hm.

**ADV MAHLAPE SELLO:** Factual arena.

**CHAIRPERSON:** Hm.

**ADV MAHLAPE SELLO:** We request that you permit us to process in the same manner that Mr Sedumedi testified.

**CHAIRPERSON:** Huh-uh.

**ADV MAHLAPE SELLO:** Which is with slides ...

**CHAIRPERSON:** Huh-uh.

**ADV MAHLAPE SELLO:** And it is not a big topic ...

**CHAIRPERSON:** Hm.

**ADV MAHLAPE SELLO:** And he like Mr Sedumedi will subsequently then reduce all that testimony into an affidavit.

**CHAIRPERSON:** *Ja.*

**ADV MAHLAPE SELLO:** Which i will file and then Chair will determine ...

10 **CHAIRPERSON:** Yes.

**ADV MAHLAPE SELLO:** Whether he would like to interrogate them any further.

**CHAIRPERSON:** No that is ...

**ADV MAHLAPE SELLO:** Thank you Chair.

**CHAIRPERSON:** That is fine. That is fine.

**ADV MAHLAPE SELLO:** But as I realise Mr Chabi definitely will prepare ...

**CHAIRPERSON:** *Ja.*

**ADV MAHLAPE SELLO:** And expert report.

20 **CHAIRPERSON:** *Ja.* Okay, thank you Mr Chabi. We will leave it at that in terms of your evidence and you have understood what the arrangement is.

**MR ALISTER CHABI:** Thank you Chair.

**CHAIRPERSON:** Thank you. You are excused for now. Otherwise we are ready to adjourn. Tomorrow we start at nine.

**ADV MAHLAPE SELLO:** We could start at 10. It is a two hour witness.

**CHAIRPERSON:** It is a two hour witness.

**ADV MAHLAPE SELLO:** Yes Chair.

**CHAIRPERSON:** How many more witnesses do you have for Transnet?

**ADV MAHLAPE SELLO:** I – one, two, six.

**CHAIRPERSON:** Six?

**ADV MAHLAPE SELLO:** I am counting. It is five/six Chair.

**CHAIRPERSON:** Okay. So ...

**ADV MAHLAPE SELLO:** But it is week two.

10 **CHAIRPERSON:** Yes.

**ADV MAHLAPE SELLO:** And then the others would come in the next week.

**CHAIRPERSON:** Okay, alright. No that is fine then. We will adjourn then and tomorrow we will start at 10. We adjourn.

**ADV MAHLAPE SELLO:** Thank you Chair.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS TO 30 MAY 2019**