

COMMISSION OF INQUIRY INTO STATE CAPTURE

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10

31 MAY 2019

DAY 103

20

PROCEEDINGS ON 31 MAY 2019

CHAIRPERSON: Good morning Ms Sello, good morning everybody.

ADV MAHLAPE SELLO: Morning Chair

CHAIRPERSON: Thank you. Are you ready?

ADV MAHLAPE SELLO: We are ready.

CHAIRPERSON: Okay let us proceed.

ADV MAHLAPE SELLO: Thank you Chair. Mr Mnyandu when we parted yesterday we had completed annexure – slide I am sorry – slide 27 and we now get onto 28.

10 **MR THOBANI TREVOR MNYANDU**: Yes Chair.

ADV MAHLAPE SELLO: Okay. Okay Mr Mnyandu then you can lead us through slide 28 when you are ready.

MR THOBANI TREVOR MNYANDU: Thank you counsel. Chair at slide 28 we now seek to take you through the approval process of the relocation costs. In particular we deal with first a memorandum that was done by – compiled by Ms Lindiwe Mdletshe in respect of the CNR OEM. The memorandum was prepared on 22 July 2015. It was a request for the approval of the relocation costs for CNR at an amount of R647 181 494.00. Chair that is to be found in your Volume 13 at
20 page 9135.

CHAIRPERSON: I have got Volume 13 it is page 912?

MR THOBANI TREVOR MNYANDU: 9135.

ADV MAHLAPE SELLO: It starts at 9134 Chair but that is the cover note. The actual document is 9135.

CHAIRPERSON: Yes I have got it.

ADV MAHLAPE SELLO: If I may interrupt you Mr Mnyandu my apologies. We ought to have started on the assignment I think that Chair gave you yesterday. Could we deal with that and dispose of it and then we can continue with your testimony this morning?

MR THOBANI TREVOR MNYANDU: Yes we may Chair.

ADV MAHLAPE SELLO: It related to the question of when the term relocation first appeared in this entire transaction. Were you able to determine that?

MR THOBANI TREVOR MNYANDU: Chair upon reflection you will
10 recall that we – the documentation we took you through yesterday and specifically a document contained in the Exhibit BB8[c] noted that there was email correspondence written to at least one of the OEM's in relation to them having to put up a price for the Durban or factor in the price for manufacturing from Durban. Now Chair we also took you through the fact that the agreements that were concluded on 17 March 2017 did not make mention of the allocation of Durban as such. And therefore as the processes morphed out and as discussions were had with each of the OEM's it seems the word relocation reared its head during the course of those negotiations firstly by email correspondence
20 – by way of email correspondence and for now we can say in relation to the memorandum done by Ms Lindiwe Mdletshe requesting the acting Group Chief Executive at the time Mr Siyabonga Gama to approve the negotiation team. However Chair in discussions with the evidence team of the commission we have requested an indulgence in order to confirm this fact, reassess on the documents on hand and come back to the

commission in the statement.

CHAIRPERSON: Ja no that is fine. It may prove significant, it might not prove significant but it might be helpful to try and trace where it got used for the first time and one can take it from there. But the other questions that I would want you to deal with at some stage before you finish your evidence is whether the use of the word 'relocation' may have – it may have been simply the use of a wrong term but other than that everybody understood what was happening. In other words was it just the use of a wrong word – incorrect word or were there – was there
10 some motive to choosing to use that word because for example that might seem on the face of it to justify charging certain costs. You understand?

MR THOBANI TREVOR MNYANDU: I do Chair.

CHAIRPERSON: Yes. Okay alright. So you do not have to deal with that now you can deal with it at some – at some stage before you finish your evidence and if it is something that you are not able to say anything you just tell me.

MR THOBANI TREVOR MNYANDU: Chair I would like to say that we – I will deal with it.

20 **CHAIRPERSON**: Yes.

MR THOBANI TREVOR MNYANDU: When I deal with our conclusion.

CHAIRPERSON: Okay alright. Thank you.

ADV MAHLAPE SELLO: Thank you Chair. And in regards to the question about when the term relocation first reared its head you will respond to that having perused all other documents that do not form of

the record currently and you will respond by way of statement?

MR THOBANI TREVOR MNYANDU: Yes Chair.

ADV MAHLAPE SELLO: And based on your answer then the Chair will determine whether it is necessary for you to – to return and perhaps – for some engagement on that statement.

MR THOBANI TREVOR MNYANDU: Yes Chair.

CHAIRPERSON: Ja and in that regard it may be that the documentation you look at for that purpose if the documentation that you can look at is limited in the sense that maybe you cannot look at
10 documentation that other witnesses used then we would want those witnesses also to do the same. But if you are able to have a look at everything that would be fine.

MR THOBANI TREVOR MNYANDU: That is understood Chair thank you.

CHAIRPERSON: Okay.

ADV MAHLAPE SELLO: Thank you Chair and thank you for that Mr Mnyandu. We then can turn to your Volume 13 page 31 – 9134 and I think the Chair has located it in the file.

MR THOBANI TREVOR MNYANDU: Thank you Chair.

20 **ADV MAHLAPE SELLO:** You may then lead us through it.

MR THOBANI TREVOR MNYANDU: Chair we would like to now read out the salient parts of the memorandum in respect of the approval for the costs of relocation for CNR?

CHAIRPERSON: And that is the one starting at 9135?

MR THOBANI TREVOR MNYANDU: Indeed Chair.

CHAIRPERSON: Thank you.

MR THOBANI TREVOR MNYANDU: Chair it is addressed to Siyabonga Gama in his capacity at the time as acting Group Chief Executive. It is from Mr Ravi Nair who was at the time the acting Chief Executive of Transnet Freight Rail which is the operating division that was concerned with the purchase of the 1064 locomotives. The subject reads:

“Request for...

CHAIRPERSON: I am sorry, I am sorry. If you are able to tell me
10 during this time when Mr Gama was acting Group Chief Executive was that the time when Mr Brian Molefe had left Transnet or was he just away temporarily?

MR THOBANI TREVOR MNYANDU: He had left at this stage Chair.

CHAIRPERSON: Okay thank you. And Mr Nair was acting in the position in which – in the position that Mr Gama had occupied before when Mr Molefe was there?

MR THOBANI TREVOR MNYANDU: Yes Chair.

CHAIRPERSON: Okay thank you. You may proceed.

MR THOBANI TREVOR MNYANDU: Thank you. Chair the subject read
20 – reads:

“Request for acting GCE to approve the relocation of
CNR Rolling Stock South Africa [CNR] to TE’s
facilities in Durban for the manufacturing of 233
Class 45D electric locomotives.”

CHAIRPERSON: Is there a good chance that this is the first time that

this word relocation is being used in a memorandum at this high level?

Or you might not be able to say?

MR THOBANI TREVOR MNYANDU: Chair I stand to be corrected but if we go back to the memorandum that we dealt with yesterday.

CHAIRPERSON: Yes.

MR THOBANI TREVOR MNYANDU: To request the acting GCE Mr Siyanbonga Gama

CHAIRPERSON: Yes.

MR THOBANI TREVOR MNYANDU: To approve the negotiation team

10 **CHAIRPERSON:** Yes.

MR THOBANI TREVOR MNYANDU: The word relocation is mentioned.

CHAIRPERSON: Was used as well.

MR THOBANI TREVOR MNYANDU: Yes.

CHAIRPERSON: Okay.

MR THOBANI TREVOR MNYANDU: Yes Chair.

CHAIRPERSON: Okay. Because it might also be important to see when did senior people within the – within [indistinct] start using the same terminology.

MR THOBANI TREVOR MNYANDU: Indeed Chair.

20 **CHAIRPERSON:** Okay.

MR THOBANI TREVOR MNYANDU: Chair under purpose the memorandum reads:

“Request for acting Group Chief Executive to

- a. Note the final outcome of the negotiation for the relocation to Durban with CNR.

- b. Approve the variation order for the relocation to Durban to a maximum value of R647 181 494.00 with CNR and
- c. Sign off a letter to be issued to CNR to accept their final proposal.”

The memorandum then goes on to deal with the background.

“It notes that on the 17 March 2014 Transnet acting through its Transnet Freight Rail division entered into various locomotive supply agreements with CSR, CNR, GE and BT after negotiations which started in February 2014.”

It then says Chair at 3:

“During negotiations BT and CNR were informed that they will use the Durban Transnet Engineering TE facility for the construction of locomotives which were allocated to them. The Durban facility and the move were introduced to both CNR and after the tender had closed and evaluations were done.”

At number 4 it then says:

“On the 10 June 2015 the acting Group Chief Executive approved the team to negotiate the relocation to Durban with CNR.”

Number 5.

“TIA which is Transnet Internal Audit was present during negotiations and are in the process of

finalising their report.”

CHAIRPERSON: Thanks for – for reminding me of that full name of that acronym because there are so many of these acronyms one gets confused sometimes.

MR THOBANI TREVOR MNYANDU: Confused. Alright Chair.

CHAIRPERSON: Yes okay.

MR THOBANI TREVOR MNYANDU: And then under motivation number 6 reads:

10 “CNR’s final offer to Transnet is R647 181 494.00 which has been absorbed. Below that the primary drivers of this increase are inflation and finance costs detailed below.”

CHAIRPERSON: I am sorry let me interrupt you. Do you understand what – which has been absorbed means there?

MR THOBANI TREVOR MNYANDU: No Chair.

CHAIRPERSON: You do not?

MR THOBANI TREVOR MNYANDU: No Chair.

CHAIRPERSON: Okay alright thank you. Continue.

MR THOBANI TREVOR MNYANDU:

- 20 a. “Inflation costs increased from R166 million to R204 million [increase of approximately R38 million.]
- b. Finance costs on forward contract increased from R81 million to R88 million. Increase of approximately R7 million.
- c. Interest on stockholdings which rather would

increase from R16 million to R21 million [increase of approximately R5 million].

Therefore total project cost is an increase from R669 million to R719 million. Increase of approximately R50 million.”

ADV MAHLAPE SELLO: If you could just pause there for a moment Mr Mnyandu. Again we always trying to keep track of the increases. The last we had of increases was R669 as per the memorandum of June 20...

10 **MR THOBANI TREVOR MNYANDU:** 15

ADV MAHLAPE SELLO: 15

MR THOBANI TREVOR MNYANDU: Yes Chair.

ADV MAHLAPE SELLO: From Ms Mdletshe.

MR THOBANI TREVOR MNYANDU: Yes Chair.

ADV MAHLAPE SELLO: And that was the approval that was being sought from the acting GCE?

MR THOBANI TREVOR MNYANDU: The ...

ADV MAHLAPE SELLO: At the time.

MR THOBANI TREVOR MNYANDU: The request was that it be kept at
20 R669.

ADV MAHLAPE SELLO: Be kept as R699?

MR THOBANI TREVOR MNYANDU: Indeed Chair.

ADV MAHLAPE SELLO: And that is at Volume 13 page 9111.

MR THOBANI TREVOR MNYANDU: Indeed Chair.

ADV MAHLAPE SELLO: For reference purposes. This memorandum

comes a month after that approval. I see it is dated 22 July 2015 at page 9137 the signature page.

MR THOBANI TREVOR MNYANDU: Indeed Chair.

ADV MAHLAPE SELLO: So then since the approval of a cap of R669 million in a month according to this memorandum am I interpreting this memorandum correctly to understand that there was a further increase taking the total cost now to a new level of R719 million?

MR THOBANI TREVOR MNYANDU: Insofar as it was advanced by CNR. Indeed it is so Chair there was a further increase.

10 **ADV MAHLAPE SELLO:** R719?

MR THOBANI TREVOR MNYANDU: Yes Chair.

ADV MAHLAPE SELLO: Okay. I follow.

MR THOBANI TREVOR MNYANDU: The new project relocation cost estimate amounts to R719 090 548.00. On this price CNR's offer – CNR offers a 10% settlement discount amounting to R71 909 054.00. This results in a revised project relocation cost of R647 181 494.00. Any further delays in commencing the project beyond five months will have further cost implications that will have to be taken into consideration. The following payments terms have been proposed by

20 CNR. 50% payable within 14 days of signature amounting to R323 590 747.00 the remainder being 50% payable in 24 equal instalments of R13 482 948.00. The "[relocation payment]" Commencing the end of the first month that the project commences provided that the project is on track. Therefore CNRRSSA will invoice for 24 monthly instalments of R13 482 948.00. Transnet is currently

holding cash of approximately R4 billion with a cost of carry of approximately 4% which provides support for taking advantage of the discount based on the proposed payment regime.

ADV MAHLAPE SELLO: Before you proceed. That last point what did you interpret it to mean? That Transnet is holding cash of approximately R4 billion with a cost of carry of approximately 4% which provides support for taking advantage of the discount?

MR THOBANI TREVOR MNYANDU: What we understood that to mean was that there were monies which we understand to be part of the R4.9
10 billion contingencies that Transnet was holding and therefore would not have to request capital expenditure outside of the contract.

ADV MAHLAPE SELLO: So the payment of this R649 – 7 million 50% upon signature and then over 24 months instalment would be payable out of that R4 billion?

MR THOBANI TREVOR MNYANDU: Indeed Chair.

ADV MAHLAPE SELLO: As part of – which was part of the contingency 10% contingency for the...

MR THOBANI TREVOR MNYANDU: Indeed Chair.

ADV MAHLAPE SELLO: 1064 – thank you. Please proceed.

20 **MR THOBANI TREVOR MNYANDU:** Alright.

“9. Refer to annexure A for the final detailed proposal. Budget implications.

10 The board at its meeting of 28 May 2014 approved an amount of R4.9 billion in contingencies as part of the revised ETC which means the estimated total costs.

11. The contingencies budget were to following items.

- a. Capital spares beyond the warranty period.
- b. Variation orders and options [such as electronically controlled pneumatic braking and wire distributed power etcetera].
- c. Relocation of the programme to Transnet Engineering's Durban facilities."

ADV MAHLAPE SELLO: I would like you to pause once again. Are we to understand that paragraph 11 to mean when the R4.9 billion – when the R49 billion ETC was approved with the R4.9 billion contingency the
10 contingency already made provision for the relocation?

MR THOBANI TREVOR MNYANDU: Indeed Chair.

ADV MAHLAPE SELLO: And that appears in the – in which document?
Where do we do find that?

MR THOBANI TREVOR MNYANDU: Chair that would be in a document that has been presented to the commission. It is a memorandum prepared by the then acting Group Chief – sorry the then Group Chief Executive Mr Brian Molefe to the board. It is dated 23 May 2014 and in it Mr Brian Molefe sought to rationalise to the board the justification for the increase.

20 **ADV MAHLAPE SELLO:** For the increase and in doing so as to what covers – what contingencies are catered for relocation is one of the items?

MR THOBANI TREVOR MNYANDU: Even though the word relocation in the memorandum does not appear yes the subject of allocating the two OEM's to Durban is covered.

ADV MAHLAPE SELLO: Okay. Thank you.

MR THOBANI TREVOR MNYANDU: Under paragraph 12.

The current status of the utilisation of the contingency's budget is as follows:

You will see that below Chair there is a description of what the contingencies have been approved for and there is an amount related to each specific line item. Contingencies approved R4.9 billion. Variation orders approved to date R1.2 billion. Relocation of BT R618 million. Relocation of CNR R647 million. Then there is unutilised
10 portion of contingencies amounting to some R2.519 billion.

ADV MAHLAPE SELLO: Then another – if I may I am sorry to interject. On read – on the reading of paragraph 12 particularly in respect of relocation of BT and CNR regard being had to the amounts the budget referred to in here cannot be the budget of the business case because that was the year previous?

MR THOBANI TREVOR MNYANDU: Indeed Chair.

ADV MAHLAPE SELLO: And that could not have been a budget spelt out in the memorandum of Mr Molefe because that was in May 2014 and at the time the relocation cost at least insofar as CNR is concerned was
20 not R647?

MR THOBANI TREVOR MNYANDU: Indeed Chair even though a specific amount was made out for contingencies as it were.

ADV MAHLAPE SELLO: Yes for contingencies.

MR THOBANI TREVOR MNYANDU: Yes

ADV MAHLAPE SELLO: So my question then is – is there any

document that reflects this budget as set out in paragraph 12 by Mr –
by Ms Lindiwe Mdletshe?

MR THOBANI TREVOR MNYANDU: Apart from the first line item.

ADV MAHLAPE SELLO: Yes.

MR THOBANI TREVOR MNYANDU: Which is set out as we have said in
the memorandum dated 23 May.

ADV MAHLAPE SELLO: Yes.

MR THOBANI TREVOR MNYANDU: 2014 prepared by Mr Brian Molefe
there is no other document that lists this budget.

10 **ADV MAHLAPE SELLO:** So we are seeing it for the first time in this
memorandum?

MR THOBANI TREVOR MNYANDU: It is seeing for the first time here.

ADV MAHLAPE SELLO: Okay. Thank you.

MR THOBANI TREVOR MNYANDU: Thank you Chair. Chair then – if
the Chair turns overleaf to 91 – page 9137 paragraph 13 reads:

“Consequently an amount of R647 181 494.00 is part
of the contingencies budget included in the final
approved estimated total cost the project.
Recommendation.”

20 Paragraph 14 reads:

“Request for the acting Group Chief Executive to

- a. Note the final outcome of the negotiations for the
relocation to Durban with CNR.
- b. Approve variation order for the relocation to Durban
to a maximum value of R647 181 494.00 with CNR

and

- c. Sign off a letter to be issued to CNR to accept the final proposal.”

Chair what then appears below are the names of the people that

- a. The compiler of the memorandum and the individuals that then recommended as well as the approval signature by Mr Gama which dated 23 July 2015.

CHAIRPERSON: So the memorandum was compiled by Ms Lindiwe Mdletshe who signed. It was recommended by the – recommended by
10 Mr Ravi Nair acting Chief Executive Transnet Freight Rail.

MR THOBANI TREVOR MNYANDU: Yes Chair.

CHAIRPERSON: It was signed by him on 22 July 2015.

MR THOBANI TREVOR MNYANDU: Yes Chair.

CHAIRPERSON: It was also recommended by Mr Ndphiwe Silinga Group Executive Legal and Compliance and signed on 22 July 2015

MR THOBANI TREVOR MNYANDU: Yes Chair.

CHAIRPERSON: It was recommended by Mr Anoj Singh Group Chief Financial Officer on 22 July 2015.

MR THOBANI TREVOR MNYANDU: Indeed.

20 **CHAIRPERSON:** It was recommended by Mr Thamsanqa Jiyani on the same date and signed on the same date as well as by Mr Garry Pita and then the following day it was signed by – approved and signed by Mr Gama in his capacity as acting Group Chief Executive of Transnet?

MR THOBANI TREVOR MNYANDU: Yes Chair.

CHAIRPERSON: Well I do not know whether you have picked up

something that I cannot see or have not been able to see in this memorandum. This memorandum seeks approval that a very large amount of money what R647 000,00 be approved for...

ADV MAHLAPE SELLO: Million Chair.

MR THOBANI TREVOR MNYANDU: Million Chair.

CHAIRPERSON: Million yes. Million be approved to be paid for what is called relocation costs but I cannot see anything in the memorandum where those who Ms Mdletshe and those who recommend and ultimately Mr Gama who approves which says why is this amount a reasonable
10 amount to spend on this so called relocation. All I can see is the background and the fact that the amount falls within what was budgeted for under contingencies. But the fact that there is budget for an item is not justification for paying a certain amount for that item. You must still check whether that amount is justifiable. I have not seen that here on this memorandum so I wonder whether you have seen that?

MR THOBANI TREVOR MNYANDU: Chair we have not been able to see anything that speaks to either a critique of the final proposal or the final amount or that justifies or details a support of the final amount which is being requested for approval.

20 **CHAIRPERSON:** Hm. So approval ...

ADV MAHLAPE SELLO: Sorry Chair your microphone is off.

CHAIRPERSON: Thank you. The – that this amount be spent on the so called relocation is recommended by various senior people and approved by the acting Group Chief Executive without any of them asking this very critical question would we be spending – would we be

justified to spend so much money on this relocation – so called relocation? How is this amount justifiable? Why is it R647 million and not R100 million? Why is it not R50 million? And nowhere here in this memorandum is – is that amount of R9 million that was first given by CNR reflected...

MR THOBANI TREVOR MNYANDU: Mentioned.

CHAIRPERSON: To say that is where we coming from initially these costs were estimated at R9 million but now we are talking about R6 hundred and something million rand. So that the full picture is shown.

10 That is not mentioned.

MR THOBANI TREVOR MNYANDU: It is not dealt with Chair not mentioned at all.

CHAIRPERSON: Now in your investigation did you find that Transnet and maybe the previous witnesses would have dealt with this I just cannot remember now – did we have proof that Transnet did receive that estimate of R9 million or acknowledged having received it and responded to it in one way or another that was made initially?

MR THOBANI TREVOR MNYANDU: Chair the best way to answer it even though we did not have proof of email correspondence that
20 responds to the offer of R9 million the documentation that included that quotation of R9 million which is addressed to Mr Garry Pita and Ms Lindiwe Mdletshe was received from Transnet itself. It was received in particular from the supply chain services personnel at Transnet Freight Rail. When Ms Mdletshe became the interface for us to receive information that was required to be perused for the course of our

investigation so the documents that we have perused came from Transnet.

CHAIRPERSON: So certainly it was received by Transnet?

MR THOBANI TREVOR MNYANDU: Certainly it was received Chair.

CHAIRPERSON: Hm – but were you able – were you only able to tell that Supply Chain Management received it but you did not find any evidence that other people in Transnet the GCEO, Mr Gama, Mr Molefe, Mr Pita, Mr Anoj Singh did you come across anything that suggested that they at least knew of this amount at some stage or another?

10 **MR THOBANI TREVOR MNYANDU**: No Chair. I however would like to also point out that at the time that the quotation is sent was during the final stages of the negotiations.

CHAIRPERSON: Yes.

MR THOBANI TREVOR MNYANDU: Yes.

CHAIRPERSON: The R9 million?

MR THOBANI TREVOR MNYANDU: The R9.7 million ...

CHAIRPERSON: Yes.

MR THOBANI TREVOR MNYANDU: Is received a week prior to the conclusion of the negotiations which were concluded on 17 March.

20 **CHAIRPERSON**: Oh.

MR THOBANI TREVOR MNYANDU: That is when the agreement was then signed.

CHAIRPERSON: Yes and you have not come across – have you come across anything that shows that the Board was told of this R9 million quotation?

MR THOBANI TREVOR MNYANDU: No Chair.

CHAIRPERSON: You have not found anything?

MR THOBANI TREVOR MNYANDU: No Chair.

CHAIRPERSON: Okay because it is important to find out to establish that Transnet received this quotation of R9 million for this cost. It is important to establish what their reaction was to it because that becomes quite important for them to justify how they were reacting to offers of hundreds of millions of Rand for something that they would have known at some stage produced a quotation of R9 million and I
10 think from what Mr Mnyandu said even with that R9 million maybe should – should have been lower – you know - I think. So - so it is very important to connect all of these things. Who was aware of this R9 million quotation? What did they do about it? How do they justify – how do they justify approving R600-and something million afterwards? Where is the interrogation of these amounts that they were obliged to undertake on behalf of Transnet in order to protect Transnet's interest and the taxpayers money.

ADV MAHLAPE SELLO: Indeed Chair.

CHAIRPERSON: Okay.

20 **ADV MAHLAPE SELLO:** Perhaps on that score then let us just clarify at least now did you make enquiries Mr Mnyandu from Ms Mdletshe - who is the author of this memorandum we just went through and as you say was the interface between Transnet and MNS during the course of your investigations – did you inquire from her whether she did receive the R9 million quote – original R9 million quote - from CNR ...

MR THOBANI TREVOR MNYANDU: Chair ...

ADV MAHLAPE SELLO: And what was her response if you did?

MR THOBANI TREVOR MNYANDU: Chair I cannot recall with certainty whether that actual question was posed with her – to her - rather. Let me say this for the record Chair that as for forensic investigators who are tasked with perusing certain documents, conducting certain interviews with personnel who were involved in a myriad of transactions you are tasked with number one, reading documentation and making necessary deductions. You have to reach certain conclusions because

10 it is not each and every witness who is going to be one, willing to speak to you in the first place but moreover be willing to answer certain questions that would in any event seem as though you are laying blame or placing responsibility on them. The Chair will recall that in any event yesterday we informed the Chair that whilst Ms Lindiwe Mdletshe had first - who was the lead interface insofar as the collation of documents were concerned for MNS Attorneys might not have been hostile but when it got certain discussions she was. So in explaining that I am trying to point out to the Chair that it is not each and every detail that would have been interrogated with her in order to reach

20 certain conclusions and having said that I would go further but not speak out of turn. In relation to the approval of these costs Chair you will recall that yesterday we took you through prior to getting to this an email sent by Mr Garry Pita on 10 July. In particular he requested that not only should she compile the documentation for the approval of the relocation costs but that she should also get the sign off from

Transnet's Internal Audit Team. The Chair will note from page 9137 which we have just taken you through that not only is it not signed by a representative of the Transnet Internal Audit Team but there is actually no signature line that was ever added to the memorandum. Yes Chair.

CHAIRPERSON: No, no that is – that is understandable and – and I accept that it is not all the questions that I might think of or Ms Sello might think of that you and your team may have thought of and not all the questions that we think of are questions that people watching from their homes can think of. There will always be questions that
10 somebody else thinks of that you might not have thought of and that on its own and depending on the question - on the nature of the question – and what your task was and what you had before you – you know – there might be no blame – you know. So obviously there may be certain questions that are too obvious so that if you do not ask them people say but what was he doing if he did not ask this question. So – so – but at this stage I – I understand – you know. I understand that there are certain questions that you may not have asked but of course there are some that even if a witness is hostile if they are important you have to ask and if they do not answer that is – and you have no
20 power over them – just record that they did not want to answer but ...

MR THOBANI TREVOR MNYANDU: Indeed Chair.

CHAIRPERSON: Yes. No, no that is fine. So we might have to – to look at all of these things to really establish who knew what in – you knew about this ...

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: R9 million quotation and later got to know about over R600 million for the same thing ...

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: And why was the R9 million not accepted but as Mr Mnyandu implies even that R9 million should not have just been accepted. They should interrogate everything that has got cost implications for – for Transnet and for the taxpayers.

ADV MAHLAPE SELLO: Indeed Chair.

CHAIRPERSON: *Ja.*

- 10 **ADV MAHLAPE SELLO:** And the Chair will recall that that R9 million – that quotation was first introduced by Mr Gonsalves.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: We will go back to Mr Gonsalves ...

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: Files and see what – how much of the answer - of the question we can begin to answer and to the extent that we still have a gap. Then our investigators will be requested to see if they can close that gap.

- CHAIRPERSON:** Yes. No thanks and I do not know if we asked
20 Mr Gonsalves but we need to know whether from his side he knows any reaction that may have come from one or other official from Transnet in regard to it.

ADV MAHLAPE SELLO: We will determine that through the papers ...

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: And the transcript and if the question was not

posed ...

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: We perhaps may pose it to Mr Gonsalves ...

CHAIRPERSON: *Ja.*

ADV MAHLAPE SELLO: And to the extent necessary he will file a supplementary statement in that regard.

CHAIRPERSON: *Ja.* That is fine, thank you.

ADV MAHLAPE SELLO: Thank you Chair. Yes Mr Mnyandu we may – we may proceed.

- 10 **MR THOBANI TREVOR MNYANDU:** Thank you Chair. It is now necessary for us to move to slide 29 to take you through the memorandum prepared in respect of BT. The memorandum was prepared on the very same day. It is to be found at Appendix 15 which is contained in volume 13 of the Chair's files at 9129.

ADV MAHLAPE SELLO: Yes.

MR THOBANI TREVOR MNYANDU: 9129 being the covering page and the document beginning at 9130. Chair I will read the memorandum just like I did with the previous one.

CHAIRPERSON: Yes.

- 20 **MR THOBANI TREVOR MNYANDU:** "The purpose is to one, request the Acting Group Chief Executive (GCE) to a, note the final outcome of the negotiation for the relocation to Durban with Bombardier Transportation SA (BT). B, approve variation order for the relocation to Durban to a maximum value of

R618 457 125 with BT and c, sign off a letter to be issued to BT to accept their final proposal.”

Below that it says “The Background”.

10 “On 17 March 2014 Transnet acting through its Transnet Freight Rail Division (Transnet Freight Rail) entered into various locomotive supply agreements with CNR – CSR, CNR, GE and BT. After negotiations which started in February 2014. During negotiations BT and CNR were informed that they will use the Durban Transnet Engineering (TE) Facility for the construction of the locomotives which were allocated to them. The Durban Facility and the move were introduced to both CNR and BT after the tender had closed and evaluations were done. Number four, on 10 June 2015 the Acting GCE – Group Chief Executive – approved the team to negotiate the relocation to Durban with Bombardier Transportation SA. Five, TIA was present at the negotiations and are in the process
20 of finalising their report.”

Below that is the “Motivation”. Paragraph 6 reads as follows:

“Bombardier’s final offer to Transnet is an additional discount of 2.5 percent and the following cost which has been absorbed. A, further price escalation. B, financing cost of own additional

efforts suppliers and already accumulated stock and C, claims from the suppliers that BT has already rescheduled and delayed.”

The Chair turns overleaf. It says:

10 “A, further price escalation the cost of the further price escalation of material, layby and other expenses were evaluated at 4 percent due to the additional time for deliver. 2.5 percent was due to the increase of the Euro/Rand ration over the last year since the instruction to change Transnet Engineering Facility was received from Transnet Freight Rail and since Bombardier Transportation submitted the first notice of company proposed variation on the subject. The additional financing cost due to our ongoing expenses on the internal efforts and cost from our suppliers in addition to the logistics and warehousing cost (negative cash flow) create an additional 2.5 percent (two and a half of the cost). In addition the escalation mentioned
20 above claims from suppliers were costed at 1 percent (one percent).”

ADV MAHLAPE SELLO: Can I just inquire at times under A at page 9131 - the section you just read – there is reference to “our”. Do we interpret the “our” to be referenced to CNR and not our Transnet. So it is not Transnet speaking here?

MR THOBANI TREVOR MNYANDU: It seems to reference BTs.

ADV MAHLAPE SELLO: BT rather sorry.

MR THOBANI TREVOR MNYANDU: Yes Chair.

ADV MAHLAPE SELLO: So it is a – seemingly a direct quote from the BT proposal?

MR THOBANI TREVOR MNYANDU: Indeed Chair.

ADV MAHLAPE SELLO: Thank you.

MR THOBANI TREVOR MNYANDU: “If the variation order is

10 not issued by 24 July 2015 the value of BTs notice of company proposed variation order will increase by 20 percent. BTs current offer represents a total discount of 32.5 percent. When taking into consideration the indicated potential price increase of approximately 20 percent in instances where by the notice of company proposed variation or the VO is not approved by TFR by 24 July 2015 (validity of BTs offer). The 32.5 percent is the sum of the 10 percent absorbed cost of further price escalation the above mentioned 20 percent increase price
20 after 24 July and a further 2.5 percent discount given by BT.”

The following payment terms have been proposed by BT in accordance with Section 1.2 of Schedule 1 (Pricing and Payment Terms) of the Locomotive Supply Agreement. It quotes:

“The first two milestones (the effective date and the

6 months after effective date) amounting to a combined total of 18 percent of total contract price of all locomotives have already been achieved due and will be invoiced by BT once the variation order is issued. The third milestone payment to the value of 9 percent of the total contract price of all locomotives will be due 17 months after the effective date and will be invoiced accordingly.”

Chair what follows below even though the wording is not clear we know
 10 this from previous email correspondence that was needed to be checked by the Legal Department is that this would mean – what changes would need to be effected to the Locomotive Supply Agreement.

“One, definition – TE Facility - as it reads currently Koedoespoort Gauteng amended to definition – TE Facility Durban KwaZulu-Natal. Two, Clause 9.1.1 – as it reads currently Clause 9.1: if the acceptance of a locomotive occurs after its scheduled acceptance date (a delay) the contractor
 20 shall subject to Clause 9.2 (delay penalty cap) pay a delay penalty to the company in respect of the delayed locomotive at the applicable rate. A delay penalty grace period for three months shall apply to the initial six locomotives scheduled acceptance date. Amendment to Clause 9.1. If the acceptance

of a locomotive occurs after its scheduled acceptance date (a delay) the contractor shall subject to Clause 9.2 (delay penalty cap) pay a delay penalty to the company in respect of the delayed locomotive at the applicable rate. A delay penalty grace period of three months shall apply to the initial 35 locomotives scheduled acceptance date. An additional grace of two months shall apply to the remainder of the fleet.”

10 Budget implications under paragraph 9 it reads:

“The Board at its meeting of 28 May 2014 approved an amount of R4.9 billion in contingencies as part of the revised estimated total cost. The contingencies budget were to cover the following items: a, capital spares beyond the warrantee period; b, variation orders and options (such as electronically conclude pneumatic breaking and wire distributed power and c, relocation of the program to Transnet Engineering’s Durban Facilities.”

20

Under paragraph 11:

“The current status of the utilisation of the contingencies budget is as follows.”

The Chair will recall that this was a table referred to in the previous memorandum. Under paragraph 12 it says:

“Consequently an amount of R618 457 125 is part of the contingencies budget included in the final approved estimated total cost of the project.”

And if the Chair turns overleaf at page 9133 there is a recommendation.

Under paragraph 13:

“Request the Acting Group Chief Executive to a, note the final outcome of the negotiations for the relocation to Durban with Bombardier Transportation; b, approve variation order for the
10 relocation to Durban to a maximum value of R618 457 125 with BT and c, sign off a letter to be issued to BT to accept their proposal.”

As the Chair will then note the memorandum is also compiled by Ms Lindiwe Mdletshe. She has signed it but has not dated. Mr Ravi Nair Acting Chief Executive at Transnet Freight Rail who signed it on 22 July 2015 in recommendation. It was also signed and recommended by Mr Ndiphiwe Silinga a Group Executive Legal and Compliance on 22 July 2015. It is also signed and recommended by the Group Chief Financial Officer at the time Mr Anoj Singh on
20 22 July 2015. Also signed and recommended by the then Chief Executive of Transnet Engineering Mr Thamsanqa Jiyane on 22 July 2015 as well as Mr Garry Pita Group Chief Procurement Officer on 22 July 2015 and then below that is the approval signature of Mr Siyabonga Gama on 23 July 2015.

ADV MAHLAPE SELLO: Thank you. Before we leave that

memorandum I would like to take you back to page 9131. At 9131 under the heading a, "Further Price Escalation". You read four items and at times it would appear that it is a direct - as you confirmed I think – a direct quotation from the BT proposal?

MR THOBANI TREVOR MNYANDU: Indeed Chair.

ADV MAHLAPE SELLO: Now I would like to refer to the paragraphs that follow that. There are two paragraphs the first starting:

"If the variation order is not issued by 24 July and subsequent ..."

- 10 Can I take that to now be the drafter of the memorandum speaking? It is no longer a quotation – direct quotation – from the proposal.

MR THOBANI TREVOR MNYANDU: It is drafted in that manner but it comes from the letter sent by BT to Transnet.

ADV MAHLAPE SELLO: I under – but now this is what Ms Mdletshe as a drafter is saying – is informing.

MR THOBANI TREVOR MNYANDU: Is communicating.

ADV MAHLAPE SELLO: Yes.

MR THOBANI TREVOR MNYANDU: Indeed Chair.

- ADV MAHLAPE SELLO:** I am interested in the paragraph thereafter
20 and I want to see whether you – you consider it in your investigations and whether you have got a clear understanding of it and if so to share the understanding with us. It reads:

"BTs current offer represented total discount of 32.5 percent when taking into consideration the indicated potential price increase of approximately

20 percent in instances where the notice of company proposed variation or the VO is not approved by 24 July 2015.”

I have gone back to your slide 19 where you have listed the various price offers given by BT. The highest was 634.

MR THOBANI TREVOR MNYANDU: Indeed Chair.

ADV MAHLAPE SELLO: The highest known and the accepted offer – the lowest was 618 million which turned out to be the accepted offer?

MR THOBANI TREVOR MNYANDU: Indeed Chair.

- 10 **ADV MAHLAPE SELLO:** I am trying to understand this 32 percent discount. Where and how do I factor it in? I do not if – unless my mathematics is failing me. If you go to your slide 19 you will see the prices compared.

MR THOBANI TREVOR MNYANDU: Chair it is not explained.

ADV MAHLAPE SELLO: Okay.

MR THOBANI TREVOR MNYANDU: In fact if one has regard to EXHIBIT BB8 ...

ADV MAHLAPE SELLO: Yes.

MR THOBANI TREVOR MNYANDU: And at page 95.

- 20 **CHAIRPERSON:** Just one second please.

MR THOBANI TREVOR MNYANDU: Yes Chair.

CHAIRPERSON: Okay, alright.

ADV MAHLAPE SELLO: You now – you now want us to turn to ...

CHAIRPERSON: Where – where are we – which page are we going to

...

ADV MAHLAPE SELLO: We are back to ...

CHAIRPERSON: And just – just tell me again what the question was.

ADV MAHLAPE SELLO: The question Chair emanates from page 9131 of volume 13.

CHAIRPERSON: *Ja.*

ADV MAHLAPE SELLO: The volume at hand. There is reference in that memorandum where it is stated that the B- Bombardier's current price represents a total discount of 32.5 percent.

CHAIRPERSON: Hm.

10 **ADV MAHLAPE SELLO:** I then referred Mr Mnyandu back to page 19 of his slide which has shown us all BTs cost offers.

CHAIRPERSON: Hm.

ADV MAHLAPE SELLO: The highest coming in at 634 ...

CHAIRPERSON: Hm.

ADV MAHLAPE SELLO: And the lowest coming in at 618 million. It is against that background I seek an understanding as to where the 32.5 percent saving ...

CHAIRPERSON: Hm.

20 **ADV MAHLAPE SELLO:** Is to be found accepting that perhaps I – I may have made an error in my mathematics.

CHAIRPERSON: Hm.

ADV MAHLAPE SELLO: Mr Mnyandu is attempting to answer that question for me ...

CHAIRPERSON: Hm.

ADV MAHLAPE SELLO: Has referred us now to BB8C that is the slide

file.

CHAIRPERSON: Oh, okay.

ADV MAHLAPE SELLO: And he has referred us in particular to page 95.

CHAIRPERSON: Okay.

ADV MAHLAPE SELLO: That will be under 6 Chair.

MR THOBANI TREVOR MNYANDU:

CHAIRPERSON: Yes. I have got it thank you.

ADV MAHLAPE SELLO: Okay. We have located TTM6.

10 **MR THOBANI TREVOR MNYANDU:** Chair Ms Sello says in attempting to answer the question when I am actually trying to compound the confusion even more.

ADV MAHLAPE SELLO: Oh, okay. I was overly optimistic there.

CHAIRPERSON: I guess you are – you are answering it by compounding it.

MR THOBANI TREVOR MNYANDU: Chair this is a letter sent by Bombardier Transportation. It is dated 7 July 2015.

ADV MAHLAPE SELLO: Yes.

20 **MR THOBANI TREVOR MNYANDU:** It is the covering letter of what was the final proposal sent by BT which as we have explained to the Chair did not change materially but for what is recorded in the letter.

CHAIRPERSON: Hm.

MR THOBANI TREVOR MNYANDU: It is addressed to Transnet Freight Rail. It is for the attention of Ms Lindiwe Mdletshe as well as Mr Frikkie Harris. It says:

“Copy to Mr Anoj Singh, Mr Thamsanqa Jiyane,
Mr Garry Pita.”

ADV MAHLAPE SELLO: Yes.

MR THOBANI TREVOR MNYANDU: It is titled: “Price Reduction on the
Notice of Company Proposal Variation Durban VO.”

“Dear Lindiwe/Frikkie, we refer to our last notice of
company proposal variation submitted to Transnet
Freight Rail ...”

CHAIRPERSON: Or rather latest?

10 **ADV MAHLAPE SELLO:** To our latest.

CHAIRPERSON: Refer to our latest.

MR THOBANI TREVOR MNYANDU: Latest.

CHAIRPERSON: As opposed to last.

MR THOBANI TREVOR MNYANDU: Oh, apologies.

CHAIRPERSON: Hm.

20 **MR THOBANI TREVOR MNYANDU:** “We refer to our latest
notice of company proposal variation submitted to
Transnet Freight Rail (TFR) as per our
correspondence which has a reference of
BT/TFR/C/15/0034 dated 10 April 2015. As
discussed into our ongoing discussions ...”

CHAIRPERSON: Or described.

MR THOBANI TREVOR MNYANDU: Oh described.

CHAIRPERSON: Ja.

MR THOBANI TREVOR MNYANDU: “...into our ongoing

discussions Bombardier Transportation has endeavoured to minimise project impact from the change of TE Facility from Koedoespoort to Durban. As a further show of good faith BT is willing to offer an additional discount of 2.5 percent. In evaluating the discount please take into consideration that this reduction in reality is much higher due to the fact that since our first offer notice of company proposed variation in 2014 we have already

10 absorbed the following costs: further price escalation, financing costs of our own additional efforts, our suppliers and already accumulated stock and claims from the suppliers that we have already rescheduled and delayed. The revised amount after the 2.5 percent discount will be R618 457 125.”

Chair for the purposes of what we are trying to communicate we can stop there ...

CHAIRPERSON: Hm.

20 **MR THOBANI TREVOR MNYANDU:** In reading this letter ...

CHAIRPERSON: Hm.

MR THOBANI TREVOR MNYANDU: But even on BTs own account insofar as this letter is concerned on 7 July ...

CHAIRPERSON: Hm.

MR THOBANI TREVOR MNYANDU: Which notes the final offer made ...

CHAIRPERSON: Hm.

MR THOBANI TREVOR MNYANDU: There is no talk or mention of a discount amounting to 32.5 percent.

CHAIRPERSON: Hm.

MR THOBANI TREVOR MNYANDU: Yes Chair.

CHAIRPERSON: Hm.

ADV MAHLAPE SELLO: It is 2.5 percent?

MR THOBANI TREVOR MNYANDU: Indeed it is so Chair.

CHAIRPERSON: Hm.

10 **ADV MAHLAPE SELLO:** So I guess it is a question of the author will explain to us whether 32.5 percent discount is derived from?

MR THOBANI TREVOR MNYANDU: Yes Chair.

ADV MAHLAPE SELLO: Because that is what is communicated to the Acting GCE?

MR THOBANI TREVOR MNYANDU: Yes Chair.

CHAIRPERSON: But ...

ADV MAHLAPE SELLO: If ...

CHAIRPERSON: Oh, *ja*.

20 **ADV MAHLAPE SELLO:** Before we get there though was there any documentation you were able to come across in the course of your investigations that would support a claim of a 32.5 percent discount?

MR THOBANI TREVOR MNYANDU: I would like to say to the Chair at this moment that as we said yesterday there is documentation sent by Bombardier Transportation towards the end of 2014 ...

ADV MAHLAPE SELLO: Yes.

MR THOBANI TREVOR MNYANDU: Which will be provided to the Commission which sought to be explanatory or letters that were explaining or expanding on the offers of Bombardier Transportation to Transnet.

ADV MAHLAPE SELLO: *Ja* but – yes I understand but an analysis of that very documentation together with what we have before us were you able to establish definitively that this would – the negotiations have resulted in a 32.5 discount?

MR THOBANI TREVOR MNYANDU: No we were not.

10 **ADV MAHLAPE SELLO:** Okay. Thank you Chair.

CHAIRPERSON: I think you made the point that the memorandum that you were reading talks about a certain discount. Is that right?

MR THOBANI TREVOR MNYANDU: Yes Chair.

CHAIRPERSON: Discount which you say cannot be found in this letter from BT. Is that right?

MR THOBANI TREVOR MNYANDU: Yes Chair.

20 **CHAIRPERSON:** In terms of the amounts once they talk about different figures that should affect the amounts. Does it affect the amounts – the final amount or does it not affect – I just – did not - have not looked at it. The amounts that they talk about in – in the memorandum in regard to BT compared to the amount BT talks about in this letter where they do not mention this other discount that the memorandum talks about.

MR THOBANI TREVOR MNYANDU: Chair if one has regard to the fact that the first offer in September 2014 ...

CHAIRPERSON: Hm.

MR THOBANI TREVOR MNYANDU: Is some R634-odd million.

CHAIRPERSON: Hm.

MR THOBANI TREVOR MNYANDU: A 32.5 percent discount ...

CHAIRPERSON: Hm.

MR THOBANI TREVOR MNYANDU: Would be much more significant than the amount moving from ...

CHAIRPERSON: Yes.

MR THOBANI TREVOR MNYANDU: 634 to 618.

10 **CHAIRPERSON:** Yes, yes.

MR THOBANI TREVOR MNYANDU: Yes Chair.

CHAIRPERSON: But you did not do the exercise of – of establishing – establishing exactly what the amount would be the real amount if ...

MR THOBANI TREVOR MNYANDU: No Chair we did not do the exercise based on the ...

CHAIRPERSON: Yes, yes.

MR THOBANI TREVOR MNYANDU: 32.5 percent.

CHAIRPERSON: Okay. So I think it would be important to – for somebody to do it if we have not done it also.

20 **ADV MAHLAPE SELLO:** Chair it would be an arithmetic exercise really.

CHAIRPERSON: Ja, it is an arithmetic exercise.

ADV MAHLAPE SELLO: It is a calculator.

CHAIRPERSON: Ja.

ADV MAHLAPE SELLO: The first offer is 634.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: The last and acceptable offer is 618 million.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: Now one can work out on a calculator what that represents by way of percentage – the discount.

CHAIRPERSON: Yes. That is what I am talking about, *ja*.

ADV MAHLAPE SELLO: What I was trying to determine is – is there another figure we are missing.

CHAIRPERSON: *Ja*.

- 10 **ADV MAHLAPE SELLO:** That if we incorporate into the calculation will give us the 32.5 percent discount because whatever discount there may be from 634 to 618 is not 32.5, that would bring us closer to the 400million mark if it were.

CHAIRPERSON: *Ja* what I'm looking at is to see whether there may have been some genuine errors somewhere by somebody or whether there is much more to it.

ADV MAHLAPE SELLO: We will Chair, it may be – instead of 32.5 it might be 3.25, we will do that calculation Chair.

CHAIRPERSON: Thank you.

- 20 **ADV MAHLAPE SELLO:** And Mr Mnyandu you make the point that both the BT and the CNR memoranda to Mr Siyabonga Gama were approved on the same day.

MR THOBANI TREVOR MNYANDU: Yes Chair

ADV MAHLAPE SELLO: So the costs of relocation as quoted by both were accepted by Transnet.

MR THOBANI TREVOR MNYANDU: Indeed Chair.

ADV MAHLAPE SELLO: You may proceed then from there.

MR THOBANI TREVOR MNYANDU: Chair having taken you through the approval process followed we now deal with the involvement or the limited involvement of Transnet Internal Audit...(intervention).

CHAIRPERSON: Before we do that, what it does mean is that when you put the two amounts approved for both BT and CNR then you have about what, 1,4billion?

MR THOBANI TREVOR MNYANDU: It's an aggregate amount of
10 1.2billion.

CHAIRPERSON: About 1, - I think it should be about one more than that, both are more than 600million...(intervention).

ADV MAHLAPE SELLO: 647 and 618.

MR THOBANI TREVOR MNYANDU: Yes.

CHAIRPERSON: So – or is it just under 1.3?

MR THOBANI TREVOR MNYANDU: It's just under 1.3.

CHAIRPERSON: Ja, okay alright, for the relocation – for the so-called relocation costs.

MR THOBANI TREVOR MNYANDU: Of both OEM's, yes Chair.

20 **CHAIRPERSON:** Ja, now before we proceed let me ask this question. When you look at both memoranda, the one from CNR and the one from BT, they appear to say, look, this money that we are asking you to approve has already been – or falls under contingencies, contingencies that have already been approved, so it's really not a problem, you know, just approve, okay and it looks like, then Mr Gama is satisfied

and then approves. So now, since we know that from the memoranda that was sent to him, both in regard to BT and in regard to CNR, did not really include motivation by the compiler of the memoranda as to why those amounts were acceptable. The question would be, whether, when contingencies were approved there was anything that related, specifically to these so-called – this so-called relocation or whether contingencies were simply approved on the general basis, whatever contingencies may come up, they should be taken care of under this amount we've put aside for four comma something billion rand as I recall. So is that something that your team looked at as to see whether one can say, look the approval of the contingencies, the information that was before those who approved contingencies was such that there was no need when this request was made, to interrogate this issue more because it had already been dealt with, is that something you looked at?

MR THOBANI TREVOR MNYANDU: Chair, I'd like to draw your attention to the fact that we've said the 23 May memorandum prepared by Mr Brian Molefe, insofar as it relates to 4.9billion rand for contingencies it makes mention of the use or the allocation of Transnet Engineering Durban facility in order to stimulate, amongst other reasons, the economic trade of South Africa along the coast line. However, there is no line item that speaks to a certain number that then budgets for the "relocation". However, Chair even if there was, our view, based on the findings we have come to and what one would expect from standard contract management protocol, even if it was, that

an exact amount of 1.5billion rand had been set aside, that would not excuse Transnet and its officials from reviewing, critiquing and seeking a justification from each of the OEM's for the costs. One certainly does not work from the premise that there is 2billion rand in the kitty and therefore if one claims a billion, which is 50 percent of that I'm going to be comfortable with it. It's something that we considered and we came to that conclusion Chair.

CHAIRPERSON: One would really expect them to interrogate these issues but I'm just trying to see what kind of possible justification they might have because it's a lot of money and you expect that they – any memoranda that seeks to say such big amounts must be approved would deal with why it's acceptable to pay in the first place and why it's acceptable to pay the particular amount in the second place, how is that amount made up, what are the items, you know, and that's lacking in both memoranda, so – ja, okay.

ADV MAHLAPE SELLO: Thank you Chair. It is, as the Chair states, and the reasons perhaps might be advanced at a future date when the Chair has the opportunity to talk to some of the drafters and approvers of these memoranda's.

20 **CHAIRPERSON:** Yes, yes – no we'll have to hear from them it's a lot of money and as Mr Mnyandu says you don't expect people to say, look there is budget for it so we can just pay.

ADV MAHLAPE SELLO: Indeed.

CHAIRPERSON: Ja okay.

ADV MAHLAPE SELLO: You are now turning your attention Mr

Mnyandu to the involvement or non involvement of TIA.

MR THOBANI TREVOR MNYANDU: Indeed Chair, Chair just as an overview we cover this in our report, the Transnet Procurement Procedures Manual which was applicable at this time of volume 3 2015 requires that for any contract negotiation or variation, that exceeds 50million rand as an estimate must involve the high value tender team which is Transnet Internal Audit who must undertake through each and every stage of such negotiation, what are called, gateway reviews. You will recall Chair that when we took the Chair through the transcript of
 10 the meeting held – rather the meetings held with each of the OEM's on 19 June 2015 there was a representative from the high value tender team or the Transnet Internal Audit team. Chair we've got a report from Transnet Internal Audit dated 7 June 2017, it is found in volume 13 of page rather at page 9147, it's not necessary to take the Chair through the report because in the slide we highlight the salient parts. They confirm that they attended the initial meeting held - or rather meetings held with each of the OEM's on 19 June 2015. The report specifically records that the lead of the negotiations Mr Anoj Singh was the Group Chief Financial Officer at the time, requested that the bidders submit
 20 revised proposals that would explain their offers in more detail and the report also confirms that a follow-up meeting was then scheduled for 23 June 2015 for further negotiations. The report also then recalls that unfortunately Transnet Internal Audit was not invited to subsequent meetings where the negotiations for the relocation costs then continued. The report also makes mention of the fact that a

representative of Transnet Internal Audit Ms Emma Moletsane was copied in the email correspondence of Mr Gary Pita on 10 July 2015, in which, as we've taken the Chair through this morning, there was a request that Transnet Internal Audit sign off on the – to use the word loosely, the prudence of the costs of relocation, having confirmed that the necessary gateway reviews were undertaken. As we've taken the Chair through it, it is made mention of in the report that, that request for a signature – a review never came through to Transnet Internal Audit and therefore the report concludes by saying that, unfortunately

10 the Transnet Internal Audit team is not able to confirm that, indeed, the process followed was in accordance with what is required by the Procurement Procedures Manual.

ADV MAHLAPE SELLO: And I see at page 9147, which is the actual report, it is addressed to Mr Siyabonga Gama, the Group Chief Executive.

MR THOBANI TREVOR MNYANDU: Indeed Chair.

ADV MAHLAPE SELLO: So it's a report by Internal Audit for Mr Siyabonga Gama dated June 2017. At page 9152, which is the signature page of that document, I see Mr Siyabonga Gama has signed

20 it which means he became aware of his contents.

MR THOBANI TREVOR MNYANDU: Indeed Chair.

ADV MAHLAPE SELLO: Understanding then that TIA – TIA's involvement in this entire transaction was minimal to none? Understanding from this report, that there is no confirmation that what you call gateway reviews were conducted at all relevant points or

junctions.

MR THOBANI TREVOR MNYANDU: Yes Chair.

ADV MAHLAPE SELLO: Do you know what Mr Gama's response or reaction to this report was?

MR THOBANI TREVOR MNYANDU: Chair it is actually at page 9152, apart from noting it, and it is dated that he noted it on 8 June 2017, he has scribbled a note and I'd like to read it into the record for the Chair's benefit.

10 "in a letter to acting Group Chief Executive on 23 July
reference is made to the effect that the high value tender
report is being finalised. I would like that the Edge VT report
is produced. Further all information required for same must be
made available to the CAE",

 which is for Chief Audit Executive, the Chair will see that next
to Mr Siyabonga's signature is the name Ms Mmathabo Sukati who was
the Chief Audit Executive and she has signed. Chair the letter that Mr
Gama refers to in this regard can only be the two memoranda that we
read for the Chair, for the approval of the costs, the Chair will
remember that under background and just before motivation it notes
20 that TIA, Transnet Internal Audit, was part of the negotiations and the
finalising the report.

ADV MAHLAPE SELLO: So the – I see now where Mr Siyabonga Gama
has signed it reads now, Group Chief Executive, and this is June 2017
and by this time had been a permanent appointee to that.

MR THOBANI TREVOR MNYANDU: Indeed Chair.

ADV MAHLAPE SELLO: So when he says in the note, in a letter to AGCE, that's Acting Group Chief Executive, who is he talking about?

MR THOBANI TREVOR MNYANDU: He is referring to himself Chair.

ADV MAHLAPE SELLO: Oh he's speaking about himself in the third person?

MR THOBANI TREVOR MNYANDU: In the third person.

ADV MAHLAPE SELLO: Okay besides that note, do you know whether Mr Gama took any particular steps in regard to the process followed and the concerns raised here or recorded in any document what he
10 proposes be done about non-compliance, which I think this report constitutes?

MR THOBANI TREVOR MNYANDU: No Chair.

CHAIRPERSON: So your investigation did not find anything suggesting that the high value team report that he said should be made available to CAE, namely the Chief Audit Executive, you found no evidence that it was made available to the Chief Audit Executive?

MR THOBANI TREVOR MNYANDU: We found no record Chair.

CHAIRPERSON: Yes, did you ask the Chief – the particular Chief or did the Executive whether she – is it a she?

20 **MR THOBANI TREVOR MNYANDU:** Indeed it is a She.

CHAIRPERSON: She ever received it?

MR THOBANI TREVOR MNYANDU: Yes we did ask but it was never received. Chair I would just like to note as well that the note in itself and the request to use the word used by the Chair yesterday is strange. It is strange for the reason that the report from Transnet Internal Audit

records that in light of the fact that we have not been able to fully partake in the negotiations out of, not our fault, we are unable as the Internal Audit Team to provide assurance that the process was followed out in accordance with the spirit and purport of what's contained in the procurement policy manual.

CHAIRPERSON: Okay when and where do they say that, is that something we have just dealt with or is it one of the things we didn't read in relation to this letter to the date of this signature by Mr Gama, when was this, when they said this?

- 10 **MR THOBANI TREVOR MNYANDU:** Chair this was in 2017 – it's 7 June 2017 it is something that we did not read into the record but if the Chair is able to, we'd like to turn your attention to page 9151.

CHAIRPERSON: Yes.

MR THOBANI TREVOR MNYANDU: Chair I would just like to read the conclusion.

CHAIRPERSON: Yes this is just – just – this is a memo from Transnet Internal Audit addressed to Mr Siyabonga Gama, Group Chief Executive and what date – there's no date given on the first page, what date was it...(intervention).

- 20 **MR THOBANI TREVOR MNYANDU:** Chair the first date – the first page notes a date at 9148 as 7 June 2017.

CHAIRPERSON: 7 June 2017, there is a stamp on the right-hand side, on the left-hand side it's...(intervention).

ADV MAHLAPE SELLO: At 9148?

MR THOBANI TREVOR MNYANDU: 9148, apologies Chair.

CHAIRPERSON: Oh so it was received by the office of the Group Chief Executive, which would have been Mr Gama at that time.

MR THOBANI TREVOR MNYANDU: Yes Chair.

ADV MAHLAPE SELLO: It was received on the 7th of June 2017 and it was coming from the internal auditor, is that right?

MR THOBANI TREVOR MNYANDU: Indeed Chair.

CHAIRPERSON: Okay so now we know that's June 2017 and – that's June 7, so he is making this note the following day?

MR THOBANI TREVOR MNYANDU: Yes Chair.

10 **CHAIRPERSON:** He might or might not have seen it yet, isn't it?

MR THOBANI TREVOR MNYANDU: I beg yours Chair.

CHAIRPERSON: He might or might not have seen it yet. What do you say, if it arrived the previous day in his office and he signs the following – he signs this memo the following day we don't know whether he had – it had reached him or am I missing something?

MR THOBANI TREVOR MNYANDU: Chair he comments on the actual memorandum.

CHAIRPERSON: Oh this is the memorandum he's commenting on?

MR THOBANI TREVOR MNYANDU: Yes Chair.

20 **CHAIRPERSON:** Okay in a letter to – on 23 July reference is made to the fact that the HVT report is being finalised, I would like that the HVT report is produced, is this the HVT report?

MR THOBANI TREVOR MNYANDU: Indeed Chair.

CHAIRPERSON: In his note that we're talking about after – below his signature, he talks about a letter to himself, as you have told us, which

is dated 23 July, this is not this note at 9148/9149 hey?

MR THOBANI TREVOR MNYANDU: Chair can we take you to 9148.

CHAIRPERSON: Yes I am at 9148.

MR THOBANI TREVOR MNYANDU: The subject reads HVT.

CHAIRPERSON: HVT negotiations for Durban relocation, yes, CNR consortium and BT, Bombardier, yes for your approval/signature, comments. You might be able to read that better, that handwriting AD Thomas/ Gary Pita, kindly ensure that all information that was required for the HVT report is produced or be produced – is made available to
10 the CAE in order for the HVT to finalise its report. So who is writing there because that is addressed to Mr Gama isn't it?

MR THOBANI TREVOR MNYANDU: Yes Chair.

CHAIRPERSON: But when you go to his note on page 9152 he seems to repeat that.

MR THOBANI TREVOR MNYANDU: Yes Chair.

CHAIRPERSON: Is that why you say he's commenting on it?

MR THOBANI TREVOR MNYANDU: Yes Chair.

CHAIRPERSON: But the letter of 23 July is some other letter?

MR THOBANI TREVOR MNYANDU: Chair as we've said we haven't
20 found a letter of 23 July, it can only be, in our deduction, the two memoranda that were prepared for him in respect of BT and CNR respectively for him to approve the relocation costs. We say so because in the memorandum, it is recorded that Transnet Internal Audit was part of the negotiations and is completing its report.

CHAIRPERSON: Oh okay, so – and those were signed on the 22nd we

might just have made a mistake by saying 23 instead of 22.

MR THOBANI TREVOR MNYANDU: Yes they were compiled on the 22nd and everybody that signed and recommended did so on the 22nd, he signed them off the next day on the 23rd.

CHAIRPERSON: Oh he signed on the 23rd so that's maybe the reason why he used the 23rd.

MR THOBANI TREVOR MNYANDU: Indeed Chair.

CHAIRPERSON: Okay so what do you make of his – you were making a certain point about is note below his signature at 9152, that is what
10 triggered my questions, yes there was a point you were making.

MR THOBANI TREVOR MNYANDU: In order to try and...(intervention).

CHAIRPERSON: It was strange that he made this note.

MR THOBANI TREVOR MNYANDU: Yes Chair.

CHAIRPERSON: Ja just repeat that point.

MR THOBANI TREVOR MNYANDU: And we would like to take you to 9151.

CHAIRPERSON: Yes.

MR THOBANI TREVOR MNYANDU: The request was that we read for you, Chair, the conclusion.

20 **CHAIRPERSON:** Yes.

MR THOBANI TREVOR MNYANDU: There are three paragraphs, they read as follows,

“TIA was not invited for subsequent negotiation meetings
where negotiations on relocation costs were discussed with the
bidders in attendance as required per the high value tender

methodology. Paragraph 7, despite the Group Chief Supply Chain Officer's request for Transnet Internal Audit to sign off on the memo that was to be sent to the acting Group Chief Executive for approval, Transnet Internal Audit was not provided with the memo or the outcome of the negotiations or the letters of acceptance of the proposals by the acting Group Chief Executive. Finally, paragraph 8 records, based on Transnet Internal Audits limited involvement in the process indicated above, a formal report to indicate adequacy and/or effectiveness of the process undertaken in the Durban relocation negotiations could not be produced".

CHAIRPERSON: Oh now I see the point you are making, you were saying – you were saying how could he be talking about the production of that report because he had just been told in that memo that TIA cannot – could not produce anything because of their limited involvement.

MR THOBANI TREVOR MNYANDU: Yes Chair.

CHAIRPERSON: Okay, thank you.

ADV MAHLAPE SELLO: So then following on that, what one would expect from a Group Chief Executive is to engage with the conclusions and the consequences – the conclusions drawn at 678 by the internal audit and then to address himself to the consequences of the exclusion of internal audit from the process?

MR THOBANI TREVOR MNYANDU: One would expect so Chair.

ADV MAHLAPE SELLO: Is there any documentation that would reflect

that he did?

MR THOBANI TREVOR MNYANDU: No there isn't.

ADV MAHLAPE SELLO: Okay, are you aware of whether or not Mr Siyabonga Gama ever made any follow-up, either on this report or the note he makes on the report itself?

MR THOBANI TREVOR MNYANDU: No Chair, we are not aware.

ADV MAHLAPE SELLO: Okay, if that's all you intended to highlight on the internal audit report, we are ready to proceed but I think the Chair might not – might want to have – might have a question or two on the
10 report still.

CHAIRPERSON: No we can continue.

ADV MAHLAPE SELLO: Thank you.

MR THOBANI TREVOR MNYANDU: Thank you Chair. Chair prior to taking you through slide 32 I'd like to give you context as to how it came about that we instructed the people that we instructed on behalf of Transnet to conduct an assessment of the relocation costs and the negotiations. Having formed a *prima facie* view on face value that the costs of relocation of both OEM's were excessive we deemed it prudent to acquire the services of a rail logistics company that also is in the
20 business of manufacturing locomotives and would therefore have the necessary knowledge on how much it would cost to set-up production lines in the coast. We then instructed Loliwe Rail Solutions, a team led by Mr Kevin McGill of the company to conduct an assessment for us and provide a report on the final proposals accepted by Transnet in respect of the relocation costs. Chair this is to be found in volume 13

on page 9446, what we have tried to do for the Chair in slide 32 is to summarise the salient findings made by Loliwe Rail Solutions as an independent expert as it were which supports the *prima facie* view or views that we held in relation to the relocation costs approved and accepted by Transnet and basically Chair Loliwe Rail Solutions, in their report come to the following conclusions. That there was no relocation of either OEM, that the variation orders were inflated intentionally by the OEM's and inadequately evaluated by Transnet prior to the conclusion and approval of the amendment of the contracts. That

10 there's no justification for either the direct or the indirect costs presented by BT and CNR. That it was improper for Transnet to have agreed to lump sums for the relocation.

The Chair will recall that when we took you through the memorandum of – in respect of CNR there was a request that CNR be paid an upfront payment 323million rand which is 50 percent of what had been agreed to. That the approval of the direct and indirect costs was done without the presentation of valid and substantiated documentation and finally, that the process followed in the approval of the relocation costs was not in accordance with the standard contract

20 management protocol. Just on the last point Chair, we'd just like to draw your attention to the fact that when reference is made to standard contract management protocol it is not a drafted standard by anybody who approved and gazetted by anybody but it speaks to the norm in the industry of manufacturing, construction and engineering and what it actually points out is to the fact that if there is to be a variation that

the parties accept is going to increase in cost because in certain instances what only increases, is the duration of a contract or a project. If there is to be an increase in cost then there is an agreed amount that is reached or rather reduced to writing and people or contractors alike then claim on proven cost, to say, this is how much we agreed upon, this is now what I've produced, here are the invoices related to the particular claim and therefore you need to pay me this certain amount. Chair arising from our *prima facie* view as well as the findings of Loliwe Rail Solutions we then take you through our findings
 10 which is the conclusion of the presentation and note to you our recommendations to Transnet.

CHAIRPERSON: Well you have said something about invoices and I was still to ask whether apart from the fact that the two entities gave their quotations and there was – there were terms of payments that they put forward which Transnet agreed to payment ultimately when it was done was it done on the basis of any invoices and supporting documents and so on? Here I have in mind that if you have had to buy some material which are for this so called relocation you can produce what you have spent on them?

20 **MR THOBANI TREVOR MNYANDU:** Chair without speaking out of turn because we have been advised by the evidence leaders.

CHAIRPERSON: Ja.

MR THOBANI TREVOR MNYANDU: That a witness from Transnet

CHAIRPERSON: Ja.

MR THOBANI TREVOR MNYANDU: Will come and testify as to the

payments done.

CHAIRPERSON: Yes.

MR THOBANI TREVOR MNYANDU: We can confirm

CHAIRPERSON: Hm.

MR THOBANI TREVOR MNYANDU: That insofar as firstly CNR is concerned.

CHAIRPERSON: Hm.

10 **MR THOBANI TREVOR MNYANDU**: An invoice was drawn for an amount – drawn up for an amount of R368 million this is inclusive of tax.

CHAIRPERSON: Hm.

MR THOBANI TREVOR MNYANDU: At 14% at the time and it was subsequently paid. The details in relation to payment will be as we say...

CHAIRPERSON: Ja.

MR THOBANI TREVOR MNYANDU: Expanded upon by a different witness.

CHAIRPERSON: Okay no that is fine.

MR THOBANI TREVOR MNYANDU: Insofar as BT is concerned.

20 **CHAIRPERSON**: Hm.

MR THOBANI TREVOR MNYANDU: We can confirm that as at the date on which Transnet took the decision to stop making payments in relation to the two variation orders an amount of R248 710 000,00 had already been paid in respect of its relocation costs.

CHAIRPERSON: Hm. Okay thank you.

ADV MAHLAPE SELLO: Thank you. That then leads you to MNS own findings.

MR THOBANI TREVOR MNYANDU: Indeed Chair.

ADV MAHLAPE SELLO: May you proceed?

MR THOBANI TREVOR MNYANDU: Chair the first and the most obvious finding that we have made is that the relocation costs were excessive. I would just like to add to that Chair that it seems Transnet communicated to both OEM's that they would be located at a different facility as opposed to the Koedoespoort that had initially been
10 proposed or spoken of. It is not clear as to why Transnet then chose to lock itself into agreements that would necessitate the execution of variation orders. As I say Chair it is not clear and we have not been able to find the reason for this but it was certainly not prudent to conclude the agreements on the basis of one aspect that is clearly not going to be beneficial for Transnet. Chair insofar as the approval of the relocation costs are concerned we have found that the former Group Chief Executive at the time Mr Siyabonga Gama breached the provisions of Section 76[3] of the Company's Act insofar as he was required to exercise fiduciary duties and to take particular care and be
20 diligent insofar as the execution of his duties are concerned in that he authorised the expenditure of R1.2 – an aggregate amount of R1.2 billion without satisfying himself as to the cost analysis that had been done by his team that negotiated on behalf of Transnet or a third party that would have been appointed by Transnet. Chair this would have been reasonably expected of a Group Chief Executive, a person in his

position who had been with Transnet at the time for well over fifteen years. Had served not only as the Group Chief Executive but had the knowledge and expertise experience of being the Chief Executive of the particular operating division that was making the acquisition in this regard. We have found Chair as a result that a portion of the amount which unfortunately cannot be quantified and it cannot be quantified for a reason I will explain amounts to fruitless and wasteful expenditure. Because Chair you raised a question earlier on and you requested that I deal with it before concluding the evidence. It is accepted that the

10 tender proposals were based on one understanding. It could be accepted by two parties – there is no entitlement – but it could be accepted by two parties contracting at arms-length that as soon as you change something as significant as my location then my price might change. As I say Chair if it has not been provided for in the contract that we have signed then it must be dealt with by way of a variation order. It having been accepted it would then have to have been quantified properly. In this case we found that it was not. When one reaches the conclusion that the relocation costs were unjustifiable and therefore excessive there is the incurrence by Transnet of fruitless and

20 wasteful expenditure which is contemplated by Section 1 of The Public Finance Management Act. Chair we have also found that the critical aspects of the advice that had been given by PWC during the beginning of 2014 was not carried through. You will recall Chair ...

CHAIRPERSON: Maybe it might be convenient that I ask you questions in relation to what we have just dealt with before you proceed.

MR THOBANI TREVOR MNYANDU: Yes Chair.

CHAIRPERSON: So in relation to this – the use of relocation from what you are saying it would seem to me and I would like your comment it would seem to me that a relocation may have been just a wrong term to use but there would be legitimacy to any extra costs that may have to be discussed and negotiated that may have had to be discussed and negotiated between Transnet on the one hand and CNR on the other and between Transnet on the one hand and BT on the other arising from the fact that Transnet said you are now going to have to do this
10 job from Durban and not from Gauteng. It seems that to the extent that that would give rise to certain costs there would be nothing wrong in principle in the idea that there will be – there would be additional costs. What would remain is whether those costs are reasonable and whether procedures processes are followed that are supposed to be followed before those costs are approved and paid. Does that accord with your understanding?

MR THOBANI TREVOR MNYANDU: Chair I would like to say instead of a statement that says they would have been.

CHAIRPERSON: Hm.

20 **MR THOBANI TREVOR MNYANDU:** I would qualify it by saying they could have been.

CHAIRPERSON: Yes.

MR THOBANI TREVOR MNYANDU: And I say that or rather we reached the conclusion on the basis that it could very well be

CHAIRPERSON: Ja.

MR THOBANI TREVOR MNYANDU: That we contract on the basis of R54 million per locomotive.

CHAIRPERSON: Ja.

MR THOBANI TREVOR MNYANDU: And your base price and everything that you have included into the tender proposal or the agreement reached.

CHAIRPERSON: Hm.

MR THOBANI TREVOR MNYANDU: Is actually reduced

CHAIRPERSON: Hm.

10 **MR THOBANI TREVOR MNYANDU:** By your location.

CHAIRPERSON: Hm.

MR THOBANI TREVOR MNYANDU: So it does not...

CHAIRPERSON: No I think we are on the same – on the same page. What I am saying – talking to the principle. So you still have to justify the cost but in principle if the agreement was you will operate from here and then later on there is a decision to say no you have to operate from somewhere else if principle there is no problem with there being a difference in price or there being a possibility of higher costs – more costs – extra costs but they must still be justified. If you are being
20 moved from Pretoria to Johannesburg the cost might be minimal or maybe there might not be any. But if you are being moved from a place that is closer to one that is much further there may be more costs but each item of cost must be justified. I think that – that is what you probably are saying as well?

MR THOBANI TREVOR MNYANDU: Yes Chair.

CHAIRPERSON: Yes.

MR THOBANI TREVOR MNYANDU: Correct.

CHAIRPERSON: Yes.

MR THOBANI TREVOR MNYANDU: Agreed in full.

CHAIRPERSON: Yes the principle that there could be extra costs has no problem.

MR THOBANI TREVOR MNYANDU: Yes Chair.

CHAIRPERSON: The question is whether those costs if they do arise are justifiable.

10 **MR THOBANI TREVOR MNYANDU**: Indeed Chair.

CHAIRPERSON: Ja okay alright.

ADV MAHLAPE SELLO: And then if I may just follow up on that Mr Mnyandu. But if the RFP and the contract subsequently concluded says you – let us say the RFP you are required to bid for production of the locomotives in Koedoespoort or any other location in South Africa and read that as a complete term. If it read that way one would expect that in calculating your costs as a bidder you would take into consideration that this site for production might not necessarily be Koedoespoort and might be another position in South Africa and you will have catered for
20 that eventuality. Would that be an unreasonable expectation?

MR THOBANI TREVOR MNYANDU: Chair I am going to answer yes and no.

CHAIRPERSON: I think I know what your answer should be. Your answer – your answer has to be when you put in your bid for that you will say well if it is in Koedoespoort this is what the cost will be. Since

you have not mentioned what other place in South Africa I can only quote once I know which other place.

ADV MAHLAPE SELLO: But the issue being that it is not really a change per se if the RFP contemplated that the production place might be different.

CHAIRPERSON: No it is not a change of place but in terms of course it makes it – it may make a difference.

ADV MAHLAPE SELLO: It may make a difference.

CHAIRPERSON: Ja.

- 10 **ADV MAHLAPE SELLO:** It may result in an increase in cost or it may result in a savings.

CHAIRPERSON: In a decrease.

ADV MAHLAPE SELLO: Yes.

CHAIRPERSON: Ja but you only know whether it is an increase or a decrease once you know where?

ADV MAHLAPE SELLO: Indeed.

CHAIRPERSON: Ja, ja.

ADV MAHLAPE SELLO: Then...

MR THOBANI TREVOR MNYANDU: Indeed Chair.

- 20 **CHAIRPERSON:** Did I guess your answer correctly?

MR THOBANI TREVOR MNYANDU: Yes Chair hundred marks.

CHAIRPERSON: Okay.

ADV MAHLAPE SELLO: I will test that after the hearing whether he did guess it correctly Chair. You may continue Mr Mnyandu.

MR THOBANI TREVOR MNYANDU: Thank you Chair. As we have said

we have found that the advice that was offered by PWC was not carried through in the negotiations. The Chair will recall that the two points of advice that we gave evidence in respect of yesterday were that the OEM's were to be requested to justify their costs. And that secondly if the costs were going to be prohibitive then Transnet were to seek alternative measures where loosely used in the report of PWC additional costs would not be incurred. And we reach this conclusion having regard even to the fact that there might have been those concerns that were raised initially in particular we draw your attention

10 Chair and take you back to the email correspondences shared between the – amongst the negotiation team members where Mr Laher writes to Ms Lindiwe Mdletshe and says: here are my 18 areas of concern. She responds two days later and she says: Here is the revised proposal. And then he responds further to say: Well my concerns have not been addressed save for a different offer in relation to payment terms. So that engagement with the OEM insofar as it does not in the end result in a justification of costs means that there has not been an execution of the advice given originally by PWC.

CHAIRPERSON: Well did you establish who at Transnet got to know

20 about the PWC advice? Did you get to know a number of people who

MR THOBANI TREVOR MNYANDU: Chair...

CHAIRPERSON: Who can say did become aware of it at one stage or another?

MR THOBANI TREVOR MNYANDU: Chair we confirm that we were advised by Mr Thamsanqa Jiyani his transcript is one of the appendixes

to our report on relocation that the then Group Chief Financial Officer was the one who spearheaded or sought the actual advice from PWC and that he came back to them with a report from PWC and told them what it said. So certainly the negotiation team prior to the conclusion of the contract knew of the advice from PWC.

CHAIRPERSON: Yes. That is going to be important to take further.

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: One the proof that they were aware of it but we also need to know whether the Group Chief Executive or Acting Group
10 Chief Executive depending on when it was became aware of it and to the extent that it was not followed what reasons – why it was not followed.

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: So it is just like the R9 million we need to establish each and every person in the hierarchy

ADV MAHLAPE SELLO: Absolutely Chair.

CHAIRPERSON: Of Transnet.

ADV MAHLAPE SELLO: Absolutely Chair.

CHAIRPERSON: Who got to know about it and what they did about it.

20 **ADV MAHLAPE SELLO**: But one thing we can establish already and based on Mr Mnyandu's response to the Chair's question if that was – that report was – PWC Report as contracted for by Mr Anoj Singh and that is the Group Chief Executive you suggest.

MR THOBANI TREVOR MNYANDU: Group Chief Financial Officer.

ADV MAHLAPE SELLO: Group Chief Financial Officer. We know from

evidence adduced by Mr Mnyandu that Mr Anoj Singh was part of the negotiating team

CHAIRPERSON: He was the leader actually.

MR THOBANI TREVOR MNYANDU: Yes.

ADV MAHLAPE SELLO: Of the negotiating teams for the relocation.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: So already one can – at least one member of that team was aware of the report [indistinct].

CHAIRPERSON: A very important member.

10 **ADV MAHLAPE SELLO**: A very important member of that team

CHAIRPERSON: What would remain is the GCE.

ADV MAHLAPE SELLO: Absolutely.

CHAIRPERSON: And the Chief Executive of the Rail and Freight.

ADV MAHLAPE SELLO: Freight yes.

CHAIRPERSON: Ja. Unit yes.

ADV MAHLAPE SELLO: Yes we will close that loop Chair.

CHAIRPERSON: Okay thank you.

MR THOBANI TREVOR MNYANDU: Thank you Chair. Chair we have found that there was a breach of the PPM by the entire negotiation or
20 negotiating team of Transnet in particular Ms Lindiwe Mdletshe having been the lead interface insofar as she failed to deal with the concerns that were raised to the satisfaction of her colleagues and in the interest of Transnet. We have also found that the concluded agreement or rather the agreement concluded between BEX and CNR is a very suspicious one. It brings into question and to sharp light the question

of fraud and corruption which we get back to when we refer to our recommendations to Transnet. We make the point in slide number 35 that as an SCS which is Supply Chain Services Official and the lead interface for the negotiations Ms Mdletshe failed to adequately make use of an important internal structure even when she had been requested by the Group Chief Procurement Officer.

ADV MAHLAPE SELLO: And for the record that structure is?

MR THOBANI TREVOR MNYANDU: The Transnet Internal Audit.

ADV MAHLAPE SELLO: Thank you.

- 10 **MR THOBANI TREVOR MNYANDU:** Thank you Chair. We have found that as – we already been highlighted that all members of the negotiation team those who recommended the costs did not act in manner that would have been expected of senior officials within the organisation of Transnet in their respective positions. Chair in our recommendations and as a first base principle which is something related to a point that the Chair has raised this morning on invoices. We have recommended to Transnet that the two OEM's be requested to provide a statement and debasement of the monies paid in respect of relocation thus far. We have also recommended that Transnet consider
- 20 the whole issue of the variation orders related to relocation within the context of our findings in Volume 1 and to expand on that Chair just to explain in our legal analysis of the variation orders we have found that if the contract itself is unlawful for want of compliance with amongst other things Section 54 of the Public Finance Management Act then everything that follows from it is unlawful. And so in the judicial review

application that must now ensue Transnet must seek a just and equitable remedy that also incorporates the consideration of the relocation variation orders. As a measure in order to limit the exposure already suffered by Transnet thus far we have specifically recommended to Transnet that they stop making all payments in relation to relocation. And finally Chair in relation to the CNR and BEX agreement that I said raises sharp interest and focus in relation to allegations of fraud and corruption we have recommended to Transnet that they consult law enforcement agencies in order to take the matter
10 forward. And that Chair brings us to the end of the presentation.

CHAIRPERSON: Thank you very much.

ADV MAHLAPE SELLO: Chair.

CHAIRPERSON: You are done.

ADV MAHLAPE SELLO: I am done Chair. That brings us to the conclusion of Mr Mnyanadu's testimony before you Chair.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: Subject of course to the filing and consideration of the supplementary statement in respect of the issues raised by the Chair.

20 **CHAIRPERSON:** Yes.

ADV MAHLAPE SELLO: At that juncture the Chair will make a determination whether Ms Mnyandu – Mr Mnyandu need appear any further.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: Thank you Chair.

CHAIRPERSON: No that is fine. And there is also the affidavit that we talked about for the witnesses who came without an affidavit. It may well be that when one takes the transcript of their evidence and one puts annexures – I am not sure it may well be that it might serve that purpose I am not sure but if – if it is – if one could have an affidavit that basically repeats the evidence that they have given but now puts it in affidavit form without the interruptions and everything that may be very convenient.

ADV MAHLAPE SELLO: We will look into that Chair.

- 10 **CHAIRPERSON**: Ja if there is difficulty in one or another about that I am open to another option that involves using the transcript.

ADV MAHLAPE SELLO: Yes Chair.

MR THOBANI TREVOR MNYANDU: But when you talk about Mr Mnyandu and Mr Sedumedi these are lawyers

ADV MAHLAPE SELLO: Yes.

CHAIRPERSON: Once they have got to transcript of their own evidence they could even prepare that themselves and just bring you a draft of their affidavit and you can just have a look but it must be something that you know goes in accordance

- 20 **ADV MAHLAPE SELLO**: That has got value.

CHAIRPERSON: With the evidence they have given. And as an affidavit it might then attach annexures. If it does not attach annexures it could just indicate that the particular annexure appears in volume whatever.

ADV MAHLAPE SELLO: Indeed.

CHAIRPERSON: At what page then it would be convenient. So at least with regard to them

ADV MAHLAPE SELLO: It is easier.

CHAIRPERSON: You do not have a big job to do.

ADV MAHLAPE SELLO: Chair

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: If I may on that we will give the affidavit a first shot we will see if it works. Mindful of the fact that we do not want to make the Chair's record unduly voluminous. But if there is a...

10 **CHAIRPERSON**: Well it is the Chair that prefers it that way.

ADV MAHLAPE SELLO: The result might come with more 17 volumes and I am sure the Chair would not appreciate that. But we will give it a shot Chair and if you permit us should we run into difficulties or...

CHAIRPERSON: Ja – ja if there are difficulties you...

ADV MAHLAPE SELLO: Should it – if the affidavits fail to address the point that the Chair

CHAIRPERSON: Ja

ADV MAHLAPE SELLO: Raises we shall revert Chair and we will consider other ways.

20 **CHAIRPERSON**: Yes but I think with lawyers it is much more easier.

ADV MAHLAPE SELLO: I will leave it to the two lawyers.

CHAIRPERSON: Because your involvement will be limited. They can draw the affidavits themselves. They know what their evidence was. They know what documents they referred to in their evidence.

ADV MAHLAPE SELLO: Indeed Chair I just need to check that both

lawyers are here.

CHAIRPERSON: They are here.

ADV MAHLAPE SELLO: Yes they are Chair.

CHAIRPERSON: And they both agree.

ADV MAHLAPE SELLO: They both agree.

CHAIRPERSON: Okay thank you very much Mr Mnyandu for coming to give your evidence to the extent that there might be – there will be some aspects that still need to be addressed you will address them together with the Ms Sello but thank you very much. You are excused.

10 **MR THOBANI TREVOR MNYANDU**: Thank you Chair.

CHAIRPERSON: Thank you.

ADV MAHLAPE SELLO: Chair we know we have encroached on the tea break somewhat but we are done. The next witness is ready.

CHAIRPERSON: Ja.

ADV MAHLAPE SELLO: He will be led by my leader Mr – Advocate Pretorius.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: I do not know if he would like to address you now or after tea when he takes the podium.

20 **CHAIRPERSON**: It does not look like he is keen to address me now.

ADV MAHLAPE SELLO: Then it will have to be after fifteen minutes Chair.

CHAIRPERSON: So we will take the tea adjournment. It is now twenty five past eleven we will resume at twenty to twelve.

ADV MAHLAPE SELLO: Thank you Chair.

CHAIRPERSON: We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Good morning Mr Pretorius.

ADV PAUL JOSEPH PRETORIUS SC: Morning Chair.

CHAIRPERSON: How are you feeling?

ADV PAUL JOSEPH PRETORIUS SC: Well at the moment I am feeling okay but if necessary I will let you know Chair.

10 **CHAIRPERSON:** Yes. Okay. No that is alright. Okay, thank you. The files that I have here are they new files or what?

ADV PAUL JOSEPH PRETORIUS SC: No those are old files.

CHAIRPERSON: *Ja*.

ADV PAUL JOSEPH PRETORIUS SC: You can set them aside. I am about to hand up a new file.

CHAIRPERSON: Okay. Thank you.

ADV PAUL JOSEPH PRETORIUS SC: Chair the evidence under the auspices of MNS Attorneys continues. The author of Report 2B is Dr Jonathan Bloom and he will testify in respect of that report. May I
20 hand up his presentation which is EXHIBIT BB8D.

CHAIRPERSON: Thank you.

ADV PAUL JOSEPH PRETORIUS SC: It is based on MNS Report volume 2B. I understand that during the course of his evidence Dr Bloom will on at least one occasion refer to the report.

CHAIRPERSON: I am sorry – I am sorry. You just said it is based on

MNS Report ...

ADV PAUL JOSEPH PRETORIUS SC: 2B.

CHAIRPERSON: 2B?

ADV PAUL JOSEPH PRETORIUS SC: Yes.

CHAIRPERSON: Okay.

ADV PAUL JOSEPH PRETORIUS SC: That report is in the files behind you Chair.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: In volume 8/17 but for
10 convenience I have asked that a further copy of the report be made
with the same pagination number to save you having to look behind
you. If you want that I can give it to you otherwise you can rely on the
one ...

CHAIRPERSON: Please give me that. That will be convenient.
Zonneke (Chair speaking to Registrar). Yes.

ADV PAUL JOSEPH PRETORIUS SC: Chair the annexures and the
report are volumes 8, nine and 10 I am informed but you will not have
to go there. What you have before you is sufficient for present
purposes. Then Chair the evidence goes to an explanation and expert
20 opinion of Dr Bloom - we will qualify him in due course – but as a
precaution the legal team the evidence leaders in relation to Dr Bloom
requested this week that the Secretariat nevertheless notify those
persons mentioned of the fact that that evidence has been given. That
elicited a response from Nedbank and after discussions between
ourselves and Attorney Gerhard Rudolph of Allen & Overy representing

Nedbank there was a request to place a statement on record which if you give me leave Chair I will do now. It is the following:

“According to the legal representatives of Nedbank
– Nedbank was first provided with the MNS Preliminary Report volume 2A and 2B on the evening of 27 May 2019. Nedbank and its advisors are studying the report with a view to providing the Commission with its comment thereon as soon as possible.”

- 10 As I understand the intention of that communication it is simply to state that they have not had enough time to respond in full but intends to cooperate with the Commission by giving full submissions. What I have not placed on record and do not intend to do it at this stage is the fact that 33 notices were issued earlier and the fact that there have been interactions between MNS and Nedbank prior to the 27 May but I do not want to go into any (indistinct).

CHAIRPERSON: Okay. No that is fine.

- ADV PAUL JOSEPH PRETORIUS SC:** Then Chair if I may by way of brief introduction explain or state what Dr Bloom is going to put before
20 you Chair. As you know the purchase of locomotives from China the 1 064 or part of the 1 064 involved a foreign manufacturer delivering locomotives across borders into South Africa. Transnet could not pay for these locomotives immediately. It had to borrow the money firstly off shore in Dollars and then later locally a syndicated loan in Rands in South Africa. The contracts involved payments to China North Rail and

China South Rail in Rands in South Africa. The money loaned off shore would be in Dollars and exchanged across the border into Rands when brought into South Africa. Further Chair the loan would not be drawn in one sum - at one time - but in a series of tranches or amounts over a period of time. These are referred to as drawdowns and over this period of time obviously exchange rates which fluctuate and interests would fluctuate. Inherent then in such a loan arrangement are risks. There is the risk that the exchange rate could alter to prejudice the borrower – Transnet – or the other way around. There are interest rate

10 fluctuation risks that higher interest rates might have to be paid over a period of time if a floating rate loan was entered into. There are credit risks. There is the potential risk of Transnet – the borrower – being unable to pay the interest on the loan in some time in the future and there is what is known as and what will be referred to as a further related risk a contingent credit risk and that is the risk that Transnet might be unable to pay because of external factors. A downgrade or a collapse in the economy or something that might have the result external to Transnet but also to Transnet that it could not pay the loan. Those are all risks that are attached to the transactions that were

20 entered into and what financiers have done in their wisdom Chair. They developed a range of instruments to address these risks. Some more complex than others and Chair the language attached to these risks derivatives hedging, contingent credit risks and the like is a foreign language and the purpose – one of the purposes – of Dr Bloom's evidence is to facilitate an understanding of this so that our

understanding can be used later in dealing with other witnesses and making submissions to you Chair. So the evidence will seek to explain these financial instruments that are used to mitigate risk, hedging instruments. The evidence will also show how these hedging instruments and the transactions related – Chair just to save you the trouble I have had this introduction typed out. I do not know if you want a copy.

CHAIRPERSON: Yes. *Ja*, please.

ADV PAUL JOSEPH PRETORIUS SC: So firstly Chair the evidence will
 10 seek – this is at the bottom of the page - to explain the use of hedging instruments. Secondly the evidence will seek to show how the implementation and use of these instruments were manipulated to benefit – to prejudice Transnet that should be – not benefit and to benefit third parties. Thirdly to show how the financial advisors involved benefitted from these financial transactions and fourthly to place an opinion before you that in the view of Dr Bloom internal resources could have been utilised by Transnet making it unnecessary to outsource for these costly exercises. Once this and other evidence is given Chair the legal team and its investigators are obviously not
 20 limited to the MNS mandate. Our investigations and evidence will go further and we will seek to build a picture of who made all these decisions. When were these decisions made? Why were these decisions made? Who benefitted from these decisions and to try and establish ...

CHAIRPERSON: And what knowledge ...?

ADV PAUL JOSEPH PRETORIUS SC: Lings between all these questions.

CHAIRPERSON: And I guess what knowledge they had in this sector. Did they have the right knowledge to make the decisions because one, if they had the right expertise but nevertheless made certain decisions that were maybe inexplicable that might point to an intentional ...

ADV PAUL JOSEPH PRETORIUS SC: Yes Chair.

CHAIRPERSON: To prejudice Transnet but if they did not have the required expertise that might not show intention but it might show
10 negligence or even gross negligence but it might show – it might raise the question of why they make decisions in a field in which they knew nothing.

ADV PAUL JOSEPH PRETORIUS SC: Correct Chair.

CHAIRPERSON: Ja. Okay.

ADV PAUL JOSEPH PRETORIUS SC: And in fact Chair what Dr Bloom will help us with is to point us in the direction of those questions that we should be asking and also begin to build up some picture of possible answers and then the investigation and legal team will build on those hopefully to present before you a picture which might form the
20 basis of findings that you may make which go much further than just the transactions themselves. Finally Chair in accordance with the directive you have given this week we will in the course of – of the next few weeks prepare an expert report in the normal form with expert qualifications and the like to present to you.

CHAIRPERSON: Ja. No that is fine. That is fine.

ADV PAUL JOSEPH PRETORIUS SC: May the witness then be sworn.

CHAIRPERSON: Yes but just before that I think it would help if at the beginning of his evidence I could just be alerted to certain specific terms that one needs to understand from the beginning that he may be using that obviously I do not know about not being in his field of expertise.

ADV PAUL JOSEPH PRETORIUS SC: No Chair it is ...

CHAIRPERSON: So that – so that I – as we go on one know there is this term.

10 **ADV PAUL JOSEPH PRETORIUS SC:** Yes.

CHAIRPERSON: This is what it means and so on.

ADV PAUL JOSEPH PRETORIUS SC: We have tried to avoid in the first part ...

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: And that is not long ...

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: The reference to any specialist term ...

CHAIRPERSON: Yes, *ja*.

20 **ADV PAUL JOSEPH PRETORIUS SC:** And at the appropriate time we do intend to do that.

CHAIRPERSON: Okay. No that is fine. As long as by the time they are used ...

ADV PAUL JOSEPH PRETORIUS SC: Yes.

CHAIRPERSON: I have been alerted and (intervenes).

ADV PAUL JOSEPH PRETORIUS SC: Chair and – and I must say that for someone including that is not used to these terms ...

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: Very often what an expert would do ...

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: Is be confronted with a question about the proper meaning ...

CHAIRPERSON: Hm.

10 **ADV PAUL JOSEPH PRETORIUS SC:** Of a particular term ...

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: And then use another technical term to explain it which does not really help someone in my position and I understand your position too Chair.

CHAIRPERSON: *Ja*.

ADV PAUL JOSEPH PRETORIUS SC: So we will – we will and with your assistance Chair to stop us ...

CHAIRPERSON: *Ja*.

20 **ADV PAUL JOSEPH PRETORIUS SC:** When necessary we will attempt to clarify ...

CHAIRPERSON: Well ...

ADV PAUL JOSEPH PRETORIUS SC: An understanding of these instruments.

CHAIRPERSON: Well Mr Pretorius that does happen and sometimes it is a *bona fide* mistake on the part of – of the expert. Sometimes it is

meant to show you how little you know.

ADV PAUL JOSEPH PRETORIUS SC: Yes.

CHAIRPERSON: So ...

ADV PAUL JOSEPH PRETORIUS SC: In this field I am prepared to accept that we start from scratch.

CHAIRPERSON: And I am sure other people say lawyers do the same.

ADV PAUL JOSEPH PRETORIUS SC: Of course we do.

CHAIRPERSON: Okay, alright.

ADV PAUL JOSEPH PRETORIUS SC: It is just a different language.

10 **CHAIRPERSON:** Just a different language. The witness may be sworn in please or affirmation maybe administered.

REGISTRAR: Please state your full names for the record.

DR JONATHAN ZORAH BLOOM: Jonathan Zorah Bloom.

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

DR JONATHAN ZORAH BLOOM: No.

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

DR JONATHAN ZORAH BLOOM: Yes.

20 **REGISTRAR:** Do you swear that all the evidence you will give will be the truth, the whole truth and nothing but the truth if so please raise your right hand and say so help me God.

DR JONATHAN ZORAH BLOOM: So help me God.

REGISTRAR: Thank you.

DR JONATHAN ZORAH BLOOM: (duly sworn, states)

CHAIRPERSON: Thank you very much.

ADV PAUL JOSEPH PRETORIUS SC: Dr Bloom first up would you tell the Chair of your qualifications and Chair in this regard may I refer you to the green divider at the end of your bundle? You will see there an abbreviated CV. You must ...

CHAIRPERSON: Oh yes.

ADV PAUL JOSEPH PRETORIUS SC: Dr Bloom with reference to that would you please tell the Chair of your qualifications?

DR JONATHAN ZORAH BLOOM: Thank you Chair. I hold a BCom
10 Degree with majors in statistics and finance from Stellenbosch University. An Honours BCom Cum Laude from the same institution. A MCom Cum Laude from the same institution. A PhD in Business Management with the Corporate Finance Specialisation from the same institution.

ADV PAUL JOSEPH PRETORIUS SC: And would you tell the Chair please of your experience in the field about which you are to testify?

CHAIRPERSON: Sir I am sorry. It is BCom from Stellenbosch you said.

DR JONATHAN ZORAH BLOOM: That is right.

20 **CHAIRPERSON:** And BCom Honours Cum Laude Stellenbosch?

DR JONATHAN ZORAH BLOOM: Correct.

CHAIRPERSON: And then MCom Cum Laude ...

DR JONATHAN ZORAH BLOOM: From Stellenbosch.

CHAIRPERSON: Which university, Stellenbosch?

DR JONATHAN ZORAH BLOOM: Yes.

CHAIRPERSON: Yes.

DR JONATHAN ZORAH BLOOM: All the degrees.

CHAIRPERSON: And then PhD Cum Laude?

DR JONATHAN ZORAH BLOOM: No. Unfortunately there is no cum laude for a PhD.

CHAIRPERSON: You thought you had had enough. It is fine if you just get the degree. No, thank – thank you Dr Bloom.

ADV PAUL JOSEPH PRETORIUS SC: Your experience.

DR JONATHAN ZORAH BLOOM: Chair I have had the opportunity to –
10 to consult on various financial matters to financial institutions in the Financial Services Industry. Also from a finance point of view in the Development Industry where – where Stellenbosch I held the position as Professor of Real Estate Investment and Financing and the idea behind that was that we – we prepared students for a chartered financial analyst qualification and I was part of the team that did that. So for the last 22 years although I was part – at Stellenbosch at that point in time as well I had the opportunity to consult in the industry and *ja*.

CHAIRPERSON: Thank you.

20 **ADV PAUL JOSEPH PRETORIUS SC:** You will tell the Chair of the various financial instruments that financiers use and institutions use to mitigate risk in transactions such as the loans involved in the purchase of locomotives from China?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Do you have experience in

studying these instruments?

DR JONATHAN ZORAH BLOOM: Yes Chair. I – I investigated as part of this assessment the – the various instruments used and unpacked them to understand what Transnet did or what the service provider that assisted Transnet did in the execution of these instruments. So the focus was essentially on the instruments used to hedge the risks related to the financing.

ADV PAUL JOSEPH PRETORIUS SC: Alright. We will come to your actual work ...

10 **DR JONATHAN ZORAH BLOOM**: Yes.

ADV PAUL JOSEPH PRETORIUS SC: And what you learnt from that work during the course of your evidence but the question I am asking is a more general question. You have - and I may ask it again when the particular opinion that you express is relevant – but do you have general experience in the study and understanding of the use of risk avoiding instruments ...

DR JONATHAN ZORAH BLOOM: I do Chair.

ADV PAUL JOSEPH PRETORIUS SC: In financing?

DR JONATHAN ZORAH BLOOM: I do Chair.

20 **ADV PAUL JOSEPH PRETORIUS SC**: Okay. You were part of the MNS Team that studied the transaction involved in Report 2B?

DR JONATHAN ZORAH BLOOM: Correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Over what period of time have you been working on this project?

DR JONATHAN ZORAH BLOOM: Chair since September last year and

it continues.

ADV PAUL JOSEPH PRETORIUS SC: Right and what was your brief in sum?

DR JONATHAN ZORAH BLOOM: My brief consisted of several components. It started off by looking interestingly enough at the local content contributions and assessment thereof of the – of the OEMs specifically the China North Rail and China South Rail Locomotive local content. It moved to understanding the advisory services that were provided through an LOI and an MSA. In other words (intervenes).

10 **ADV PAUL JOSEPH PRETORIUS SC:** What is LOI and MSA?

DR JONATHAN ZORAH BLOOM: The Letter of Intent and the Master Services Agreement that was actually testified to in this Commission by Mr Sedumedi in volume 2A and then after that I moved over to understanding how the – how several transactions were introduced in the financing of the vehicles and how the hedging of those – of the – of the risks associated therewith was – was done.

ADV PAUL JOSEPH PRETORIUS SC: Alright. You have already introduced a word in the foreign language in which you are an expert – hedging. Let us leave that for the moment.

20 **DR JONATHAN ZORAH BLOOM:** Okay.

ADV PAUL JOSEPH PRETORIUS SC: But for the moment financial instruments used to mitigate risk.

DR JONATHAN ZORAH BLOOM: Correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: And I have in my opening mentioned these briefly and you will deal with them in detail in due

course?

DR JONATHAN ZORAH BLOOM: Correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: As I understand it your evidence here deals only with the part of that part of the locomotives transactions involving China North Rail and China South Rail?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Right and as I understand it you have examined how the purchase of these locomotives were firstly financed. Is that correct?

10 **DR JONATHAN ZORAH BLOOM:** Correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: And you have also examined how the risks associated with the transaction - the loan transaction in particular – were dealt with. Let us just put it that way for the moment.

DR JONATHAN ZORAH BLOOM: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: If we may then go to your report and deal with what we have placed on record by way of introduction more methodically. At page 2 you have an introduction. Would you just take the Chair through that please?

20 **DR JONATHAN ZORAH BLOOM:** Yes. Chair this is a – this is a prelude to the – to the actual work but it is necessary to provide the context in what – in which the work that I did actually happened. So the presentation deals with Transaction Advisory Services and as Mr Pretorius indicated it refers to 232 diesel locomotives from China North Rail and 359 electric locomotives from China South Rail. So as – as part of the introduction Transnet appointed Transaction Advisors in

2012 to provide it with a Transaction Advisor Services related to the acquisition of 1 064 locomotives and Transnet awarded at that time the Transaction Advisory Contract to the McKinsey Consortium in July of that year. The scope of the contract was amended from time to time.

ADV PAUL JOSEPH PRETORIUS SC: Okay. So before we proceed even before it enters into any transaction Transnet appointed advisors to assist it in obtaining a loan and determining how that loan would work - as I understand it?

DR JONATHAN ZORAH BLOOM: Correct.

10 **ADV PAUL JOSEPH PRETORIUS SC:** Right and that transaction advisory contract was awarded to McKinsey in July 2012?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Tell the Chair of how the Consortium was initially composed please because we will see in the course of time the development of a transfer of the work to particular institutions which are central to the investigative work of the Commission.

DR JONATHAN ZORAH BLOOM: The McKinsey Consortium Chair was led by McKinsey Incorporated - the South African branch of the
20 company.

ADV PAUL JOSEPH PRETORIUS SC: You are at page 3?

DR JONATHAN ZORAH BLOOM: Page 3. Correct Chair. Comprising of McKinsey Incorporated as the main bidder, Letsema Consulting as the co bidder and then several sub-contractors - Advanced Rail Technologies, Nedbank Capital, Edward Nathan Sonnenbergs – ENS –

(indistinct) Young Incorporated and (indistinct) Capital. Sorry Chair.

CHAIRPERSON: Yes okay.

ADV PAUL JOSEPH PRETORIUS SC: Then let us go to page 4 and we begin to see changes in who the transaction advisors are.

CHAIRPERSON: I am – I am sorry. This might be a question that has nothing to do with you. I just see that there is an indication of at page 3 of those who were sub-contractors but I wonder whether they had – they had been put in as part of the consortium from the beginning but as I say it might be something that you know nothing about. Somebody
10 else would tell me about it.

DR JONATHAN ZORAH BLOOM: Chair you are correct.

CHAIRPERSON: Oh, okay alright. Mr Pretorius is there something that somebody wants to do to assist the witness?

ADV PAUL JOSEPH PRETORIUS SC: If you could just bear with me.

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: I am just concerned that the progress on the screen is not as it should be.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: We have wrestled control ...

20 **CHAIRPERSON:** Hm

ADV PAUL JOSEPH PRETORIUS SC: We have wrestled control from others over the screen Chair.

CHAIRPERSON: Oh.

ADV PAUL JOSEPH PRETORIUS SC: So we will take responsibility for any errors.

CHAIRPERSON: Okay but – but I was concerned about the movement

...

ADV PAUL JOSEPH PRETORIUS SC: Yes. That is – that is it Chair.

CHAIRPERSON: It has been sorted out now?

ADV PAUL JOSEPH PRETORIUS SC: I hope it has been sorted out.

CHAIRPERSON: Okay, alright.

ADV PAUL JOSEPH PRETORIUS SC: I am told it can.

CHAIRPERSON: Ja, okay because any movement to the witness while the witness is giving evidence one needs to be careful about it.

10 **ADV PAUL JOSEPH PRETORIUS SC:** I understand that Chair.

CHAIRPERSON: Okay, alright.

ADV PAUL JOSEPH PRETORIUS SC: It was entirely in order to ...

CHAIRPERSON: (Intervenes).

ADV PAUL JOSEPH PRETORIUS SC: Take control of the screen.

CHAIRPERSON: If I am – I mean I am advised if I am informed then it helps.

ADV PAUL JOSEPH PRETORIUS SC: Yes.

CHAIRPERSON: If I do not know I do not know what is happening and

...

20 **ADV PAUL JOSEPH PRETORIUS SC:** Yes Chair.

CHAIRPERSON: Anybody watching might be thinking the witness is being told what to say. Okay, alright. Thank you. So ...

ADV PAUL JOSEPH PRETORIUS SC: I can assure you that that would be very difficult with Dr Bloom.

CHAIRPERSON: I – I can imagine.

ADV PAUL JOSEPH PRETORIUS SC: One would have to first learn a new language.

CHAIRPERSON: But are we – are we okay now?

ADV PAUL JOSEPH PRETORIUS SC: Yes we are Chair.

CHAIRPERSON: Okay, alright thank you.

ADV PAUL JOSEPH PRETORIUS SC: Alright. Can we go to page 4 please? Just explain at a very high level what happened to the sequence that you outline here ...

DR JONATHAN ZORAH BLOOM: Chair ...

- 10 **ADV PAUL JOSEPH PRETORIUS SC:** And particular the composition of the financial advisors.

DR JONATHAN ZORAH BLOOM: On 22 August 2012 Transnet raised a conflict of interest between Letsema and (intervenes).

CHAIRPERSON: I am sorry Dr Bloom.

DR JONATHAN ZORAH BLOOM: No problem.

CHAIRPERSON: I do hear you, but maybe if you can just raise your voice a bit that will help.

DR JONATHAN ZOHAR BLOOM: Certainly Chair.

CHAIRPERSON: Thank you.

- 20 **DR JONATHAN ZOHAR BLOOM:** On the 22nd of August 2012 Transnet raised a conflict of interest between Letsema and Barloworld, it was based on this conflict that Transnet advised McKinsey or the McKinsey Consortium to consider the replacement of Letsema. At the date of the appointment McKinsey Consortium excluded Letsema and it was replaced by Regiments.

ADV PAUL JOSEPH PRETORIUS SC : Right, so the first entry of Regiments into the Consortium was to replace Letsema?

DR JONATHAN ZOHAR BLOOM: That's correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: And then what happened?

DR JONATHAN ZOHAR BLOOM: And then subsequently Regiments would also replace Nedbank and Utu who were a consortium on their own or a partnership on their own, due to the conflict of interest as a member with the McKinsey Consortium and this occurred on the 19th of October 2013.

- 10 **ADV PAUL JOSEPH PRETORIUS SC:** Just a comment, and I'm not sure that you're equipped to deal with it, but ordinarily when entering into arrangements of this sort and appointing transaction advisors in such an important series of transactions, one would imagine conflicts of interest would be dealt with before the appointment of the consortium?

DR JONATHAN ZOHAR BLOOM: That's correct Chair because typically you would ask the consortium members, do they have any conflicts of interest and it – and then that would be – in other words they wouldn't be able to participate as a consequence so yes, you would sort that out, or you would address that right in the beginning.

- 20 **CHAIRPERSON:** And apart from asking, maybe, you may be expected to do your own investigation of what may be in the public domain?

DR JONATHAN ZOHAR BLOOM: Absolutely Chair, it's all part of...(intervention).

CHAIRPERSON: Something very basic at least.

DR JONATHAN ZOHAR BLOOM: Correct it's all part of the

procurement process and the evaluation.

CHAIRPERSON: Yes okay.

ADV PAUL JOSEPH PRETORIUS SC: And then if you would go to page five please, there has been evidence and there will be more evidence concerning a session that took place in February 2014 and the proprietary in nature of that session but without going into any detail would you just tell the Chair please what happened then?

DR JONATHAN ZOHAR BLOOM: Yes Chair on the 5th of February 2014 McKinsey purported to cede their rights and obligations to
10 Regiments for the transaction and that related to the 1064 locomotives and what is important in this context is that Regiments was now responsible for the whole of the advisory services.

ADV PAUL JOSEPH PRETORIUS SC: So if one reviews at a very high level, the sequence of events, in relation to the appointment of transaction advisors, one will see that initially Regiments was not part of the consortium but over a period of time in successive steps came to be the transaction advisor.

DR JONATHAN ZOHAR BLOOM: That's correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: And the details of the manner in
20 which this happened and any implications for our own investigations and evidence that, that might have been the subject matter of other evidence.

DR JONATHAN ZOHAR BLOOM: That's correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: What does volume 2 (B), that is the report that you authored I understand it.

DR JONATHAN ZOHAR BLOOM: That's correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: What does volume 2 (B) provide?

DR JONATHAN ZOHAR BLOOM: It provides a technical analysis and comment of the transactions, the regular transactions concluded by Transnet on the advice of transaction advisors.

ADV PAUL JOSEPH PRETORIUS SC: And that would be transactions related to the borrowing of money to finance the purchase of locomotives.

10 **DR JONATHAN ZOHAR BLOOM:** That's correct.

ADV PAUL JOSEPH PRETORIUS SC: And the financial instruments used to mitigate against the risk involved in this loan transaction or these loan transactions.

DR JONATHAN ZOHAR BLOOM: That's correct Chair.

CHAIRPERSON: So in other words it's the product of the work of the transaction advisors to Transnet, to say this is our advice and this is the analysis on which it is based.

DR JONATHAN ZOHAR BLOOM: Yes Chair that would be a typical situation to...(intervention).

20 **CHAIRPERSON:** To expect from that kind of report.

DR JONATHAN ZOHAR BLOOM: Correct Chair.

CHAIRPERSON: Okay.

ADV PAUL JOSEPH PRETORIUS SC: So if you would just go to the second bullet then on page six and tell the Chair what your presentation entails.

DR JONATHAN ZOHAR BLOOM: Chair the presentation and the work as well entitled the services and analysis of the services rendered by the transaction advisors, principally Regiments and he fees paid to them, that's the first part. The second part, the loans that Transnet concluded to purchase the Chinese locomotives which covered, and I think this is important to provide context because this is actually where it starts, a requirement existed for a loan of 2.5billion US Dollars to finance the Chinese locomotives that we are talking about...(intervention).

10 **ADV PAUL JOSEPH PRETORIUS SC:** When you say CDB loan, what is that talk of?

DR JONATHAN ZOHAR BLOOM: It was the loan that was sourced from the China Development Bank in China and that was for an amount of 2.5billion. What happened, subsequently, is that, that loan was split into two portions, 1.5billion that was drawn down as Advocate Pretorius also indicated in the introduction and a further 1billion that was reserved as a facility that Transnet could draw on should the need arise. There was – just related to that 1billion rand facility Chair, there was not – there were no commitment fees that Transnet paid and we
20 will see later that, that was shelved in favour of, what is the last bullet on that slide, in favour of a 12billion syndicated South African Rand Club Loan.

ADV PAUL JOSEPH PRETORIUS SC: Right before you go on, the initial arrangement was that the loan entered into to finance the purchase of the locomotives from China would entail a loan from he

China Development Bank in the amount of 2.5billion Dollars.

DR JONATHAN ZOHAR BLOOM: That's correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Then there was the change of mind and it was decided that only 1.5billion rand would be loaned from China, from the CDB.

DR JONATHAN ZOHAR BLOOM: That's correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: And that another loan would be entered into which we've called the Club Loan or which was termed the Club Loan.

10 **DR JONATHAN ZOHAR BLOOM:** That's correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: That was a loan entered into between Transnet and a syndicate of lender, principally.

DR JONATHAN ZOHAR BLOOM: That's correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: For the amount of 12billion rand.

DR JONATHAN ZOHAR BLOOM: That's correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: And then if you would go over the page to tell the Chair what else you're going to deal with.

DR JONATHAN ZOHAR BLOOM: Chair the – what else is assessed is
20 the risks associated with the loans and the processes to mitigate them and there's specifically, as Advocate Pretorius also indicated, there's specifically three type of risks that we are interested in and that are applicable to the transactions. The one refers to interest – movement in interest rates...(intervention).

ADV PAUL JOSEPH PRETORIUS SC: Alright so when I borrow money

I pay interest to the lender.

DR JONATHAN ZOHAR BLOOM: Correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: If – well in any situation whether it's cross border or local those interest rates, as we know, fluctuate.

DR JONATHAN ZOHAR BLOOM: That's correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: And what does – why is that a risk?

DR JONATHAN ZOHAR BLOOM: Because Chair, what can happen is,
10 is that you borrow money at a certain rate which is fluctuating, which is variable and if interest rates increase it will increase your cost of borrowing.

ADV PAUL JOSEPH PRETORIUS SC: Right and then the second sub-heading there, fluctuations in the exchange rate, you will also deal with that.

DR JONATHAN ZOHAR BLOOM: Yes Chair.

ADV PAUL JOSEPH PRETORIUS SC: Why is that – well as we know that would only be a risk if the lender is outside the country and the borrower is inside the country.

20 **DR JONATHAN ZOHAR BLOOM:** That's correct.

ADV PAUL JOSEPH PRETORIUS SC: You'll have money crossing borders and exchange rates.

DR JONATHAN ZOHAR BLOOM: That's correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Why is that a risk?

DR JONATHAN ZOHAR BLOOM: As we saw, the money that was

borrowed was from the China Development Bank which was 1.5billion Dollars, that money had to be transferred to a South African bank and it arrives here in Dollars and because the contract with the OEM's for the payment of the vehicles is in rand the money – the Dollars had to be converted to rand. So if the rand starts to weaken then the cost of that borrowing also increases because they would want their money back in – the repayments on that loan they would want it back in Dollars. So that places the borrower of the funds at risk.

ADV PAUL JOSEPH PRETORIUS SC: So if the exchange rate moves
10 against the borrower or to prejudice the borrower it could find itself in a position where it could feasibly no longer afford to repay to the foreign lender.

DR JONATHAN ZOHAR BLOOM: That's correct.

ADV PAUL JOSEPH PRETORIUS SC: Then the third category of risk is credit risk and you talk of two categories of credit risk what are those?

DR JONATHAN ZOHAR BLOOM: The first category is the ... (intervention).

CHAIRPERSON: I'm sorry just before you proceed, please don't forget
20 the question you were answering, I just want to go back to the answer you gave to the previous question. Does that – does the instruments that you're talking about to mitigate some of these risks arise from the fact that if the borrower in South Africa and the lender in China, if their agreement simply said, this is what you owe me, maybe you're going to pay me in two years time without making any other – including any

other arrangements the lender could end up being paid at a much – at a lower amount in value, in real value or that's not really what it's about?

DR JONATHAN ZOHAR BLOOM: Chair I think basically what it boils down to is, that when the lender, especially a foreign lender finances something in a currency other than their own, then they would expect to obtain the repayments on that loan in the currency that they lent that, in other words US Dollars. So they wouldn't be worse off if I can put it that way, the risk shifts entirely to the borrower because the borrower is expected to pay in Dollars and therefore, in this particular case if the
10 rand had to weaken substantially that would result in a tremendous cash outflow for the borrower.

CHAIRPERSON: Yes well – so that makes it why it's important for the lender to specify that the repayments would be in their currency if they were to allow the repayments to be in the currency of the borrower they might run the risk that the currency of the country of the borrower weakens and then they end up getting payments – repayments that are much less than the value that they lent.

DR JONATHAN ZOHAR BLOOM: That's entirely correct Chair in other words – but they would never do that because they wouldn't take the
20 risk.

CHAIRPERSON: Well there has been some evidence, I just can't remember the details, there has been evidence in regard to something in this Commission, I think, about these transactions, I don't know whether it was about Eskom or Transnet where the transaction was in a currency that was quite unexpected.

ADV PAUL JOSEPH PRETORIUS SC: Volatile.

CHAIRPERSON: I can't remember.

ADV PAUL JOSEPH PRETORIUS SC: Volatile.

CHAIRPERSON: I can't remember but the question, when you saw it that your answer is, but why did they agree to use that currency because, you know, that's not what you expect them to do, I just can't remember the details, yes okay.

ADV PAUL JOSEPH PRETORIUS SC: As I understand it and by way of summary Dr Bloom, in this case and in many other cases, the foreign
10 lender for example the China Development Bank says, if you want to borrow money from me, I will lend you money in Dollars but you repay me in Dollars.

DR JONATHAN ZOHAR BLOOM: That's correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: If you have a problem with the exchange rate, then you must deal with it.

DR JONATHAN ZOHAR BLOOM: That's correct.

ADV PAUL JOSEPH PRETORIUS SC: And the borrower then, in South Africa, might be faced with a situation where the rand weakens it has to, in effect buy Dollars to make a repayment of the loan from time to
20 time or repayments from time to time and might find itself in financial trouble or difficulty in repaying the Dollar amount

DR JONATHAN ZOHAR BLOOM: That's correct Char.

ADV PAUL JOSEPH PRETORIUS SC: Due to circumstances beyond it's control, correct?

DR JONATHAN ZOHAR BLOOM: Yes Chair.

ADV PAUL JOSEPH PRETORIUS SC: So what it says is, I have a substantial risk, just arising out of fluctuating exchange rates, they may move against me, right I must insure myself against that risk and that's what we're going to attempt to deal with in part of the evidence that you're about to give.

DR JONATHAN ZOHAR BLOOM: That's correct Chair.

CHAIRPERSON: And if the – say South African, the rand strengthens, that might or maybe not might, will benefit me but that doesn't necessarily mean the lender gets prejudiced, is that right?

10 **DR JONATHAN ZOHAR BLOOM:** That's correct Chair, in other words you'll be paying less because the rand is strengthened so it's working in your favour.

CHAIRPERSON: Yes but the lender remains in the same position that they were because it's their currency that counts for them.

DR JONATHAN ZOHAR BLOOM: That's entirely correct Chair.

CHAIRPERSON: Okay, thank you.

ADV PAUL JOSEPH PRETORIUS SC: Alright, and you're also going to discuss the charges that the service providers charged for their services in relation to these transactions.

20 **DR JONATHAN ZOHAR BLOOM:** That's correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: You say in the second bullet in – or on page seven, and you've described how the services were initially to be provided by McKinsey Consortium and subsequently Regiments, what in sum were the services, if they were contracted to provide.

DR JONATHAN ZOHAR BLOOM: Chair related to the raising of the finance, in other words accessing the finance for the acquisition to also deal with the – or structuring the deal in other words the negotiation of that loan and other advisory services relating to the mitigation of risk.

ADV PAUL JOSEPH PRETORIUS SC: Right, so they would advise on how to obtain finance, capital raising you call it.

DR JONATHAN ZOHAR BLOOM: That's correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: How those negotiations should be conducted and the final loan agreements should be structured.

10 **DR JONATHAN ZOHAR BLOOM:** Correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: And how Transnet should deal with the risks that you've talked about so far in your evidence.

DR JONATHAN ZOHAR BLOOM: That's correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: What insurance policies you need and how these should be structured, I use the word insurance policy very loosely but it gives us an idea of what the third tranche of advice was about, that there are – that's all there's no real coincidence between an insurance policy and a financial instrument used to mitigate risk and we'll clarify that in due course. You deal on page eight with
20 fees at a very broad level and you'll go into more detail later what do you say there on page eight, will you tell the Chair please.

DR JONATHAN ZOHAR BLOOM: Yes Chair it – as previously discussed by other witnesses an initial contract for the advisory services was fixed at an amount of 35.2million, and it's important to note Chair the words in parenthesis or in brackets where there was no

performance fee payable.

ADV PAUL JOSEPH PRETORIUS SC: Or no success fee you use the word success fee later.

DR JONATHAN ZOHAR BLOOM: That's correct no success fee however, the role of Regiments expanded so did the fees payable to it but if I could continue, the contract value increase, in other words the capped amount of 35.2million...(intervention).

ADV PAUL JOSEPH PRETORIUS SC: That's fees for Regiments.

DR JONATHAN ZOHAR BLOOM: Correct Chair, in December 2012,
10 increased to 41.2million in February 2014, increased further to 78.4million in April 2014 and by July 2015 the amount that was paid to Regiments was 265.5million. Just by the way Chair, these amounts exclude VAT or tax.

CHAIRPERSON: So what was it within two and a half years they had increased from 35.2million to 265.5million?

DR JONATHAN ZOHAR BLOOM: That's correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Yes somewhere in new regulatory instrument within Transnet there is a provision that advisory services of this nature, in other words, professional advisory services,
20 even in financing should be charged out an hourly rate, effectively, are you aware of that?

DR JONATHAN ZOHAR BLOOM: Yes Chair that's correct and that is also the norm that advisory companies or firms charge their staff out is at a hourly billable rate.

ADV PAUL JOSEPH PRETORIUS SC: And just on the face of it, to

advise on a limited number of loans and a limited number of financial transactions to mitigate risk, 265million seems an extraordinary amount.

DR JONATHAN ZOHAR BLOOM: Yes Chair it is – it does appear to be excessive.

ADV PAUL JOSEPH PRETORIUS SC: And you can say that from your own experience?

DR JONATHAN ZOHAR BLOOM: Yes Chair, especially if – it would be very difficult to – you would have to have a tremendous number of
10 people at very high rates working on that contract for an extended period of time to get even close to that number and as a consequence that is – that appears extremely excessive for the purposes.

ADV PAUL JOSEPH PRETORIUS SC: But you'll deal with that in your evidence?

DR JONATHAN ZOHAR BLOOM: Yes Chair.

ADV PAUL JOSEPH PRETORIUS SC: So if one looks at the information you've set out in the table on page 9, one can compare the total capital loaned by Transnet and the advisory fees charged by Regiments and actually paid by Transnet. Could you tell the Chair of
20 that please?

DR JONATHAN ZOHAR BLOOM: Yes Chair in rand terms the 2.5billion Dollars that we've been talking about translates to 28billion rand. If we take the fee paid to Regiments, the 265.5million, excluding VAT that would represent about – almost one percent of that loan amount and as said this is well above the capped fee of 35.2million

which is, as indicated, that is quite excessive.

ADV PAUL JOSEPH PRETORIUS SC: Just to revert to the make up of the 28billion rand, there was an initial China Development Bank loan of 2.5million rand only, right – 2.5billion, billion rand, sorry I have a cold so it may not have come across correctly, 2.5billion rand.

DR JONATHAN ZOHAR BLOOM: Correct Chair, Dollars.

ADV PAUL JOSEPH PRETORIUS SC: Sorry 2.5billion Dollars, only 1.5billion Dollars was actually utilised and then another loan replaced the 1billion Dollars that was the 12million rand Club Loan.

10 **DR JONATHAN ZOHAR BLOOM:** Yes Chair the 12billion.

ADV PAUL JOSEPH PRETORIUS SC: Right on page ten you deal with what you've termed irregular success fees, please...(intervention).

CHAIRPERSON: I'm sorry Mr Pretorius, Dr Bloom seeing that you are a numbers person as I understand the position, an increase from 35.2million rand to 265.5million rand would be an increase of what percentage.

DR JONATHAN ZOHAR BLOOM: Chair if you give me one minute I'll tell you.

CHAIRPERSON: Okay, alright.

20 **DR JONATHAN ZOHAR BLOOM:** Chair that would imply a difference of 754 percent.

CHAIRPERSON: 754 Percent increase?

DR JONATHAN ZOHAR BLOOM: Correct Chair.

CHAIRPERSON: In two and a half years.

DR JONATHAN ZOHAR BLOOM: Correct.

CHAIRPERSON: Okay thank you.

ADV PAUL JOSEPH PRETORIUS SC: On page ten you begin to explain some of these – or some components of these increases because there were various increases that happened over a period of time and you deal with some of those in detail.

DR JONATHAN ZOHAR BLOOM: Correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Please tell the Chair what happened in April 2015 please.

DR JONATHAN ZOHAR BLOOM: That is when – Chair that is when

10 Transnet's Group Treasurer, Mr Phetolo Ramosebudi submitted a memorandum to the Board Acquisition and Disposal Committee of Transnet BADC (indistinct) for *inter alia*, the following two points. The confinement of JP Morgan to hedge the financial risks, in other words to mitigate the risks which referred to interest rates, credit and currency and – which emanated from the 1.5billion CDB loan, that was then back into South African Rands and there's a second part to the first bullet there Chair, that refers to also lead and underwrite the equivalent syndicated ZAR loan of the US Dollar. In other words, that is to arrange the loan for 1.5billion Dollars, it's the same – so the one

20 is to hedge the risks or to mitigate the financial risks and the other is to actually negotiate the loan. So there are two points in the first bullet. In the second one, to also motivate the contract extension of 265.5million, the number that we've just spoken about for the appointment of Regiments Capital for an advisory or an Transaction Advisory Service and to support the Transnet 1064 locomotive

transaction. It sought to justify the extension of the contract by proposing a success fee of 166million and we've heard previously Chair, that success fees and performance fees were not permitted. So this seems to be a bit irregular.

ADV PAUL JOSEPH PRETORIUS SC: Alright we're now back in April 2015, as I understand the recommendation or the memorandum motivating approval of BADC dealt with the appointment by confinement and Chair has been told about confinement appointments of JP Morgan.

DR JONATHAN ZOHAR BLOOM: That's correct Chair.

- 10 **ADV PAUL JOSEPH PRETORIUS SC:** And they were to do two things, one they were to assist and advise Transnet, mitigate against the risks inherent in these loan transactions.

DR JONATHAN ZOHAR BLOOM: That's correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: But also to lead and underwrite the equivalent syndicated ZAR loan of 1.5billion Dollars.

DR JONATHAN ZOHAR BLOOM: That's correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Right, so it was risks and advisory services in respect of the loan itself.

DR JONATHAN ZOHAR BLOOM: That's correct Chair.

- 20 **ADV PAUL JOSEPH PRETORIUS SC:** And then there's also a contract extension to 265million, the 35million had by this time already been extended on occasion you're not dealing with that.

DR JONATHAN ZOHAR BLOOM: No.

ADV PAUL JOSEPH PRETORIUS SC: But you're dealing with an increase of 166million which allowed the full amount to reach

265million.

DR JONATHAN ZOHAR BLOOM: That's correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: And that Mr Ramosebudi said to the BADC let's give them a success fee or a performance fee.

DR JONATHAN ZOHAR BLOOM: That's correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: And you've stated that, that wasn't allowed in the original contractual arrangement.

DR JONATHAN ZOHAR BLOOM: Correct.

ADV PAUL JOSEPH PRETORIUS SC: What did the BADC – isn't there
10 a duplication here.

DR JONATHAN ZORAH BLOOM: Well Chair the...

ADV PAUL JOSEPH PRETORIUS SC: Or we dealing with different loans?

DR JONATHAN ZORAH BLOOM: No we dealing with the 1.5 billion CDB loan.

ADV PAUL JOSEPH PRETORIUS SC: Right.

DR JONATHAN ZORAH BLOOM: Only that loan in respect of these...

ADV PAUL JOSEPH PRETORIUS SC: J P Morgan and in relation to Regiments?

20 **DR JONATHAN ZORAH BLOOM:** In relation to Regiments that is the 265.5 million.

ADV PAUL JOSEPH PRETORIUS SC: No, no what – what transaction advisory services are the subject matter of the contract extension?

DR JONATHAN ZORAH BLOOM: That [indistinct].

CHAIRPERSON: In other words

DR JONATHAN ZORAH BLOOM: Yes I understand.

CHAIRPERSON: In other words are we not dealing with a situation where two different people are asked to do the same thing?

DR JONATHAN ZORAH BLOOM: Correct Chair in other words they were – you – they were paid to do that work under the transaction advisory contract. In other words that was not the – and it – there was no reason for the need to – to engage in a success fee arrangement.

CHAIRPERSON: But I think Mr Pretorius may be asking and that is part of what I also want to ask is once Regiments was there could they
10 not do cover all of this or is this a part that they could not cover and therefore J P Morgan had to be brought in?

DR JONATHAN ZORAH BLOOM: Chair that is - that is a duplicate – that could be a duplication.

CHAIRPERSON: Hm.

DR JONATHAN ZORAH BLOOM: The – that is possible yes.

CHAIRPERSON: That is possible.

ADV PAUL JOSEPH PRETORIUS SC: Right.

CHAIRPERSON: Okay. Is it something that you might be able to speak more confidently on after maybe reviewing more documents because it
20 would be important to know if it is indeed a duplication in terms of work to be done or whether it is not?

DR JONATHAN ZORAH BLOOM: Chair yes I can maybe just add.

CHAIRPERSON: Hm.

DR JONATHAN ZORAH BLOOM: To enlighten that point.

CHAIRPERSON: Yes.

DR JONATHAN ZORAH BLOOM: That in this transaction when J P Morgan was appointed when they started this Regiments was their supply development partner.

CHAIRPERSON: Hm.

DR JONATHAN ZORAH BLOOM: So they were part of J P Morgan and then they were – it appeared that they were still doing other work and being paid. So what the arrangement between Regiments and J P Morgan was I am unclear about.

CHAIRPERSON: Hm.

- 10 **DR JONATHAN ZORAH BLOOM:** But it appears that they did not have the in terms of hedging the – or in terms of mitigating the risks Regiments could not do that part of the exercise because J P Morgan had a very strong balance sheet.

CHAIRPERSON: Hm

DR JONATHAN ZORAH BLOOM: And in order to have sufficient financial muscle you would need a firm such as them.

CHAIRPERSON: Hm.

DR JONATHAN ZORAH BLOOM: So I will look into that Chair.

CHAIRPERSON: Okay.

- 20 **DR JONATHAN ZORAH BLOOM:** And come back to you.

CHAIRPERSON: Okay. Okay thank you.

ADV PAUL JOSEPH PRETORIUS SC: Right. Let us stay with the insurance analogy for the moment. We going to ditch the insurance analogy in due course but the insurer who insures against risk must have the capacity – the financial capacity to meet its obligations.

DR JONATHAN ZORAH BLOOM: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: And you say that is why J P Morgan was considered and appointed as the for the moment insurer?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: The risk mitigater counterparty. Right. But you say that Regiments already had a presence in that arrangement?

DR JONATHAN ZORAH BLOOM: As the supply development partner yes Chair.

10 **ADV PAUL JOSEPH PRETORIUS SC:** To J P Morgan?

DR JONATHAN ZORAH BLOOM: Correct.

ADV PAUL JOSEPH PRETORIUS SC: So Regiments had a presence in both these series of arrangements?

DR JONATHAN ZORAH BLOOM: It appears so.

ADV PAUL JOSEPH PRETORIUS SC: But what did BADAC decide then after this recommendation was put before it?

DR JONATHAN ZORAH BLOOM: Chair they decided BADAC or the – decided not to appoint J P Morgan to lead and underwrite the US dollar 1.5 billion loan. In other words that one – one recommendation that
20 was made to this committee was removed at that point. So only – the only thing that J P Morgan was – was mandated to do in terms of this approval was to essentially hedge or mitigate the risk related to that loan.

ADV PAUL JOSEPH PRETORIUS SC: So J P Morgan then was appointed with Regiments in the wings to deal with the risk mitigation

aspect of this group of transactions that you are going to talk about?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: And who was the lead underwriter – the leader and underwriter of the loan, the loans involved or the 2.5 – 1.5 billion dollar loan?

DR JONATHAN ZORAH BLOOM: Well Regiments – Regiments arranged that in terms of or they – they were – they – because BADAC did not approve J P Morgan's appointment for underwriting or lead and underwriting that was taken over by Regiments. And the under – the –
10 who underwrote ...

ADV PAUL JOSEPH PRETORIUS SC: But Regiments was already in the picture because of the transactions you have already described.

DR JONATHAN ZORAH BLOOM: Correct this was in addition to the work.

ADV PAUL JOSEPH PRETORIUS SC: Okay. As the Chair has requested perhaps a thorough analysis of the agreements and arrangements.

DR JONATHAN ZORAH BLOOM: Correct.

ADV PAUL JOSEPH PRETORIUS SC: Between Transnet and its
20 advisors will be included in your final report.

DR JONATHAN ZORAH BLOOM: Yes Chair.

ADV PAUL JOSEPH PRETORIUS SC: That we will present. But on the face of it a question that arises and I am not sure you can answer it now or it has been answered to date is there just seems to be a duplication in the recommendation by Mr Ramosebudi if one has regard

to the wording you have used in your presentation. Because if you look at the first bullet J P Morgan was requested to be appointed on confinement to lead and underwrite the equivalent syndicated rand loan of 1.5 billion dollars and it seems that the same appointment exists in the second bullet and had already been made in terms of the arrangement you have already described?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Is that correct? Alright. Then if you would go over the page please to page 11 you there deal with the
10 success fee or performance fee and you make a comment, what is that?

DR JONATHAN ZORAH BLOOM: Chair as we – as mentioned previously no success fee Transnet does not permit success – the charging of success fees so no success fees should have been charged or paid as services performed as part of the transaction advisory services for Regiments as they had already been appointed and this issue will be dealt with separately.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Okay but there are two points you make. The one is that the Transnet policies do not permit the
20 payment of success fees.

DR JONATHAN ZORAH BLOOM: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Or performance fees.

DR JONATHAN ZORAH BLOOM: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Alright. They are presumably too subjective and too random and incapable of precise definition.

DR JONATHAN ZORAH BLOOM: Yes Chair it is a – it is essentially about what percentage you want if I can put it that way and what is the amount that a percentage is being applied to? So yes it – from a success fee basis it is a question of you take risk if you doing it on that basis. In other words if you are not successful in terms of what your mandate is then you do not get paid. If you are you do get paid. But that was not Transnet policy.

ADV PAUL JOSEPH PRETORIUS SC: Yes but in this case the success fee was just one component of a much larger fee?

10 **DR JONATHAN ZORAH BLOOM:** That is correct.

ADV PAUL JOSEPH PRETORIUS SC: It is not as if Regiments took any risk?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: They just got an added success fee as a bonus or thank you?

DR JONATHAN ZORAH BLOOM: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: But anyway you say that – you say two things I think or you have already said two things. One is Transnet policy does not permit success fees.

20 **DR JONATHAN ZORAH BLOOM:** Correct.

ADV PAUL JOSEPH PRETORIUS SC: And you also say that the original contractual arrangement did not permit a success fee?

DR JONATHAN ZORAH BLOOM: Yes Chair that is true.

ADV PAUL JOSEPH PRETORIUS SC: Okay and then the second bullet what do you say there?

CHAIRPERSON: Before that just to follow this – so are you saying as you understand Transnet's agreement with Regiments it was that – they would be paid for their services initially without any success fee. There was no success fee mentioned because Transnet policy does not allow that.

DR JONATHAN ZORAH BLOOM: That is correct Chair.

CHAIRPERSON: Is that right?

DR JONATHAN ZORAH BLOOM: Yes.

CHAIRPERSON: So whether they had succeeded or not they would still
10 have been paid, is that right?

DR JONATHAN ZORAH BLOOM: As part of their transaction?

CHAIRPERSON: In terms of that kind of arrangement.

DR JONATHAN ZORAH BLOOM: Correct as part of their transaction advisory fee.

CHAIRPERSON: Yes, yes.

DR JONATHAN ZORAH BLOOM: Yes Chair.

CHAIRPERSON: So – but later on what happens is that Mr Phetolo Ramosebudi prepares a memorandum which recommends that apart from being paid what had been agreed which would have nothing to do
20 with success or failure they must in addition be paid a success fee.

DR JONATHAN ZORAH BLOOM: That is correct Chair.

CHAIRPERSON: And you are saying that when one talks about the success fee in this context a success fee generally applies if the – if the basis is if you achieve your target you will be paid but if – this is what you will be paid. But if you do not succeed you will not be paid

anything.

DR JONATHAN ZORAH BLOOM: That is correct Chair.

CHAIRPERSON: So here we get a combination of the two regimes that is part of the point you make.

DR JONATHAN ZORAH BLOOM: Correct Chair. As you correctly pointed out the success fee is on top of the advisory fee.

CHAIRPERSON: Yes.

DR JONATHAN ZORAH BLOOM: For which they have already been paid.

10 **CHAIRPERSON:** Yes. And one should normally choose one or the other and not have both.

DR JONATHAN ZORAH BLOOM: Correct Chair.

CHAIRPERSON: Yes okay thank you.

ADV PAUL JOSEPH PRETORIUS SC: Then you make an important – then you make an important observation Doctor Bloom in the second bullet on page 11. What is that?

DR JONATHAN ZORAH BLOOM: Chair in 2014 when the – the CDB loan was being negotiated and concluded Transnet had a – or Transnet had a funding team that included three highly experienced funding
20 managers and an analyst. Between them they had cumulative experience of in excess of fifty years in fund raising in most capital markets. So as a consequence one begs to ask the question why was it necessary to engage an external party to do the work where the expertise and capacity existed within Transnet at that time.

ADV PAUL JOSEPH PRETORIUS SC: Right. And as I understand it

and you may say this elsewhere it was not – it is not only your opinion the capabilities and expertise that resided within Transnet had been recognised externally as well.

DR JONATHAN ZORAH BLOOM: That is correct Chair. Yes because there is – the people that were – if I can put it this way the – the treasury department with – and aligned with the funding team were recognised and we will see that later as well in a survey as being one of the best treasuries in the world in 2010 which – which points to the fact that that would not occur if the necessary capacity and skills was
10 not available within the institution. So yes that – it just – one just wonders why was this particular situation allowed to occur.

ADV PAUL JOSEPH PRETORIUS SC: What do Transnet policies say about that?

DR JONATHAN ZORAH BLOOM: Chair in terms of the Transnet procedure procurement procedures and procurement manual the PPM by leveraging third parties to lead an under – to lead, arrange and negotiate the CDB loan while having a full capacitated internal debt raising team. And I would like to Chair if I may refer you to a page in the – in the report.

20 **ADV PAUL JOSEPH PRETORIUS SC:** You talking of report 2B now.

DR JONATHAN ZORAH BLOOM: 2B. Report 2B it is page 6864 on the left hand – the left hand page.

CHAIRPERSON: I am sorry Mr Pretorius I am looking at what you gave me that will not have the same page numbers or will it?

ADV PAUL JOSEPH PRETORIUS SC: Yes the same page numbers

have been put in.

CHAIRPERSON: Oh okay.

ADV PAUL JOSEPH PRETORIUS SC: And they are in the top right hand column.

CHAIRPERSON: Okay what is the page number Doctor Bloom?

DR JONATHAN ZORAH BLOOM: 06864.

CHAIRPERSON: 06 – Mr Pretorius I only see a page with a 06 on the last page cover but what I have inside does not have 06..

ADV PAUL JOSEPH PRETORIUS SC: Alright Chair

10 **CHAIRPERSON**: Pages I have got 95.

DR JONATHAN ZORAH BLOOM: Otherwise I can...

CHAIRPERSON: I have got 95, 81, 77 I got 64.

DR JONATHAN ZORAH BLOOM: Chair if I could assist?

CHAIRPERSON: Am I looking at the right thing?

DR JONATHAN ZORAH BLOOM: Yes you are.

ADV PAUL JOSEPH PRETORIUS SC: Yes if one has the two pages in front of you Chair.

CHAIRPERSON: Ja.

20 **ADV PAUL JOSEPH PRETORIUS SC**: So if one jut turns it sideways that – the other way Chair. So you have – you have unable to read the one page next to the other page.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: If you look at the top right hand corner.

CHAIRPERSON: Oh they...

ADV PAUL JOSEPH PRETORIUS SC: You will see the pages there.

CHAIRPERSON: They put the stapler there so it makes it difficult to see the page numbers.

ADV PAUL JOSEPH PRETORIUS SC: Ah yes Chair we changed.

CHAIRPERSON: Ja. I think the – I think this...

ADV PAUL JOSEPH PRETORIUS SC: Chair can I assist? Can I give you another copy?

CHAIRPERSON: Okay, okay.

ADV PAUL JOSEPH PRETORIUS SC: Which is not – where the page
10 numbers are not obstructed.

CHAIRPERSON: Yes okay thank you. Take this one.

ADV PAUL JOSEPH PRETORIUS SC: Page 6864.

DR JONATHAN ZORAH BLOOM: 6864 yes Chair.

ADV PAUL JOSEPH PRETORIUS SC: Ja I know it.

CHAIRPERSON: Are you going to need this copy or not really?

ADV PAUL JOSEPH PRETORIUS SC: I have been given another copy
Chair.

CHAIRPERSON: Okay. Will your junior need this one?

ADV PAUL JOSEPH PRETORIUS SC: Perhaps we could take that one
20 back.

CHAIRPERSON: Ja maybe take that one. Ja okay thank you. I think it can be used if you know where the page numbers are or you get the staple to be on a different corner of the document. Yes.

DR JONATHAN ZORAH BLOOM: Okay. Thank you Chair. Okay it is on the left hand – in the left hand page on that double page.

Paragraph – I would like to refer to 16.2 which is – which is amended Transnet Procurement Procedures Manual version 3 dated 1 June 2015. And I would like to refer to the first paragraph which is 16.2.1. and just read it by way of explanation? Chapter 8 of the said manual refers to the identification of strategic specialist units but what is interesting is that in this particular manual in the amended one the treasury is not included as a strategic unit. And therefore in 8.3 that refers to the compulsory utilisation of specialist units the manual states the following:

- 10 “The specialist units mentioned above must be
utilised by other Transnet entities for required goods,
construction works and services falling within their
scope and this is important. The external market may
not be approached for goods construction works and
services falling within this strategic specialist units
or division core competency areas. This would also
include specialist services that are required which
may be performed by a particular internal function
and – and I use the example of group treasury and
20 group tax.”

So Chair this just aligns with the point on – in 2014 when the CDB loan was being negotiated that the necessary expertise was available and in terms of the procurement and procedures manual they were required to use their internal expertise.

ADV PAUL JOSEPH PRETORIUS SC: Alright.

DR JONATHAN ZORAH BLOOM: Except for the fact that in this – as you can see this was in June 2015 and that was prior to – so this was changed then when it came to further ana – further utilisation of internal units.

ADV PAUL JOSEPH PRETORIUS SC: Alright. Doctor Bloom you have just quoted from the report which has in turn quoted from original policy documentation of Transnet.

DR JONATHAN ZORAH BLOOM: Correct.

ADV PAUL JOSEPH PRETORIUS SC: In your final affidavit your final
10 expert report we will obviously have to refer to the original document in force at the time these transactions were entered into.

DR JONATHAN ZORAH BLOOM: Correct.

ADV PAUL JOSEPH PRETORIUS SC: And what you saying in sum is that where specialist units existed within Transnet there was an express policy prohibition against going out to the market for those same services.

DR JONATHAN ZORAH BLOOM: That is correct Chair.

CHAIRPERSON: But – but is the point being made at 16.2 of the report the one you have just read or were you also making the point that at a
20 certain stage the - t-e internal policy was amended in such a way that treasury was excluded?

DR JONATHAN ZORAH BLOOM: Yes Chair as a – in other words that – that would have permitted if in terms of the PP manual as amend – PPP or the PPM

CHAIRPERSON: Yes.

DR JONATHAN ZORAH BLOOM: PP manual as amended that would have resulted in them having – having the ability to go out to the market.

CHAIRPERSON: Yes.

DR JONATHAN ZORAH BLOOM: Because the strategic units such as treasury in this case is excluded.

CHAIRPERSON: Yes. But – but your understanding is that that exclusion was not applicable at the time of this transaction?

DR JONATHAN ZORAH BLOOM: That is correct because this was
10 2014.

CHAIRPERSON: Yes.

DR JONATHAN ZORAH BLOOM: And this was – this was 2015

CHAIRPERSON: Yes okay.

DR JONATHAN ZORAH BLOOM: Correct.

CHAIRPERSON: Okay. Okay.

DR JONATHAN ZORAH BLOOM: But Chair it will become applicable when we proceed further that is why I have highlighted it here so I can just refer you back to that section 8.3

CHAIRPERSON: Yes. Yes.

20 **ADV PAUL JOSEPH PRETORIUS SC:** So we are past one o'clock but perhaps if I could just finish this Chair.

CHAIRPERSON: Ja, ja.

ADV PAUL JOSEPH PRETORIUS SC: So are you saying that that exclusion of treasury or the – let us put it a different way which is more accessible to us at least. That the provision in Transnet policies which

would have prevented going out to market was removed certainly in respect of treasury?

DR JONATHAN ZORAH BLOOM: Yes from the 1 June 2015.

ADV PAUL JOSEPH PRETORIUS SC: And that was relevant to further transactions that you are going to deal with?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

ADV MAHLAPE SELLO: So it is possible that someone within Transnet would have seen we cannot go out to market we have to amend the policy so we can employ external advisors?

10 **DR JONATHAN ZORAH BLOOM**: It appears to be so.

ADV PAUL JOSEPH PRETORIUS SC: Is this a convenient time Chair?

CHAIRPERSON: Yes but I just want to say this before we – we adjourn. We just have to keep our eyes on certain things that we are getting as we go along. We have seen that in regard to the fees for this transactional – transactional advisory services an amount of 35, something million had been fixed but then the amount went up to more than 700% as I understand it 700% that is – that is very huge and earlier today and yesterday I was hearing evidence of similar things where – I mean we dealt yesterday with evidence that a supplier said if

20 we do this for you Transnet it would cost R9 million but we know that ultimately it costs R600 and something million. So here we have that kind of situation but we have heard I think in regard to Eskom maybe with regard to Transnet as well already situations where the risk capacity within the entity within a parastatal for certain work to be done but that work is given to and outside supplier in circumstances where at

least so far we have not heard any evidence what was wrong with using internal capacity and from what you have said treasury here Transnet's own treasury had the capacity and had people who were internationally acclaimed as good people for doing the – providing the services that were now being given to outside entities at huge amounts.

DR JONATHAN ZORAH BLOOM: That is correct Chair I think what is important just to note is that we are specifically talking about the funding side.

CHAIRPERSON: Yes, yes.

10 **DR JONATHAN ZORAH BLOOM:** We will still get to the

CHAIRPERSON: YEs.

DR JONATHAN ZORAH BLOOM: Use of the treasury when it comes to the mitigation of the risk instruments.

CHAIRPERSON: Yes. But at least the funding side there was proper capacity that could have been used.

DR JONATHAN ZORAH BLOOM: That is correct Chair.

CHAIRPERSON: Yes. Thank you. We...

ADV PAUL JOSEPH PRETORIUS SC: Chair may I just say

CHAIRPERSON: Yes.

20 **ADV PAUL JOSEPH PRETORIUS SC:** That we will in the report deal with the sequence.

CHAIRPERSON: With all of these things.

ADV PAUL JOSEPH PRETORIUS SC: Of appointments

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: And we will also deal with the

sequence of cost escalation.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: But they are also dealt with in report 2A.

CHAIRPERSON: Yes okay.

ADV PAUL JOSEPH PRETORIUS SC: Which is

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Not within the province of report 2 B

10 **CHAIRPERSON**: Yes.

ADV PAUL JOSEPH PRETORIUS SC: But we will do it in any event.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Chair is this a convenient time?

CHAIRPERSON: No that is alright. We will take the lunch adjournment and we will resume at five past two. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: You may proceed Mr Pretorius.

20 **ADV PAUL JOSEPH PRETORIUS SC**: Thank you Chair. Dr Bloom before we deal with the contents of page 12 of your presentation. I would just like to take step back. You will recall your evidence that in respect of certain advisory services the McKinsey Consortium was the original appointee?

DR JONATHAN ZORAH BLOOM: Correct.

ADV PAUL JOSEPH PRETORIUS SC: A series of events occurred the result of which was to introduce Regiments to larger chunks of the contract until eventually it ended up as the sole service provider for what was originally McKinsey's contract. Correct?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: The question arises any – in any of those steps in which Regiments took an increasing part of the overall function contracted out by Transnet were proper procurement procedures followed?

10 **DR JONATHAN ZORAH BLOOM:** Chair I am – I am unsure about that.

CHAIRPERSON: Yes because that is not your area.

DR JONATHAN ZORAH BLOOM: That is correct Chair.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: No I just highlight that Chair to point out ...

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: That that is part of evidence 2A but we will incorporate it in the report ...

CHAIRPERSON: Yes.

20 **ADV PAUL JOSEPH PRETORIUS SC:** 2B.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Volume 2B of the report but my instructions are that ...

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: No procedures ...

CHAIRPERSON: *Ja.*

ADV PAUL JOSEPH PRETORIUS SC: No procurement procedures ...

CHAIRPERSON: *Ja.*

ADV PAUL JOSEPH PRETORIUS SC: Or open tender procedures were followed.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: In each of those steps.

CHAIRPERSON: *Ja.*

ADV PAUL JOSEPH PRETORIUS SC: You have also told the Chair
10 Dr Bloom that from 35 million – the original contract price – to 265
million – the – at least a final payment although it appears there were
more which you have not dealt with in your report – several steps took
place between the 35 and 265. Correct?

DR JONATHAN ZORAH BLOOM: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: One of them was an increase of
what you refer to as the success fee?

DR JONATHAN ZORAH BLOOM: Correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Of R166 million. You have
investigated how that fee was calculated and with your experience and
20 knowledge in the trade as it were you are able to give an opinion to the
Chair as to how that was made up and whether that is within
reasonable parameters or normal acceptable parameters.

DR JONATHAN ZORAH BLOOM: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: That is the task we are going to
do now.

DR JONATHAN ZORAH BLOOM: Okay.

ADV PAUL JOSEPH PRETORIUS SC: So you say in the first bullet on page 12 that the invoice for R166 million excluding VAT was made up of two amounts. What were those amounts? We are on page 12 Chair.

DR JONATHAN ZORAH BLOOM: An amount of 152.7 million - 0.8 million – for Lead Manager and Debt Originator services related to the CDB loan and Chair there were two other amounts which are combined in the second bullet which refer to assistance Regiments purported to provide for certain of the hedging instruments that we will discuss later.

10 **ADV PAUL JOSEPH PRETORIUS SC:** That is the debt risk management instruments?

DR JONATHAN ZORAH BLOOM: Correct. So there were – there were specifically two of the instruments that we are going to discuss through the testimony that relate to fees or relate to that particular component of the 166.

ADV PAUL JOSEPH PRETORIUS SC: And what do you say in the second bullet there – second principal bullet there on page 12?

DR JONATHAN ZORAH BLOOM: The one based – where it says based on my financial (intervenes)?

20 **ADV PAUL JOSEPH PRETORIUS SC:** Well let us – before we go there.

DR JONATHAN ZORAH BLOOM: Okay.

ADV PAUL JOSEPH PRETORIUS SC: You have experience in the financial industry. Correct?

DR JONATHAN ZORAH BLOOM: (No audible reply).

ADV PAUL JOSEPH PRETORIUS SC: And you have told the Chair that

you have – and you must say yes because a nod ...

DR JONATHAN ZORAH BLOOM: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Will not be picked up – and you have told the Chair that included in your raft of experience is risk management – financial risk management and the fees charged therefore. Is that correct?

DR JONATHAN ZORAH BLOOM: Yes Chair.

ADV PAUL JOSEPH PRETORIUS SC: Right. So you are able to make – pass a judgment on whether fees charged are out of the norm or
10 within the norm and you are able to say what the norm is. Am I correct?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Alright. So what is the norm? How is a fee for a Lead Manager and Debt Originator for a loan made up?

DR JONATHAN ZORAH BLOOM: Okay. Chair there are two components. It is normally a value. In other words the – the amount to which the percentage of the fee – the percentage that is – that is the fee is calculated.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Let us deal with the first one – the amount of money.

DR JONATHAN ZORAH BLOOM: Yes.

ADV PAUL JOSEPH PRETORIUS SC: What is that amount?

DR JONATHAN ZORAH BLOOM: That amount could also be two components depending on – on what decision is made. The first

component would be on the – on the capital value. In other words for instance if you are applying for a home loan and you take – and it is R1 000 or R1 million or whatever the case may be and somebody is taking a fee which is a percentage. It would be a percentage of that. That is the capital value.

ADV PAUL JOSEPH PRETORIUS SC: The original capital value loaned?

DR JONATHAN ZORAH BLOOM: Correct. It is also referred to in the trade as notional. The notional value.

10 **ADV PAUL JOSEPH PRETORIUS SC:** So the first term of art – we will get to hedging later but the first time of art is notional?

DR JONATHAN ZORAH BLOOM: Correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: In any loan it is the original capital amount of that loan excluding interest?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Okay. So that is notional.

CHAIRPERSON: Just so that I understand that – that part. Are you saying when one wants to – when one is dealing with fees for a Lead Manager and Debt Originator of a loan - in this context – one of the
20 first things to know is what the capital amount of the loan is?

DR JONATHAN ZORAH BLOOM: Correct Chair.

CHAIRPERSON: And depend – maybe depending on a number of things you might have to bear that in mind because the fee might be or a component of the fee might be linked to the amount of the loan?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

CHAIRPERSON: Okay, alright.

ADV PAUL JOSEPH PRETORIUS SC: Of course said there were two matters to bear in mind when one deals with the amount. You have told the Chair that what one does when one calculates a fee is one has an amount and one applies a percentage then to that amount. So my fee for example would be one percent of that amount?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Now you have also told the Chair that one could use the original capital value of the loan – notional – as
10 the amount to which one applies the percentage?

DR JONATHAN ZORAH BLOOM: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: But you could use something else. What is that?

DR JONATHAN ZORAH BLOOM: Chair that is ...

CHAIRPERSON: I am sorry. Before that.

DR JONATHAN ZORAH BLOOM: No it is fine.

CHAIRPERSON: The reference to the original capital is that the amount that ultimately gets granted as a loan or is it the amount that your client may have asked you to get as a loan but you might have got
20 a lesser amount? Reference to original what does it relate to?

DR JONATHAN ZORAH BLOOM: Chair that would be per agreement. In other words if – if I was for instance sourcing a loan for you we would agree that this is the amount of the loan and that would be ...

CHAIRPERSON: That I want you to get for me?

DR JONATHAN ZORAH BLOOM: That is correct.

CHAIRPERSON: *Ja*, 2 billion for example?

DR JONATHAN ZORAH BLOOM: *Ja*.

CHAIRPERSON: Yes.

DR JONATHAN ZORAH BLOOM: That is correct.

CHAIRPERSON: So – so when the two of us are – when I am giving you a mandate for our purposes that is the original loan that you are talking about?

DR JONATHAN ZORAH BLOOM: That is correct.

CHAIRPERSON: Original amount?

10 **DR JONATHAN ZORAH BLOOM:** That is correct Chair because that is what you are looking for.

CHAIRPERSON: Yes.

DR JONATHAN ZORAH BLOOM: So that is – that is my mandate.

CHAIRPERSON: Yes. If - if you only succeed to get me 1 billion instead of two the – when we talk about the original it will remain 2 billion and the 1 billion you got would not be referred to as the original?

DR JONATHAN ZORAH BLOOM: That is correct because that was – that what was not part of the mandate.

20 **CHAIRPERSON:** Okay.

DR JONATHAN ZORAH BLOOM: The mandate was 2 billion.

CHAIRPERSON: Okay, thank you.

ADV PAUL JOSEPH PRETORIUS SC: Is that always the case or does it depend on the agreement between the parties?

DR JONATHAN ZORAH BLOOM: It is about the – it has got to do with

the agreement between the parties because what might happen is that the percentage changes. If I ...

ADV PAUL JOSEPH PRETORIUS SC: Let us not go to the percentage.

DR JONATHAN ZORAH BLOOM: No, with all the fees.

ADV PAUL JOSEPH PRETORIUS SC: The Chair is just talking about the notional or the original amount of the loan. Is it always what is mandated or is – could it be what loan was actually received?

DR JONATHAN ZORAH BLOOM: It would be – it would be on the loan that is actually received because that was what you were able to
10 achieve.

ADV PAUL JOSEPH PRETORIUS SC: No, but now you have said two things to the Chair. So let us go back a step. When you talk about a fee you talk about an amount of money on the one hand and a percentage applied to that amount of money.

DR JONATHAN ZORAH BLOOM: Correct.

ADV PAUL JOSEPH PRETORIUS SC: Right. So let us leave aside the percentage applied for the moment and let us just look at the basic amount of money to which you apply your fee. The Chair asked you that amount of money is it what I as the borrower want from you the
20 lender in my mandate to the loan provider.

DR JONATHAN ZORAH BLOOM: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Or is it what the actual loan capital amount is? So the Chair postulates a situation where I could get to Regiments and I could say listen I want a R2 billion. You come back or Regiments comes back to me and says sorry you cannot have 2

billion but I can get you 1 billion, right. What is the figure on which the fee is based?

DR JONATHAN ZORAH BLOOM: It will be 1 billion.

ADV PAUL JOSEPH PRETORIUS SC: Okay. So Chair I am afraid ...

CHAIRPERSON: *Ja.*

ADV PAUL JOSEPH PRETORIUS SC: I hope that clarifies.

CHAIRPERSON: Okay - to the extent that the term of original amount may still be used must we understand it therefore to refer to the amount that is loaned?

10 **DR JONATHAN ZORAH BLOOM:** That is correct Chair.

CHAIRPERSON: That is actually loaned?

DR JONATHAN ZORAH BLOOM: Yes Chair.

CHAIRPERSON: Okay, thank you.

ADV PAUL JOSEPH PRETORIUS SC: Right. Now the – we are still in the amount of money box at the moment or category rather. That – one amount that can be used to apply a percentage is the actual amount of the loan. There is another amount that could be used. What is that amount?

20 **DR JONATHAN ZORAH BLOOM:** Chair that is a – that is an amount which includes an aggregate of all the repayments made over the full term of the loan. In other words it includes all the costs in everything that is involved with – with regard to that loan. It is referred to yield to maturity. That is just the term for it but it is a - let us put it. If I can put it another way – it is a much higher value than what we were referring to as the notional value of the loan in the previous example.

So this is – this is the amount that is repaid in aggregate over the full period of the loan.

ADV PAUL JOSEPH PRETORIUS SC: It is capital plus interest?

DR JONATHAN ZORAH BLOOM: Capital plus interest and over the – over the tenure but there is – yes we can leave it there.

CHAIRPERSON: So what you have just said now is it another way of arriving – is it another way of determining a fee for transactional advisors such as Regiments? In other words one way – are you saying one way of doing this is to say to a transactional advisor I want a loan
10 for R2 billion. You – you raise it and I will pay you X percentage of the amount of loan that you get me?

DR JONATHAN ZORAH BLOOM: Correct.

CHAIRPERSON: That is one way?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

CHAIRPERSON: Are you saying therefore there is another way and another way is – is that the fee is calculated on a different basis and the different basis is you look at the repayments over a long period including interest?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

20 **CHAIRPERSON:** Okay, thank you.

ADV PAUL JOSEPH PRETORIUS SC: Now as we know from bond repayments if I take the capital amount of the bound that I have to pay and I add the interest I end up paying more than double for my home. If I buy a home for R1 million and I take the full amount of capital plus interest I end up paying more than R2 million for it. Is that correct?

DR JONATHAN ZORAH BLOOM: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: So the yield to maturity as you have referred to is a far higher amount - much higher amount – than just the notional original capital amount?

DR JONATHAN ZORAH BLOOM: That is correct Chair. Can I ...?

ADV PAUL JOSEPH PRETORIUS SC: Now I can choose either. Correct?

DR JONATHAN ZORAH BLOOM: Chair yes. It depends on what agreement is reached between the parties ...

10 **ADV PAUL JOSEPH PRETORIUS SC**: Yes.

DR JONATHAN ZORAH BLOOM: But the norm in the industry is a percentage on the notional value not on the higher value.

ADV PAUL JOSEPH PRETORIUS SC: Right.

DR JONATHAN ZORAH BLOOM: That is the – that is the norm.

ADV PAUL JOSEPH PRETORIUS SC: And what – sorry.

20 **CHAIRPERSON**: You – you mentioned a term for the regime in terms of which your fee is - as a transactional advisor – your fee is determined on the basis of the repayments. I think Mr Pretorius has got the terminology already. I have not yet got it. Something yield to value or something. What is that?

DR JONATHAN ZORAH BLOOM: That is yield to maturity.

CHAIRPERSON: Yield to maturity?

DR JONATHAN ZORAH BLOOM: Yes Chair.

CHAIRPERSON: So that – that refers – the yield part refers to your fee and maturity refers to the capital and interest over the period that

repayments are made?

DR JONATHAN ZORAH BLOOM: Chair the yield ...

CHAIRPERSON: Oh that is quite convoluted – a convoluted way of – of putting it.

DR JONATHAN ZORAH BLOOM: I think rather see the – when we talk about a yield ...

CHAIRPERSON: *Ja.*

DR JONATHAN ZORAH BLOOM: We talk about the interest rate.

CHAIRPERSON: Yes.

- 10 **DR JONATHAN ZORAH BLOOM:** That is applicable over – over the entire period that is to maturity ...

CHAIRPERSON: Yes.

DR JONATHAN ZORAH BLOOM: Over the entire tenure of the loan.

CHAIRPERSON: Yes.

DR JONATHAN ZORAH BLOOM: So ...

CHAIRPERSON: Oh, so it is interest over that whole long period of repayment?

DR JONATHAN ZORAH BLOOM: Plus all the capital.

CHAIRPERSON: Capital and yes, okay. Thank you.

- 20 **ADV PAUL JOSEPH PRETORIUS SC:** Okay. Let us just ...

CHAIRPERSON: Hopefully we will get there Dr Bloom.

DR JONATHAN ZORAH BLOOM: No Chair you are doing well.

CHAIRPERSON: Hopefully we will get – we will get there, okay.

ADV PAUL JOSEPH PRETORIUS SC: Let us just confirm the terminology. Capital only the smaller amount the original capital

amount you are going to refer to as notional?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Capital plus interest repaid over the full period of the loan you are going to refer to as yield or yield to maturity?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Right and we will always refer back to the underlying substance of the terminology when we go through your evidence.

10 **CHAIRPERSON:** So ...

ADV PAUL JOSEPH PRETORIUS SC: So there are two choices. I can use the smaller amount – notional or – and that is the industry norm you say?

DR JONATHAN ZORAH BLOOM: Yes Chair.

ADV PAUL JOSEPH PRETORIUS SC: But also it is not unheard of for parties to agree that the larger amount – the yield – is used?

DR JONATHAN ZORAH BLOOM: Yes it is used but it is – it is more the exception to the rule.

ADV PAUL JOSEPH PRETORIUS SC: Alright. Now ...

20 **CHAIRPERSON:** If ...

ADV PAUL JOSEPH PRETORIUS SC: The next step.

CHAIRPERSON: Before that Mr Pretorius. If I want to distinguish between the two correctly I want to call them it is regime this regime that. The one would be yield to maturity regime – I would imagine. Would that be - would that be a good description?

DR JONATHAN ZORAH BLOOM: Very much so Chair.

CHAIRPERSON: And the other one you would call what?

DR JONATHAN ZORAH BLOOM: Notional.

CHAIRPERSON: Notional ...

DR JONATHAN ZORAH BLOOM: Value.

CHAIRPERSON: Amount? Notional value (intervenes).

DR JONATHAN ZORAH BLOOM: Or notional amount is right.

CHAIRPERSON: Notional amount regime?

DR JONATHAN ZORAH BLOOM: Yes.

10 **CHAIRPERSON**: So we can have those regimes?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

CHAIRPERSON: Okay. That might not suit you Mr Pretorius. It is just for my own.

ADV PAUL JOSEPH PRETORIUS SC: No it suits me absolutely.

CHAIRPERSON: *Ja*.

ADV PAUL JOSEPH PRETORIUS SC: Except as with lawyers ...

CHAIRPERSON: *Ja*.

ADV PAUL JOSEPH PRETORIUS SC: Financiers – it is not notional at all. It is actual.

20 **CHAIRPERSON**: That is exactly what I am thinking.

ADV PAUL JOSEPH PRETORIUS SC: You can be forgiven for doing so but we will take it step by step.

CHAIRPERSON: *Ja*, okay.

ADV PAUL JOSEPH PRETORIUS SC: Alright. So you have two base amounts. One the smaller amount – notional – or the bigger amount –

yield or yield to maturity?

DR JONATHAN ZORAH BLOOM: Correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: One applies a percentage to either of those amounts to determine the fee?

DR JONATHAN ZORAH BLOOM: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: So I can say - and we will get to the actual percentages – I as the transactional advisor to you Transnet I want 1 percent of the smaller amount or one percent of the larger amount?

10 **DR JONATHAN ZORAH BLOOM:** Yes Chair. Normally ...

ADV PAUL JOSEPH PRETORIUS SC: Do not get complicated now.

DR JONATHAN ZORAH BLOOM: Okay.

ADV PAUL JOSEPH PRETORIUS SC: One would image however that there are also industry norms about the amount of that percentage or the size of that percentage one applies. Is that correct?

DR JONATHAN ZORAH BLOOM: Yes Chair.

ADV PAUL JOSEPH PRETORIUS SC: And you are aware of those?

DR JONATHAN ZORAH BLOOM: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: And you are going to tell the
20 Chair about those in a moment but just at a conceptual level if we may – notional level – sorry – conceptual level just at a conceptual level one would imagine that if one is using the smaller amount the percentage would be bigger?

DR JONATHAN ZORAH BLOOM: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: And if one was using the larger

amount the percentage would be smaller?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: What happened here?

DR JONATHAN ZORAH BLOOM: Chair if we can maybe look at the numbers that will be – that will be adequate for the explanation in - on slide 12. If we ...

ADV PAUL JOSEPH PRETORIUS SC: There is a diagram on slide 12 Chair which attempts to explain this.

CHAIRPERSON: Hm.

10 **ADV PAUL JOSEPH PRETORIUS SC:** It is on the page that you have before you.

CHAIRPERSON: Well I am still on – on your question. You – you say if one uses the notional amount regime the percentage should be what?

ADV PAUL JOSEPH PRETORIUS SC: Smaller.

CHAIRPERSON: Smaller.

ADV PAUL JOSEPH PRETORIUS SC: Within a range which is the market norm.

CHAIRPERSON: Yes and you say if you use the yield to maturity regime it should be bigger?

20 **ADV PAUL JOSEPH PRETORIUS SC:** Smaller percentage.

CHAIRPERSON: Smaller than if you use the ...?

ADV PAUL JOSEPH PRETORIUS SC: Yes.

CHAIRPERSON: Okay. Maybe if Dr Bloom can explain that to me why?

DR JONATHAN ZORAH BLOOM: Yes Chair because the value – the notional value – is a lot smaller if one wants to put it that way - than

the yield to maturity regime. In other words it is a much smaller number because remember as we discussed the yield to maturity includes all the repayments and all of that over the maturity.

CHAIRPERSON: Oh, small in terms of – of the Rand – of the amount not smaller in terms of the percentage?

DR JONATHAN ZORAH BLOOM: That is correct Chair and that is what why the percentages become important.

CHAIRPERSON: Okay. I thought – I thought it was in relation to a percentage. The percentage could be the same but because the
10 amounts are different one is higher than another one the actual amount received would be different?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

CHAIRPERSON: Ja, okay.

ADV PAUL JOSEPH PRETORIUS SC: So by way of example if there is a loan of R100 1 percent would be R1?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: That is notional. If at the end of the day I finally end up paying R200 but I still want 1 percent what am I paying?

20 **DR JONATHAN ZORAH BLOOM:** Two.

ADV PAUL JOSEPH PRETORIUS SC: R2.

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: Alright. So let us – let us deal with your diagram or the diagram that we have discussed if we may.

DR JONATHAN ZORAH BLOOM: Chair the diagram relates directly to

the R1.5 billion loan from the CDB on the ...

ADV PAUL JOSEPH PRETORIUS SC: Which – but you have translated them to Rand?

DR JONATHAN ZORAH BLOOM: Yes correct.

ADV PAUL JOSEPH PRETORIUS SC: Okay.

DR JONATHAN ZORAH BLOOM: So let us start with the - with the right hand column if we can. The notional over there is R18 billion. So in other words that represents the US\$1.5 billion loan from the China Development Bank that in Rand terms it is 18 billion. Just by the way
10 Chair this is the information that Regiments used in the calculation of their fees. So that we can just align as well.

ADV PAUL JOSEPH PRETORIUS SC: Right. So in actual fact the two – the R166 million - at least in large part - fee was calculated as you have set out here. It was based on notional. Well that is going too far too fast.

DR JONATHAN ZORAH BLOOM: Yes.

ADV PAUL JOSEPH PRETORIUS SC: I am sorry. We start with a notional. That is the basic amount of the loan – original capital?

DR JONATHAN ZORAH BLOOM: Correct Chair.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Right.

DR JONATHAN ZORAH BLOOM: This is – this is merely by way of example that the notional is included here because the way Regiments did the calculation was on the yield to maturity. So – so essentially if we can move then to the - the left hand portion of the diagram the yield – the yield to maturity of that \$1.5 billion loan was R102 billion.

ADV PAUL JOSEPH PRETORIUS SC: So that is capital plus interest over the full period of the loan?

DR JONATHAN ZORAH BLOOM: Over the full duration maturity.

CHAIRPERSON: Just repeat that about R102 billion.

DR JONATHAN ZORAH BLOOM: So the R102 billion ...

CHAIRPERSON: Is based on the yield to maturity regime?

ADV PAUL JOSEPH PRETORIUS SC:

DR JONATHAN ZORAH BLOOM: Is the yield – it is the yield to maturity.

10 **CHAIRPERSON:** It is a yield to – *ja*.

DR JONATHAN ZORAH BLOOM: Correct Chair.

CHAIRPERSON: *Ja*.

DR JONATHAN ZORAH BLOOM: What happened then was Regiments took ...

ADV PAUL JOSEPH PRETORIUS SC: Well let us what the norm is first. The norm would be - if you are going to use R18 billion what is the industry norm in relation to the percentage that you would apply to R18 billion?

20 **DR JONATHAN ZORAH BLOOM:** Chait that – that differs what – what the market is – what the market dictates and – and who you are talking to and whose prices – whose pricing you are comparing with who etcetera. So to say these – this is exact – this is what the percentage would be is – is almost impossible.

CHAIRPERSON: Is difficult, *ja*.

DR JONATHAN ZORAH BLOOM: Correct. So ...

CHAIRPERSON: But you – you would be able to say I would imagine that below a certain percentage is - would be hard to get?

DR JONATHAN ZORAH BLOOM: Correct.

CHAIRPERSON: To get somebody who charge below a certain percentage and it should be possible to say it would be very extraordinary to find somebody who charges above a certain percentage?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

CHAIRPERSON: So somewhere in between then you could have what
10 you regard as more or less not shocking?

DR JONATHAN ZORAH BLOOM: Yes Chair. So in the – at the time when these transactions were ongoing the – the basic rates that one could achieve or the percentages, fees that one could achieve in the market was between more or less 0.2 percent and 0.5 percent.

CHAIRPERSON: Hm.

DR JONATHAN ZORAH BLOOM: (Intervenes).

ADV PAUL JOSEPH PRETORIUS SC: (Intervenes) if you take the lesser amount you could achieve between 0.2 and 0.5 percent. So that is the right hand column?

20 **DR JONATHAN ZORAH BLOOM:** That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Is the norm?

DR JONATHAN ZORAH BLOOM: That is correct at the time of the transaction.

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: Now please tell the Chair if you

used the yield - the higher amount – the R102 billion what percentage could one apply as the norm?

DR JONATHAN ZORAH BLOOM: Chair that would be about 0.01 percent. It would be 0.01 percent or less. This is not what is stated over there but ...

CHAIRPERSON: Oh.

DR JONATHAN ZORAH BLOOM: But Advocate Pretorius has asked what the norm is.

CHAIRPERSON: Yes.

10 **DR JONATHAN ZORAH BLOOM:** So if we compare what is stated over there 0.15 percent ...

CHAIRPERSON: Yes.

DR JONATHAN ZORAH BLOOM: To what the norm would be which is 0.01 percent ...

CHAIRPERSON: Hm.

DR JONATHAN ZORAH BLOOM: This is 0.14 percent more.

CHAIRPERSON: Okay.

ADV PAUL JOSEPH PRETORIUS SC: Alright. So if we want to – let us just have this picture reflect the norm for the – to start with because
20 the right hand column reflects the norm. Correct?

DR JONATHAN ZORAH BLOOM: Ja.

ADV PAUL JOSEPH PRETORIUS SC: So in that box underneath ZAR102 billion if we want to see the norm let us put 0.01 percent. Correct/

DR JONATHAN ZORAH BLOOM: Yes Chair.

ADV PAUL JOSEPH PRETORIUS SC: Okay. So we now have a picture Chair if you are going to use the bigger amount ...

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: If you want to be more or less within the norm ...

CHAIRPERSON: Hm. The notional regime.

ADV PAUL JOSEPH PRETORIUS SC: Of 102 billion you would use a factor of 0.01.

CHAIRPERSON: Yes.

- 10 **ADV PAUL JOSEPH PRETORIUS SC:** If you were going to use the lesser one 8 billion – 18 billion – one would within normal parameters use 0.2 and 0.5 which is a far higher percentage ...

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: Than 0.01.

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: Okay. We are on the same page so far.

DR JONATHAN ZORAH BLOOM: That is correct Chair, yes.

ADV PAUL JOSEPH PRETORIUS SC: What did Regiments do?

- 20 **DR JONATHAN ZORAH BLOOM:** Regiments applied 0.15 percent to the yield to maturity which is a rounded figure of 102 billion and if I may the – if you do that calculation then you would get to the 152.7 billion – ag – million that you – that is stated at the top of the slide.

ADV PAUL JOSEPH PRETORIUS SC: Alright but let us take it step by step.

DR JONATHAN ZORAH BLOOM: Okay.

ADV PAUL JOSEPH PRETORIUS SC: A norm which you know - from your experience and in your opinion that you are giving to the Chair – the norm is if you use the higher amount you use a lesser percentage?

DR JONATHAN ZORAH BLOOM: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: If you use a lower amount – the notional – you use a higher percentage?

DR JONATHAN ZORAH BLOOM: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: And you are saying to the Chair
10 what Regiments did was they used the higher amount and a higher percentage?

DR JONATHAN ZORAH BLOOM: That is correct Chair even – if you want to you can compare the – the lower percentage of on the notional side. In other words the 0.2 compare that to the 0.15. It is only slightly less ...

CHAIRPERSON: Yes.

DR JONATHAN ZORAH BLOOM: But the basis on which it was applied was substantially different.

ADV PAUL JOSEPH PRETORIUS SC: So let us just summarise there.
20 You have a higher amount and a lower amount as the base on which you apply your percentage to calculate a fee?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: If you use the lower amount the norm says you can use the higher percentage?

DR JONATHAN ZORAH BLOOM: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: If you use the higher amount the norm says then you must use a lower percentage?

DR JONATHAN ZOHAR BLOOM: That's correct.

ADV PAUL JOSEPH PRETORIUS SC: If you use the higher amount the norm says then you must use a lower percentage, logical.

DR JONATHAN ZOHAR BLOOM: Correct, ja.

ADV PAUL JOSEPH PRETORIUS SC: What Regiments did was to use the higher amount and a percentage beyond market norms.

DR JONATHAN ZOHAR BLOOM: That's correct Chair.

10 **ADV PAUL JOSEPH PRETORIUS SC:** Is that correct, alright and you explain that then on page 13.

DR JONATHAN ZOHAR BLOOM: That's right Chair.

ADV PAUL JOSEPH PRETORIUS SC: And you say that the fee Regiments charged .15 on yield is equivalent to .85 on the notional amount of 18billion, right?

DR JONATHAN ZOHAR BLOOM: That's correct.

ADV PAUL JOSEPH PRETORIUS SC: And if one goes back a page you will see the norm there is .2 to .5.

DR JONATHAN ZOHAR BLOOM: That's correct.

20 **ADV PAUL JOSEPH PRETORIUS SC:** And if you do the math they were .85 if one bases it on the notional amount of 18billion. In short what you're saying is that it was beyond market norms.

DR JONATHAN ZOHAR BLOOM: Yes Chair well beyond market norms.

ADV PAUL JOSEPH PRETORIUS SC : Well beyond market norms and you tell us by how much you estimate that to be on page 13, so if you

would just take the Chair through page 13 please.

DR JONATHAN ZOHAR BLOOM: Yes Chair, so as was indicated by Advocate Pretorius the 0.15% which we know of on the yield, is equivalent to the 0.85% on the notional value, which is the R18billion that we've used. The second point refers to the market conventions and Transnet practices to pay lead arrangement fees on notional and not on the yield to maturity as Regiments did or claimed.

ADV PAUL JOSEPH PRETORIUS SC: Let's pause there, because you have two sources of information on which you base your expert opinion,
10 right.

DR JONATHAN ZOHAR BLOOM: That's right.

ADV PAUL JOSEPH PRETORIUS SC: The one is your own experience in the financial industry, financing industry, correct?

DR JONATHAN ZOHAR BLOOM: Correct yes.

ADV PAUL JOSEPH PRETORIUS SC: The other is your examination of what happened historically in Transnet?

DR JONATHAN ZOHAR BLOOM: That's correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: And against the norms produced in the industry and produced in Transnet itself was the Regiment's fee
20 within those norms or outside of those norms?

DR JONATHAN ZOHAR BLOOM: Outside of those norms.

ADV PAUL JOSEPH PRETORIUS SC: Both, both the Transnet practice and industry norms?

DR JONATHAN ZOHAR BLOOM: Yes Chair that's correct.

ADV PAUL JOSEPH PRETORIUS SC: If you go to the third bullet.

DR JONATHAN ZOHAR BLOOM: So that is what we've been discussing, so the – based on market norms or conventions the fee would have been charged of 0.2%, between 0.2 and 0.5% on the notional value.

ADV PAUL JOSEPH PRETORIUS SC: Okay if you just go back.

CHAIRPERSON: I'm sorry Mr Pretorius, on market conventions your point number two, market conventions and Transnet practices are to pay lead arrangement fees on notional and not on yield to maturity as Regiments did. Market conventions wouldn't that be what we talked
10 about when we talked about norms in the market?

DR JONATHAN ZOHAR BLOOM: That's correct Chair. In other words the fee that is payable is calculated on the notional value and not the yield, that's what's the norm in the market.

CHAIRPERSON: That is insofar as the lead arrangement is concerned and as far as the debt origination if I can call it that, and what's the market conventions and practices or is that something that you are still going to come to?

DR JONATHAN ZOHAR BLOOM: This was a – it depends, lead manager and debt originator is in this particular case a consolidated
20 term if I can put it that way, so it was – it depends on if you're the lead manager you are the debt originator in certain cases, but the, what we're referring to here is their – Regiments requirement or the Regiments that acted as the lead manager and debt originator for which they're claiming this fee.

CHAIRPERSON: Oh, you know I thought, you see on page we talked

about that amount of R152million, R152,7million that they were, Regiments were to be the lead manager and debt originator and here on point 2 at page 13 you say market conventions and Transnet practices are to pay lead arrangement fees on notional and not on yield to (indistinct), I thought that what you meant is lead manager and debt originator are – can be two separate people or entities but sometimes it's one.

DR JONATHAN ZOHAR BLOOM: That's correct Chair.

CHAIRPERSON: But I thought what you meant was these conventions,
10 market conventions and practices that you are talking about in bullet point number two on page 13 relate only to the lead management role as opposed the debt origination role, but you are now clarifying to say you meant a combination of both in regard to this transaction.

DR JONATHAN ZOHAR BLOOM: 100% correct Chair.

CHAIRPERSON: Okay now I understand, okay.

ADV PAUL JOSEPH PRETORIUS SC: Right, and when you say market convention is to base the fee calculation on notional, a smaller amount.

DR JONATHAN ZOHAR BLOOM: That's correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: You're saying that there may yet
20 be exceptions?

DR JONATHAN ZOHAR BLOOM: Yes Chair.

ADV PAUL JOSEPH PRETORIUS SC: And if one uses by way of exception the higher amount then the percentage should be much lower?

DR JONATHAN ZOHAR BLOOM: That's correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Logic. Alright so what do you say then in the third bullet, if Regiments was to use notional?

DR JONATHAN ZOHAR BLOOM: So if we assume that the market norms or we accept that the market norms in that period of time were between 0.2 and 0.5% and if you look at the first bullet Chair the equivalent, in other words in the 0.85% that's what one would be comparing this with, which indicates that Regiment's charged excessively higher fees on their notional equivalent than what the market norms were.

10 **ADV PAUL JOSEPH PRETORIUS SC:** So you take 18billion which is the original capital amount.

DR JONATHAN ZOHAR BLOOM: Correct.

ADV PAUL JOSEPH PRETORIUS SC: Market norms say you must charge .2 between .5% on your calculations they charge .85 which is beyond the norm and that is a substantial amount you say.

DR JONATHAN ZOHAR BLOOM: Correct Chair, I didn't calculate it but if one just subtracts the 0.85% from the 0.5% one gets a good indication.

ADV PAUL JOSEPH PRETORIUS SC: Right the next bullet you say if
20 however Regiments were to say, as they did, we don't want to use a smaller amount, we want to use the larger amount.

DR JONATHAN ZOHAR BLOOM: Correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: The larger amount being 102billion as opposed to 18billion.

DR JONATHAN ZOHAR BLOOM: Correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Then the percentage fee that the market would ordinarily dictate would be what?

DR JONATHAN ZOHAR BLOOM: In the region of 0.01% in other – ja I said previously.

ADV PAUL JOSEPH PRETORIUS SC: Well here you say in the fourth bullet 0.06.

DR JONATHAN ZOHAR BLOOM: Okay let me explain that now it's – what happens is if one reverses the calculation so if we want to compare something, so what I did in terms of the calculation I said if
10 the market norm is between 0.2 and 0.5 and I took the average of those two, which is then 0.35 and I compare that, if I take that percentage as an assumption and I compare that to what the – what would that be, in other words I'm doing the calculation in reverse, so how much percentage would that be on the yield to maturity, not the 15 basis points, 0.15% sorry Chair, that Regiments charged but if through market conventions then it should have been 0.06% and 0. – ja.

ADV PAUL JOSEPH PRETORIUS SC: I'm afraid you lost me there and I'm sure the Chair followed you to the letter, let me take a step back if I may, in the fourth bullet you talk about market convention and Transnet
20 practice, I would imagine in telling the hair what market convention and practice was you are referring to an external norm, do you follow what I say?

DR JONATHAN ZOHAR BLOOM: Yes Chair.

ADV PAUL JOSEPH PRETORIUS SC: So what would that external norm be, if one was to apply the yield to maturity, you told us that a

minute ago on page 12.

DR JONATHAN ZOHAR BLOOM: 0.01%.

ADV PAUL JOSEPH PRETORIUS SC: Alright so in fact we should correct the fourth bullet, if we're talking about market convention and Transnet practice, rather than your complex calculations.

DR JONATHAN ZOHAR BLOOM: No Chair the – what that 0.06 represents is not the – yes from that perspective you're right.

ADV PAUL JOSEPH PRETORIUS SC: Well it's not from that perspective, it's the words in bullet four.

- 10 **DR JONATHAN ZOHAR BLOOM:** Correct, that would be if the fee was based on yield market convention and Transnet practice it would dictate a percentage of 0.01%, that's right.

ADV PAUL JOSEPH PRETORIUS SC: Okay, so can – would you be comfortable if we took 0.06 out, I'm sorry to – my apologies for setting your calculations aside, we're talking about external convention and Transnet practice, now whether it's external historical facts you say that would produce a figure of 0.01.

DR JONATHAN ZOHAR BLOOM: Correct Chair.

CHAIRPERSON: That's the market convention and Transnet practice?

- 20 **DR JONATHAN ZOHAR BLOOM:** That's correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Can we go to the next bullet.

CHAIRPERSON: I'm sorry.

ADV PAUL JOSEPH PRETORIUS SC: Sorry Chair.

CHAIRPERSON: The Transnet practice is it always in accordance with market conventions, in the – here in what we are dealing with? I'm just

trying to understand if there is any particular significance in always pairing them, the market convention and the Transnet practice because if the Transnet practice is always in accordance with the market convention then all one needs to know is just the market convention.

DR JONATHAN ZOHAR BLOOM: Yes Chair Transnet as far as I understand and in the discussions that is what they do, they would use market norms and conventions in order to price certain transactions.

CHAIRPERSON: Okay thank you.

ADV PAUL JOSEPH PRETORIUS SC: And they had a skilled treasury
10 to guide them in this regard.

DR JONATHAN ZOHAR BLOOM: That's correct Chair.

CHAIRPERSON: But ultimately are we amending that 0.06 on page 13 to be 0.01?

ADV PAUL JOSEPH PRETORIUS SC: Yes, as I understand you're comfortable with that?

DR JONATHAN ZOHAR BLOOM: I'm comfortable with that Chair but I think we shouldn't lose sight of the 0.06% ...(intervention)

CHAIRPERSON: For a different point?

DR JONATHAN ZOHAR BLOOM: For a different point.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Alright.

DR JONATHAN ZOHAR BLOOM: I will come back to it.

CHAIRPERSON: You can – you will make that point in due course?

DR JONATHAN ZOHAR BLOOM: Yes Chair.

CHAIRPERSON: But here we can say 0.01.

DR JONATHAN ZOHAR BLOOM: Correct Chair.

CHAIRPERSON: Okay, alright.

ADV PAUL JOSEPH PRETORIUS SC: And in fact did Regiments charge

DR JONATHAN ZOHAR BLOOM: 0.1 ...(intervention)

ADV PAUL JOSEPH PRETORIUS SC: On the higher amount, yield.

DR JONATHAN ZOHAR BLOOM: 0.15%.

ADV PAUL JOSEPH PRETORIUS SC: Now was that within market norms?

DR JONATHAN ZOHAR BLOOM: No Chair.

10 **ADV PAUL JOSEPH PRETORIUS SC:** Was it slightly out or ...

DR JONATHAN ZOHAR BLOOM: From – if one compares 0.01% to 0.15% it doesn't sound like a big difference but on a very large amount it makes it a substantial difference so that's why ...(intervention)

ADV PAUL JOSEPH PRETORIUS SC: Well correct me if I'm wrong, it's 15 times the amount?

DR JONATHAN ZOHAR BLOOM: That's correct.

CHAIRPERSON: That must be quite high.

DR JONATHAN ZOHAR BLOOM: Yes Chair.

20 **CHAIRPERSON:** Let me ask you this question then, it's part of me trying to look at this with as much benefit of your knowledge as possible, would this be shocking to somebody who is familiar with the market convention?

DR JONATHAN ZOHAR BLOOM: I believe so Chair.

CHAIRPERSON: Okay, thank you.

ADV PAUL JOSEPH PRETORIUS SC: Of course the question that we

will ask in due course who made these decisions, why did they make them, when did they make them and for whose benefit, we begin to deal with those question in future pages.

DR JONATHAN ZOHAR BLOOM: Yes Chair.

ADV PAUL JOSEPH PRETORIUS SC: Right, so in the sixth bullet you come to a conclusion and what do you say there?

DR JONATHAN ZOHAR BLOOM: Chair that Regiments charged a fee that is not nearly in line with market convections and Transnet practice.

CHAIRPERSON: Actually when you say not in line you're being kind to
10 them isn't it? Way out of line?

DR JONATHAN ZOHAR BLOOM: Yes it's way out of line Chair, that's correct.

CHAIRPERSON: Ja.

ADV PAUL JOSEPH PRETORIUS SC: Well one way of looking at it is 15 times more than it should.

DR JONATHAN ZOHAR BLOOM: Yes Chair.

ADV PAUL JOSEPH PRETORIUS SC: And you've put an estimate on that, we needn't go to how you calculated that because we've got enough maths to do as we go along. What is your – in your opinion the
20 overcharge estimated to be?

DR JONATHAN ZOHAR BLOOM: Chair based on – and these calculations as I indicated previously are based on the data that Regiments used in their calculation of the fee, so if you look at it from the perspective of they charged 152.7million and you use what they did and you convert then they're overcharged by 90million, in other words

152.7 minus the 90 is what the fee should have been based on the data that they used but that, as we've determined that is well beyond market convention.

ADV PAUL JOSEPH PRETORIUS SC: Alright let's go to the last bullet you qualify everything that you've told the Chair up till now and if you do the math there's an overcharge on your estimate and in your opinion of 90million rand.

DR JONATHAN ZOHAR BLOOM: Correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: But what is the point you make,
10 finally on page 13?

DR JONATHAN ZOHAR BLOOM: Chair this relates – the last point is the that Regiments should not have been paid any fee for this work because as we determined previously, there was sufficient capacity and knowledge and skill within the Transnet Funding Department or the Debt Raising Department as it was then to perform the required function. So in my opinion there was no need for Transnet to actually outsource this function to an external party.

CHAIRPERSON: That is the overall point you make and then the other point is the one you have been dealing with I think is even if there was
20 justification to give Regiments this work to do, there was no justification for charging the amounts that they charged, is that correct?

DR JONATHAN ZOHAR BLOOM: That's correct Chair.

CHAIRPERSON: Now in terms of what you consider to be in excess of what the norm was or what they should have paid or what one could

expect to be an advisor in their position, to have been paid for this kind of work, is there anything that you came across in terms of documentation that says to you, maybe they can come up with some justification or is it one of those situations where you are able to say, there is just no way in which anybody can justify this kind of amount for this kind of work.

DR JONATHAN ZOHAR BLOOM: Chair I never came across any documentation which purported to indicate that, you know, that there was insufficient capacity or that this – these are the types of fees that
10 could be charged for the nature and the scope for the work that was being done.

CHAIRPERSON: Okay thank you.

ADV PAUL JOSEPH PRETORIUS SC: Let's just summarise to there, the analysis that you've done up to now to which loan did that relate. Remember we had the 2.5billion Dollar split into 1.5 and 1billion, right and then we had further amounts. When we're talking about the 12billion Club Loan that you talk about on page 14, you have told the Chair that the 1billion Dollar portion of the 2.5billion was shelved.

DR JONATHAN ZOHAR BLOOM: Correct Chair.

20 **ADV PAUL JOSEPH PRETORIUS SC:** And it was – what was – it was replaced with a 12billion rand which was then, presumably more or less equivalent to 1billion Dollars, not really but almost, the 12billion rand replaced the 1billion rand, portion of the 2.5billion.

DR JONATHAN ZOHAR BLOOM: Yes Chair the 1billion Dollar which was shelved in favour of the 12billion Club Loan.

ADV PAUL JOSEPH PRETORIUS SC: Now that was a loan raised domestically, in South Africa.

DR JONATHAN ZOHAR BLOOM: That's correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Fromm a syndicate of lenders.

DR JONATHAN ZOHAR BLOOM: Correct.

ADV PAUL JOSEPH PRETORIUS SC: We'll talk about that in due course.

DR JONATHAN ZOHAR BLOOM: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Alright you deal with that loan on
10 page 14. If you could just tell the Chair of those facts by way of background that appear on page 14.

DR JONATHAN ZOHAR BLOOM: Chair as we've discussed the 1billion portion of the 2.5billion US Dollar CDB loan was shelved in favour of the 12billion syndicated Club Loan. What is important just to note, which we haven't spoken about yet is the duration of that loan, in other words how long will it be till it gets paid off, which is 15 years and that it was concluded using a variable interest rate or what we term – if I can introduce another term Chair, the floating interest rate which is the same as variable interest rate on the majority of our loans.

20 **CHAIRPERSON:** Yes some witness told me about a floating interest rate, I think there is a floating and a fixed interest rate.

DR JONATHAN ZOHAR BLOOM: That's correct Chair, we're going to talk about that a lot.

CHAIRERSON: Okay, alright, thank you.

ADV PAUL JOSEPH PRETORIUS SC: We know that out there in the

market place interest rates fluctuate.

DR JONATHAN ZOHAR BLOOM: That's correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Interest rates are determined in various ways, we have the repo rate which is determined by the Reserve Bank but it varies from month to month almost.

DR JONATHAN ZOHAR BLOOM: That's correct.

ADV PAUL JOSEPH PRETORIUS SC: Right but in any event if you enter into an agreement with a floating interest rate, you pay a rate that is undetermined, fluctuating and unpredictable.

10 **DR JONATHAN ZOHAR BLOOM**: That's correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: And you've told the Chair that, that's sometimes risky.

DR JONATHAN ZOHAR BLOOM: That's correct.

ADV PAUL JOSEPH PRETORIUS SC: For the borrower at least.

DR JONATHAN ZOHAR BLOOM: That's true.

ADV PAUL JOSEPH PRETORIUS SC: Okay what happened on the 12th of May 2015 in relation to the Club Loan?

DR JONATHAN ZOHAR BLOOM: Chair on the 12th of May, JP Morgan was named as the preferred bidder to lead, arrange and underwrite in
20 other words we can see those – we can take those three concepts as one if you like for now, the Club Loan and there was a letter issued and signed by Mr Anoj Singh where he indicated to JP Morgan that they would be the preferred bidder for this work.

ADV PAUL JOSEPH PRETORIUS SC: Right, were Regiments involved in some way?

DR JONATHAN ZOHAR BLOOM: Regiments was the supplier development partner of JP Morgan as indicated previously and they were part of that process.

ADV PAUL JOSEPH PRETORIUS SC: Okay what happened then on the – we go to page 15 on the 27th of August 2015?

DR JONATHAN ZOHAR BLOOM: That is when Eric Wood who was the CEO of Regiments and Mr Phetolo Ramosebudi the Transnet Group Treasurer, they agreed to conclude the 12billion Club Loan and there are five parties that participated in this syndication for that loan.

10 **ADV PAUL JOSEPH PRETORIUS SC:** As parts of the lender?

DR JONATHAN ZOHAR BLOOM: Correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Who were they?

DR JONATHAN ZOHAR BLOOM: Nedbank that contributed 3billion, the Bank of China 3 billion, Absa 3 billion, Old Mutual Finance 1.5billion and Future Growth 1.5billion.

ADV PAUL JOSEPH PRETORIUS SC: And then what happened on the 1st of October 2015?

DR JONATHAN ZOHAR BLOOM: The Board Committee dealing with this process...(intervention).

20 **ADV PAUL JOSEPH PRETORIUS SC:** The BADC?

DR JONATHAN ZOHAR BLOOM: BADC, approved the memorandum approving the replacement of JP Morgan with Trillian in respect of lead arranging and underwriting services for the loan.

ADV PAUL JOSEPH PRETORIUS SC: Okay now Trillian come onto the scene.

DR JONATHAN ZOHAR BLOOM: That's correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: A month before or in the previous month, September 2015, you deal with this in the last bullet of the next page but let's fast-forward there for the moment...(intervention).

CHAIRPERSON: Mr Pretorius you talk about the previous month – oh previous because we have...(intervention).

ADV PAUL JOSEPH PRETORIUS SC: So 1 October JP Morgan moves off the scene and Trillian enter the scene.

10 **CHAIRPERSON**: Yes.

ADV PAUL JOSEPH PRETORIUS SC: For the Club Loan.

CHAIRPERSON: I was looking at 27 August...(intervention).

ADV PAUL JOSEPH PRETORIUS SC: Yes sorry so that's on 1 October.

CHAIRPERSON: Yes you are right.

ADV PAUL JOSEPH PRETORIUS SC: But something happened that is significant for our big picture Chair.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: A month before or in the previous month and that is dealt with in the last bullet on page 16.

20 **CHAIRPERSON**: Yes.

ADV PAUL JOSEPH PRETORIUS SC: And that is contained in the volume 2(B) report, what happened?

DR JONATHAN ZOHAR BLOOM: In order for Trillian to participate in the – as part – in the transaction and also to become a service provider, Salim Essa became the controlling shareholder in Trillian in

September 2015.

ADV PAUL JOSEPH PRETORIUS SC: So Trillian enter the scene in October 2015.

DR JONATHAN ZOHAR BLOOM: Correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: In the previous month Salim Essa about whom we are here, a substantial amount, in due course became the major shareholder in Trillian?

DR JONATHAN ZOHAR BLOOM: That's correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Let's go then to page 16 if we
10 may, what happened on the 17th of September 2015?

DR JONATHAN ZOHAR BLOOM: This was then prior to the...(intervention).

ADV PAUL JOSEPH PRETORIUS SC: (indistinct) must I pause there or...

CHAIRPERSON: Maybe, I'm just – Mr Essa becoming controlling shareholder of Trillian happens in September and Trillian replaces JP Morgan early in October, no that's what I wanted to connect.

ADV PAUL JOSEPH PRETORIUS SC: Yes that's correct.

CHAIRPERSON: Okay, alright.

20 **ADV PAUL JOSEPH PRETORIUS SC:** The first bullet on page 16 you say what happened on the 17th of September 2015, what was that?

DR JONATHAN ZOHAR BLOOM: That was when the acting GCE, Mr Gama submitted a signed memorandum to BADC requesting the appointment of Trillian as the lead arranger of the Club Loan thereby replacing JP Morgan. A couple of days later, on the 22nd of

September...(intervention).

CHAIRPERSON: I'm sorry before you do that and you must just tell me if this is something you come to deal with because it's not really – it doesn't have much to do with finances. That memorandum that Mr Gama submitted to the BADC Committee, requesting the appointment of Trillian to replace JP Morgan, I'd be interested in the reasons that were given for that change. So – but this witness might not have forecast on that.

ADV PAUL JOSEPH PRETORIUS SC: Noted chair and it will be in the
10 comprehensive report, I take that point Chair.

CHAIRPERSON: Yes okay.

ADV PAUL JOSEPH PRETORIUS SC: I believe that, that memorandum is part of the 2(A) report but I understand that when one has a sequence of events as has been presented one wants the detail in that presentation. It doesn't help to have to go to other bundles to find out what one wants, so I understand your concern Chair and we will meet that concern.

CHAIRPERSON: And sometimes you have dealt with something many months ago in a Commission such as this and you can't really
20 remember and now you want to connect the dots as it were.

ADV PAUL JOSEPH PRETORIUS SC: Yes, well Chair you only have to deal with hundreds of thousands of pages at the end...

CHAIRPERSON: (Laughing) and that's nothing.

ADV PAUL JOSEPH PRETORIUS SC: We understand Chair I don't want to make light of it but it's a real issue.

CHAIRPERSON: Thank you.

ADV PAUL JOSEPH PRETORIUS SC: So you were at the first bullet on page 16 describing the sequence of events.

DR JONATHAN ZORAH BLOOM: Correct Chair. So then on the 22 September of that year 2015 the recommendation to replace J P Morgan with Trillian was submitted to the GCE and the appointment as indicated on the previous slide was approved BADAC on the 1 October 2015. On the 18 November of that year the club loan facility was signed by Mr Daniel Roy of Trillian, Mr S Gama was the acting GCE at
10 the time and Mr Garry Pita who was the acting GCFO at the time.

ADV PAUL JOSEPH PRETORIUS SC: Now this is the agreement between Transnet and Trillian it is not the actual loan itself?

DR JONATHAN ZORAH BLOOM: I understand that – I am not a hundred percent sure on that item Chair I just need to check.

ADV PAUL JOSEPH PRETORIUS SC: No well we know from your later evidence that the loan was actually signed on the 23 November.

DR JONATHAN ZORAH BLOOM: Correct.

ADV PAUL JOSEPH PRETORIUS SC: 2015 but we getting there.

DR JONATHAN ZORAH BLOOM: Yes.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Right because that date is important when compared with the events that occurred in December

DR JONATHAN ZORAH BLOOM: Correct.

CHAIRPERSON: So...

ADV PAUL JOSEPH PRETORIUS SC: Let us not go there yet.

CHAIRPERSON: So that fourth bullet point on page 16 is the reference

to loan – to club loan facility agreement then correct. From what you have just clarified in – I am getting the impression that – from the clarification you have given to Mr Pretorius to his question I am getting the impression that that agreement was the mandate being given by Transnet to Trillian to say our relationship and this is what you will do for us and this is what we will pay. That is what that agreement was about and not about the actual loan.

DR JONATHAN ZORAH BLOOM: That is correct Chair.

10 **CHAIRPERSON:** Ye so I am just saying I am not sure whether calling it a club loan facility agreement is correct but maybe that it is I must just – but you say it is the authorisation – is their appointment to perform this job.

DR JONATHAN ZORAH BLOOM: That is correct Chair.

CHAIRPERSON: Okay.

ADV PAUL JOSEPH PRETORIUS SC: In relation to the loan concluded...

CHAIRPERSON: In relation to the club loan facility.

ADV PAUL JOSEPH PRETORIUS SC: A few days later. It may be that that is actually the title of the agreement but we will check.

20 **CHAIRPERSON:** Yes.

ADV PAUL JOSEPH PRETORIUS SC: And perhaps in brackets in the report we will

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Describe it so that there is no confusion.

CHAIRPERSON: Ja no that is fine.

ADV PAUL JOSEPH PRETORIUS SC: Alright and then in the last bullet you say what you have already told the Chair that a month and two months prior to these events Mr Salim Essa enters the scene through Trillian?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Right let us move to page 17 where you comment on the fees charged by Trillian.

DR JONATHAN ZORAH BLOOM: So Chair in November.

10 **ADV PAUL JOSEPH PRETORIUS SC:** Now let us just

DR JONATHAN ZORAH BLOOM: Sorry.

ADV PAUL JOSEPH PRETORIUS SC: Establish this. Trillian is appointed in terms of an agreement dated 18 November 2015.

DR JONATHAN ZORAH BLOOM: Correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: We know that and you will tell the Chair in due course in a different context that the loan for which it was appointed was entered into days later?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: In fact a few days later?

20 **DR JONATHAN ZORAH BLOOM:** Yes.

ADV PAUL JOSEPH PRETORIUS SC: Five days later.

DR JONATHAN ZORAH BLOOM: Correct.

ADV PAUL JOSEPH PRETORIUS SC: And given that its appointment is finalised contractually on 18 November 2015 what happened in that very same month?

DR JONATHAN ZORAH BLOOM: Chair Trillian for the work that they purported to have done issued an invoice to Transnet for a figure of R93 million inclusive of VAT which they as I said purported to have rendered as lead arranger for the club loan. And I would like to just clarify even if they did not do the work which I – I will further talk to a bit later Chair.

ADV PAUL JOSEPH PRETORIUS SC: Alright so let us just look at the time sequence because that is instructive in itself quite apart from anything else.

10 **DR JONATHAN ZORAH BLOOM:** Correct.

ADV PAUL JOSEPH PRETORIUS SC: It is appointed in November.

CHAIRPERSON: 18 November.

ADV PAUL JOSEPH PRETORIUS SC: On the 18th.

CHAIRPERSON: Ja.

ADV PAUL JOSEPH PRETORIUS SC: Right.

DR JONATHAN ZORAH BLOOM: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: The agreement is entered into on the 23rd the actual loan agreement for which it is appointed to advice.

20 **DR JONATHAN ZORAH BLOOM:** That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: And arrange.

DR JONATHAN ZORAH BLOOM: Correct.

ADV PAUL JOSEPH PRETORIUS SC: Right five days later. In the same month it issues an invoice for R93 million for being the lead arranger for that loan.

DR JONATHAN ZORAH BLOOM: Correct.

ADV PAUL JOSEPH PRETORIUS SC: Just having regard to the dates and in your opinion is it likely or probable that they actually did any work?

DR JONATHAN ZORAH BLOOM: No Chair.

CHAIRPERSON: You have – on 18 November 2016 Trillian is appointed

ADV PAUL JOSEPH PRETORIUS SC: 2015 Chair.

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: 2015.

10 **CHAIRPERSON**: Ja 18 November 2015 Trillian is appointed then you mentioned 23 September I am trying to look for that.

ADV PAUL JOSEPH PRETORIUS SC: No 23 – so I am sorry Chair 23 November.

CHAIRPERSON: November?

ADV PAUL JOSEPH PRETORIUS SC: The same month, five days later.

CHAIRPERSON: 23 November yes .

ADV PAUL JOSEPH PRETORIUS SC: That loan for which it is appointed to arrange and advise is actually entered into.

CHAIRPERSON: I am looking for that 23 November.

20 **ADV PAUL JOSEPH PRETORIUS SC**: You will not find it yet Chair.

CHAIRPERSON: Oh. Oh okay.

ADV PAUL JOSEPH PRETORIUS SC: It is yet to come in a different context.

CHAIRPERSON: Oh okay so but 23 November is when they issue their invoice?

DR JONATHAN ZORAH BLOOM: I am unsure about ...

CHAIRPERSON: Or when the payment happens?

DR JONATHAN ZORAH BLOOM: I am unsure about the date Chair but it happened in November should it – I am assuming it would have been around that time.

CHAIRPERSON: Yes okay. Now are you then saying looking at the work that an entity performing the kind of function or doing the kind of work that it was appointed to do and the amounts involved and so on it could not have done work to justify that – the kind of amount that they
10 issued an invoice for?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

CHAIRPERSON: That is what you are saying?

DR JONATHAN ZORAH BLOOM: Yes Chair.

CHAIRPERSON: That – the kind of work that would have been involved in doing what it was appointed to do to justify an amount such as – was it R93 million? In your experience would have entailed – would have taken over how long in terms of – obviously could vary from one transaction to another

DR JONATHAN ZORAH BLOOM: Chair ...

20 **CHAIRPERSON:** But generally speaking

DR JONATHAN ZORAH BLOOM: Chair it would have been months because if you recall.

CHAIRPERSON: Hm

DR JONATHAN ZORAH BLOOM: This was a syndicated loan.

CHAIRPERSON: Yes.

DR JONATHAN ZORAH BLOOM: And there were five parties.

CHAIRPERSON: Yes.

DR JONATHAN ZORAH BLOOM: Involved.

CHAIRPERSON: Yes.

DR JONATHAN ZORAH BLOOM: So you would need to enter into agreements, loan agreements will all those parties negotiate with all those parties.

CHAIRPERSON: Yes, yes.

DR JONATHAN ZORAH BLOOM: Etcetera, etcetera and loan
10 negotiations

CHAIRPERSON: Yes.

DR JONATHAN ZORAH BLOOM: Is not a – is not an overnight process.

CHAIRPERSON: Yes.

DR JONATHAN ZORAH BLOOM: It takes time and a number iterations

CHAIRPERSON: Yes.

DR JONATHAN ZORAH BLOOM: And so on. So from a timing perspective these just do not add.

CHAIRPERSON: Yes. Is it possible that the work had been done by J
20 P Morgan?

DR JONATHAN ZORAH BLOOM: Chair I cannot answer.

CHAIRPERSON: You cannot answer.

DR JONATHAN ZORAH BLOOM: If the work was done was J P Morgan.

CHAIRPERSON: Or maybe would the position be that if there was any

work that had been done already it would have been done by somebody else

DR JONATHAN ZORAH BLOOM: That is correct Chair.

CHAIRPERSON: That is as far as you can take that?

DR JONATHAN ZORAH BLOOM: Yes by Regiments.

CHAIRPERSON: Ja by Regiments.

DR JONATHAN ZORAH BLOOM: Yes.

CHAIRPERSON: Ja okay.

ADV PAUL JOSEPH PRETORIUS SC: But not only can you express an
10 opinion I understand Doctor Bloom by reference to the time periods and
it would seem that that would accord with common sense and at least to
Chair's legal experience and my own legal experience and the legal
teams legal experience but you actually looked at the documentation?

DR JONATHAN ZORAH BLOOM: Yes.

ADV PAUL JOSEPH PRETORIUS SC: It is not as if you making your
conclusions just based on the timing?

DR JONATHAN ZORAH BLOOM: Not at all Chair.

ADV PAUL JOSEPH PRETORIUS SC: So what do you say in the
second bullet by way of summary having examined the documentation?

20 **DR JONATHAN ZORAH BLOOM:** Well that the appointment of Trillian
was irregular that is the first point Chair.

ADV PAUL JOSEPH PRETORIUS SC: Why do you say that just in
summary?

DR JONATHAN ZORAH BLOOM: Because Trillian were not the party
that did the work in this – given the time frames and everything like

that they were not the party that could – that did the work it was Regiments that did the work.

ADV PAUL JOSEPH PRETORIUS SC: Alright that is your second point.

DR JONATHAN ZORAH BLOOM: Correct. And that is why it is irregular. In other words they were invoicing for work that they did not do.

ADV PAUL JOSEPH PRETORIUS SC: And that had already been done you say?

DR JONATHAN ZORAH BLOOM: Correct by Regiments in that context
10 and that is why Trillian could not have done the work that they charged for.

ADV PAUL JOSEPH PRETORIUS SC: And this is all part of the report 2A am I right?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

CHAIRPERSON: So – so when you talk about work that had been performed by Regiments you – you – are you saying you look at the – you looked at the documentation and looked at whatever else you needed to look at in order to form an opinion and you are able to say that that work was actually done or must have been done by Regiments.
20 In other words is it a situation where you say look it is Regiments who did it or is it the situation where you say it must have been done by Regiments because the work was done but we know that Regiments was there?

DR JONATHAN ZORAH BLOOM: Correct Chair. What – if one takes – looks at the situation from when the deal was signed in other words on

the – that Advocate Pretorius was referring to the 23 November for the club loan all the work that preceded that would have been done because the contracts and the loan agreements etcetera would have been in place.

CHAIRPERSON: Yes.

DR JONATHAN ZORAH BLOOM: So somebody would have – somebody must have done something.

CHAIRPERSON: Yes.

DR JONATHAN ZORAH BLOOM: But it could not have been Trillian.

10 **CHAIRPERSON:** Yes.

ADV PAUL JOSEPH PRETORIUS SC: You make – you draw a conclusion in the last bullet on page 17 what is that? This is your opinion.

DR JONATHAN ZORAH BLOOM: Now Chair the R93 million invoice that was submitted to Transnet by Trillian purportedly as part of transaction advisory services was – was – appears fraudulent, irregular, unjustified.

CHAIRPERSON: Hm.

DR JONATHAN ZORAH BLOOM: And notwithstanding was – the work
20 that was paid – or the money that was paid to Trillian for not doing the work and they further flouted Section 8.3 of the Procedures and Procurement Manual as we have discussed before.

ADV PAUL JOSEPH PRETORIUS SC: Remind us.

DR JONATHAN ZORAH BLOOM: Which is the necessity to use specialist units within Transnet with the necessary capacity and skill

and this is – remember we are talking about a loan here so it would have been part of the debt raising department so that was the – that was available that skill was available to use.

ADV PAUL JOSEPH PRETORIUS SC: Was there anything extraordinary or exceptional about this club loan that would have required the appointment of a highly specialised external advisor?

DR JONATHAN ZORAH BLOOM: No Chair not in my opinion.

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: That leaving aside whether
10 Trillian was actually that.

DR JONATHAN ZORAH BLOOM: Correct Chair.

CHAIRPERSON: But – and we will need to – to know you know compared to a team that you said Transnet had which was internationally respected from what I understood you to say. So one could compare to say what was wrong with using internal people? Was there anything special in terms of the skills and expertise from Trillian and Regiments and so on?

DR JONATHAN ZORAH BLOOM: Correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Alright. Let us move on then to
20 a new topic and here we are going to talk of risk management and your opinion and regard to how the risks that you have told the Chair existed in relation to these loans were managed and what financial devices or financial instruments were used to address this risk?

DR JONATHAN ZORAH BLOOM: Correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: But as the Chair says we have

got to take a step back and explain what hedging derivatives risk management is all about?

CHAIRPERSON: And I am going to just ask one question relating to what you – we have finished. In your involvement with NMS to assist them with the financial aspects of these transactions you have not have you – you have not had the chance to so to speak confront Trillian and whoever to say how do you justify this and hear what they have to say and you are able to say this is what they said and just maybe I can understand where they are coming from but this was wrong, this was
10 not justified or whatever they say just does not make sense.

DR JONATHAN ZORAH BLOOM: Chair I have had no engagements with any of the parties.

CHAIRPERSON: Yes.

DR JONATHAN ZORAH BLOOM: Except for Mr Ramosbudi but this was when I started the process in September as I indicated previously. It was an initial discussion to try and get an understanding of how things fit within the treasury but also in terms of certain – of the transactions but that was only one engagement and there was no further.

CHAIRPERSON: Okay thank you.

20 **ADV PAUL JOSEPH PRETORIUS SC**: Yes. That will be our task Chair. I would like to heed the request of the Chair that before we start dealing with these specialist terms we actually explain them. So if we may just deal for the moment with the second bullet on page 19. Right?

DR JONATHAN ZORAH BLOOM: Correct.

ADV PAUL JOSEPH PRETORIUS SC: In respect of the China Development Bank loan the 1.5 billion dollar and the club loan the R12 million club loan, syndicated club loan raised domestically right. There are certain risks that the borrower undergoes. You lending or you borrowing rather huge amounts of money – billions right.

DR JONATHAN ZORAH BLOOM: Correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: And because of the circumstances which prevail when you enter into that loan and the future circumstances that might prevail during the course of the loan
10 you have risks. Just summarise please for the Chair what those risks are?

DR JONATHAN ZORAH BLOOM: Chair in the context of the transaction there were three risks that were addressed or that were – were mitigated. The first one had to do with the exchange rate. In other words the borrowing of the – the US dollar funding from China and converting that into South African Rands and then repaying them in US dollars that related to the CDB loan.

ADV PAUL JOSEPH PRETORIUS SC: Right you borrowing money from China – China Development Bank.

20 **DR JONATHAN ZORAH BLOOM:** Correct.

ADV PAUL JOSEPH PRETORIUS SC: You borrowing the money in dollars. You bringing it to South Africa converting it to rand, correct?

DR JONATHAN ZORAH BLOOM: Yes Chair.

ADV PAUL JOSEPH PRETORIUS SC: When you repay you take your rands and you convert them to dollars so the exchange rates both on

the receipt and repayment of the monies?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: And the risk that you have told the Chair about is the fluctuating interest rates?

DR JONATHAN ZORAH BLOOM: Correct Chair. You want to try and remove the risk by – by using the instrument.

ADV PAUL JOSEPH PRETORIUS SC: You take out insurance.

DR JONATHAN ZORAH BLOOM: You take out insurance correct.

ADV PAUL JOSEPH PRETORIUS SC: For the moment. We will ditch
10 that analogy soon. For the moment it is good enough.

DR JONATHAN ZORAH BLOOM: Okay.

ADV PAUL JOSEPH PRETORIUS SC: The second one?

DR JONATHAN ZORAH BLOOM: The second one has to do with the possibility or the probability that there could be default of interest payments that are attributable to the borrower that is called – Chair that is called credit risk.

ADV PAUL JOSEPH PRETORIUS SC: That is where it is attributable to Transnet?

DR JONATHAN ZORAH BLOOM: That is attributable to Transnet
20 correct Chair. And as Advocate Pretorius also indicated previously this particular instrument that was used here had a contingent component and that meant that there was a further risk mitigation that had to deal with potential circumstances that are beyond the control of Transnet for example certain economic events as we said down grading and those types of events that could – that could cause interest rates to increase

significantly and could place liquidity pressure on the borrower. So it is – this is a mechanism to try and cover that. This is a – that type of instrument is a very difficult instrument to understand and we will see later Chair that that instrument was actually Transnet would not have had the ability or the capacity and the skill to be able to do that. That is why J P Morgan were involved with that particular instrument but we will see that later. And the last one Chair has to do with the interest rate movements and this was only applicable to the 12 billion club loan. So it is important to understand that there were no interest rate risk
 10 mitigation that was considered for the – or for the CDB loan but that would have been – that was covered in the exchange rate as well.

CHAIRPERSON: So the fluctuating exchange rate that is something that the borrower would be concerned about?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

CHAIRPERSON: But the lender would not be concerned about insofar as the – the repayments would be in the lender's currency?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

CHAIRPERSON: Okay and then in terms of the credit risk I guess that would be – would that be the lenders concern as well as the borrowers
 20 concern?

DR JONATHAN ZORAH BLOOM: Correct Chair.

CHAIRPERSON: The borrowers concern from the point of view what if I end up not being able to honour the agreement.

DR JONATHAN ZORAH BLOOM: Yes Chair that could also – it has got – there is a flip side if you like to that.

CHAIRPERSON: Ja.

DR JONATHAN ZORAH BLOOM: And that could mean that this was a requirement

CHAIRPERSON: Yes.

DR JONATHAN ZORAH BLOOM: By the lender.

CHAIRPERSON: Yes.

DR JONATHAN ZORAH BLOOM: Because that protects by – by introducing this instrument

CHAIRPERSON: Yes.

10 **DR JONATHAN ZORAH BLOOM**: You would be protecting the lender.

CHAIRPERSON: Ja the – so I guess the more importantly is the lender that needs protection but I guess the borrower also does not want to be in that situation where they cannot honour.

DR JONATHAN ZORAH BLOOM: Correct Chair.

CHAIRPERSON: Their agreements.

DR JONATHAN ZORAH BLOOM: Correct.

CHAIRPERSON: And then – and then the third one is financial costs also the borrowers concern?

20 **DR JONATHAN ZORAH BLOOM**: This is specifically the borrowers concern Chair.

CHAIRPERSON: Yes okay. Thank you.

ADV PAUL JOSEPH PRETORIUS SC: So let us leave page 20 for the moment and go to page 21. In explaining the terminology we are going to concentrate on firstly the club loan, the R12 million domestic club loan.

DR JONATHAN ZORAH BLOOM: Yes Chair.

ADV PAUL JOSEPH PRETORIUS SC: And the risk that is addressed in this diagram and in your further evidence is the risk of fluctuating interest rates.

DR JONATHAN ZORAH BLOOM: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Alright. So let us start – Chair on page 21 with the right hand diagram. Okay. There you have a lender that is the club.

DR JONATHAN ZORAH BLOOM: Correct Chair.

- 10 **ADV PAUL JOSEPH PRETORIUS SC:** And you have the borrower at the bottom of the page Transnet, correct?

DR JONATHAN ZORAH BLOOM: That is right Chair.

ADV PAUL JOSEPH PRETORIUS SC: And you have the content of the loan. We will learn as a matter of fact because we are only wanting to understand terminology which you are going to now use frequently in your evidence. For illustrative purposes but we know that at the end of November 2015 Transnet enters into a loan agreement with the syndicate to borrow R12 billion on a floating interest rate, correct?

DR JONATHAN ZORAH BLOOM: Correct Chair.

- 20 **ADV PAUL JOSEPH PRETORIUS SC:** What is the risk attached to that type of agreement?

DR JONATHAN ZORAH BLOOM: Well the risk lies more with the – with the borrower because the interest rates depending on the environment within which one is functioning, the economy etcetera may result in interest rates increasing significantly placing further liquidity pressure

on the borrower so entering into a floating rate or a variable rate regime would be – would – that would be the risk that would be associated therewith.

ADV PAUL JOSEPH PRETORIUS SC: So if Transnet at the borrower – as the borrower says look I have now borrowed R12 billion on a floating interest rate I have no idea well research institutes can advise but never with certainty. I have no idea with any certainty what that interest rate is going to do and I therefore am at risk.

DR JONATHAN ZORAH BLOOM: That is correct Chair.

10 **ADV PAUL JOSEPH PRETORIUS SC:** So what does it then decide to do?

DR JONATHAN ZORAH BLOOM: Well then it can enter into a risk mitigation measure which is called an interest rate swap which is the left portion of the figure.

ADV PAUL JOSEPH PRETORIUS SC: Alright but before we go there let us just explain a term. Let us leave derivatives out of our terminology.

DR JONATHAN ZORAH BLOOM: Ja.

ADV PAUL JOSEPH PRETORIUS SC: At least for the moment. Transnet says I want to find a way using financial institutions to deal
20 with this risk. I want to mitigate the risk or I want to ensure against the risk and I use that term very broadly and soon we will not use it anymore. I want to hedge my risk.

DR JONATHAN ZORAH BLOOM: Correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: So what does hedge mean?

DR JONATHAN ZORAH BLOOM: Hedge means – very, very simply put

Chair hedge means that you taking the risk away or you removing the risk from a potential negative situation but in order to do that we will get to that it costs money.

CHAIRPERSON: Yes it means you are guaranteeing against the risk almost? You are protecting somebody against the risk?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

CHAIRPERSON: But whether it is guaranteeing on something less than that we will get to hear in due course?

DR JONATHAN ZORAH BLOOM: That is correct.

10 **CHAIRPERSON**: Okay alright.

ADV PAUL JOSEPH PRETORIUS SC: So let us just deal with one issue that I think is important to deal with because it becomes important later. You can never guarantee the interest rate in the right hand box unless you enter into a fixed rate agreement.

DR JONATHAN ZORAH BLOOM: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Now the decision of whether to enter into a fixed interest rate agreement or a floating interest rate agreement is something you are going to deal with in due course.

DR JONATHAN ZORAH BLOOM: Correct. That is correct Chair.

20 **ADV PAUL JOSEPH PRETORIUS SC**: But anyway what happens here is that Transnet decide to enter into a floating interest rate loan – R12 billion – a lot of money, right?

DR JONATHAN ZORAH BLOOM: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: It cannot ever guarantee what the interest rates are going to be it is at risk. So what it does it says I

want to protect myself against the consequences of what I have done.

DR JONATHAN ZORAH BLOOM: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Alright. So whilst you can never guarantee an interest rate what you can do is say if things do not turn out well for me I can at least put in place another financial arrangement separate from this to mitigate the adverse circumstances of the decision I made to enter into a floating risk – floating rate arrangement.

DR JONATHAN ZORAH BLOOM: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Alright so what is important
10 because we talk about swops? Right you talk about swops. Noting is swopped. That original agreement on the right hand side remains the same.

DR JONATHAN ZORAH BLOOM: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Throughout your obligation to pay a floating interest rate remains.

DR JONATHAN ZORAH BLOOM: Correct.

ADV PAUL JOSEPH PRETORIUS SC: So when we talk about swops we are talking about something entirely different from that word might indicate?

20 **DR JONATHAN ZORAH BLOOM:** That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Okay. Right so let us go to the left hand...

CHAIRPERSON: Well will that still – is that still an elaboration on hedging because I just want to ...

ADV PAUL JOSEPH PRETORIUS SC: Alright so...

CHAIRPERSON: Finalise on hedging.

ADV PAUL JOSEPH PRETORIUS SC: Alright. Hedging broadly speaking as I understand it is what you have described as the act of using financial instruments to deal with your risk?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: More particularly to protect yourself against the consequences of you having entered into a risky arrangement?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

- 10 **ADV PAUL JOSEPH PRETORIUS SC:** Right. So hedging is the broad term used to describe the taking out of financial insurance as it were?

CHAIRPERSON: I do not know why I am associating the word “hedging” with like fencing off.

DR JONATHAN ZORAH BLOOM: Chair that ...

CHAIRPERSON: Fencing off maybe in that way in this context maybe it is fencing off the risk. I am not sure but I do not know why I am associating it with that.

DR JONATHAN ZORAH BLOOM: Chair that is not – that is actually a very good analogy.

- 20 **CHAIRPERSON:** Hm.

DR JONATHAN ZORAH BLOOM: Because that is essentially from the borrower’s side what you want to do ...

CHAIRPERSON: Hm.

DR JONATHAN ZORAH BLOOM: You want to protect yourself so let me take this money and enter into an arrangement that is going to take any

risk out of out.

CHAIRPERSON: Hm.

DR JONATHAN ZORAH BLOOM: So if I wanted to almost seclude myself in a sense if I can use that ...

CHAIRPERSON: Yes.

DR JONATHAN ZORAH BLOOM: As an example.

CHAIRPERSON: Yes.

DR JONATHAN ZORAH BLOOM: Then I am going to put a hedge around me.

10 **CHAIRPERSON:** Yes, yes.

DR JONATHAN ZORAH BLOOM: If I can ...

CHAIRPERSON: Okay, thank you.

DR JONATHAN ZORAH BLOOM: Relate to you on that Chair.

CHAIRPERSON: Thank you.

DR JONATHAN ZORAH BLOOM: Thank you Chair.

ADV PAUL JOSEPH PRETORIUS SC: So if the hedge protects. A financial instrument called a hedge would also protect?

DR JONATHAN ZORAH BLOOM: That is correct.

CHAIRPERSON: Yes.

20 **ADV PAUL JOSEPH PRETORIUS SC:** But a swap is one example of a hedge?

DR JONATHAN ZORAH BLOOM: That is right Chair.

ADV PAUL JOSEPH PRETORIUS SC: Swap is one way in which you can hedge your risk?

DR JONATHAN ZORAH BLOOM: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Or protect yourself against risk?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Right. The question arises of course which we deal with later is why this risk should have arisen in the first place.

DR JONATHAN ZORAH BLOOM: Correct.

ADV PAUL JOSEPH PRETORIUS SC: But we will come there and that is in fact a central part of your evidence?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

10 **ADV PAUL JOSEPH PRETORIUS SC:** In fact the question arises if you are now going to spend a lot of money hedging your floating interest rate risk why did you enter into a floating agreement in the first place?

DR JONATHAN ZORAH BLOOM: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Because Chair you will learn that mere weeks after entering into a floating interest rate loan of 12 billion Transnet commits itself to the spending of hundreds of millions of Rand to put itself in the position it would have been in a worse position but on a fixed rate basis.

CHAIRPERSON: Yes and of course I heard evidence - I do not know
20 whether it was two weeks back - about a situation where - I think it was Transnet and I cannot remember if it was this transaction because there has been an overlap of evidence – where the initial arrangement was floating interest but then somebody came from Transnet at some stage and said no it must be changed to a fix rate ...

ADV PAUL JOSEPH PRETORIUS SC: Correct.

CHAIRPERSON: But in that context the witness was – was criticising the introduction of a fixed rate and I think indicating that in the context of that evidence that introducing a fixed rate was going to put Transnet in a worse off position ...

ADV PAUL JOSEPH PRETORIUS SC: Well ...

CHAIRPERSON: But I will – I will hear and we will try ...

ADV PAUL JOSEPH PRETORIUS SC: Well you will hear Chair ...

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: That this insurance policy
10 arrangement ...

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: This hedging arrangement in a
form of a swap ...

CHAIRPERSON: *Ja.*

ADV PAUL JOSEPH PRETORIUS SC: Was really very harmful to
Transnet.

CHAIRPERSON: To Transnet *ja.*

ADV PAUL JOSEPH PRETORIUS SC: It lost a lot of money but that ...

CHAIRPERSON: Yes.

20 **ADV PAUL JOSEPH PRETORIUS SC:** We are getting there in due
course.

CHAIRPERSON: *Ja.* I think you – you will just – the legal team will
just have to – members will have to liaise with one another to see who
was leading a witness who was dealing with that ...

ADV PAUL JOSEPH PRETORIUS SC: But we will get there Chair.

CHAIRPERSON: To see that it was not the same thing.

ADV PAUL JOSEPH PRETORIUS SC: We will get there.

CHAIRPERSON: *Ja.*

ADV PAUL JOSEPH PRETORIUS SC: At the moment we are just at the level of principle.

CHAIRPERSON: *Ja.*

ADV PAUL JOSEPH PRETORIUS SC: Okay. You wanted to say something.

DR JONATHAN ZORAH BLOOM: No I think Chair ...

10 **ADV PAUL JOSEPH PRETORIUS SC:** Do not confuse us please.

DR JONATHAN ZORAH BLOOM: No, I will – I will not Chair. I think the – I think you are referring to Mr Mahomed ...

CHAIRPERSON: It could be. I just cannot remember.

DR JONATHAN ZORAH BLOOM: Of Transnet ...

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC:

DR JONATHAN ZORAH BLOOM: I think I am – my testimony is going to unpack ...

CHAIRPERSON: Yes.

20 **DR JONATHAN ZORAH BLOOM:** A lot more - the figures and numbers that he ...

CHAIRPERSON: Yes.

DR JONATHAN ZORAH BLOOM: Referred to and with certain updates as well.

CHAIRPERSON: Okay, okay thank you.

ADV PAUL JOSEPH PRETORIUS SC: So at the moment we are just describing the hedging instrument. The fact that it turned out to be a poor instrument which caused even more loss to Transnet. We will deal with in due course.

CHAIRPERSON: *Ja.*

ADV PAUL JOSEPH PRETORIUS SC: But for the moment Chair we have hedging as the utilisation of a financial instrument in order to mitigate against your risk.

CHAIRPERSON: And a swap being a form of hedging?

10 **ADV PAUL JOSEPH PRETORIUS SC:** A swap is a form of hedging.

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: And we are now going to describe what a swap is.

CHAIRPERSON: *Ja.*

ADV PAUL JOSEPH PRETORIUS SC: So when one hedges – and in this case enters into a swap arrangement one does not swap anything with the original lender. Your obligations remain fixed?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

20 **ADV PAUL JOSEPH PRETORIUS SC:** One can put a wall around that right hand box. That stays the same?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: So the lender consortium are sitting happily in their offices in Sandton knowing that they are going to get their return - whatever the interest rate might be?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: And you remain liable to pay it?

DR JONATHAN ZORAH BLOOM: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: But what ...

CHAIRPERSON: I am sorry but they may - the idea that there should be hedging may come from them or not really – from the lender?

DR JONATHAN ZORAH BLOOM: No Chair.

CHAIRPERSON: Because they want some certainty that ...

DR JONATHAN ZORAH BLOOM: Not necessarily.

CHAIRPERSON: No.

- 10 **DR JONATHAN ZORAH BLOOM:** I think it is – it has got to do with – it has got to do with the ability of the borrower to meet his obligations.

CHAIRPERSON: Yes.

DR JONATHAN ZORAH BLOOM: So in – and also to remove risk which gives them certain – then gives further certainty in the ...

CHAIRPERSON: Yes.

DR JONATHAN ZORAH BLOOM: In the context. So it – it is not necessarily that it would come from the lender as a – as a requirement ...

CHAIRPERSON: Yes.

- 20 **DR JONATHAN ZORAH BLOOM:** But if - if you take a view or if Transnet were taking a view on – on interest rates then that would be an important consideration ...

CHAIRPERSON: Ja.

DR JONATHAN ZORAH BLOOM: In the decision to either fix or to enter into a floating agreement.

CHAIRPERSON: Yes. Well what I was thinking and I do not know if it has anything to do with the example of an insurance that Mr Pretorius has been or used earlier. What I am thinking is that - you know – a bank might insist that you must take insurance when you buy a car and they help you to buy a car. You must take insurance and you cannot start driving it until you have taken insurance. They just want to make sure that if something happens then they will be covered. So I was wondering whether a lender in this case might be interested that you – you as the borrower is it take a swap – a swap or do some hedging. So
10 – because they want to be double sure that they will be fine or not really?

DR JONATHAN ZORAH BLOOM: No Chair. No you are absolutely right.

CHAIRPERSON: Hm.

DR JONATHAN ZORAH BLOOM: In this particular context ...

CHAIRPERSON: Hm.

DR JONATHAN ZORAH BLOOM: It would mean that the lender would – would cover his risk ...

CHAIRPERSON: Hm.

20 **DR JONATHAN ZORAH BLOOM:** With risk in the interest rate that is charged.

CHAIRPERSON: Hm.

DR JONATHAN ZORAH BLOOM: So a higher interest rate would mean I perceive more risk ...

CHAIRPERSON: Hm.

DR JONATHAN ZORAH BLOOM: In the person who is borrowing this money from me.

CHAIRPERSON: Hm.

DR JONATHAN ZORAH BLOOM: The – the converse of that ...

CHAIRPERSON: Hm.

DR JONATHAN ZORAH BLOOM: Is the - where the borrower says listen but I am a little uncomfortable with what potentially could happen going forward in the next year or two or whatever the case maybe ...

CHAIRPERSON: Hm.

10 **DR JONATHAN ZORAH BLOOM:** And that I need to do something about that to protect my cash resources.

CHAIRPERSON: Hm.

DR JONATHAN ZORAH BLOOM: It is a – it is very much a cash flow and a cash flow issue.

CHAIRPERSON: Arrangement?

DR JONATHAN ZORAH BLOOM: Correct Chair.

CHAIRPERSON: *Ja*, okay thank you.

20 **ADV PAUL JOSEPH PRETORIUS SC:** And I do not want to stay on the point for too long or dwell on it but you have already told the Chair that a lender may require a borrower to mitigate the risk of a downturn in the economy for example?

DR JONATHAN ZORAH BLOOM: Correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: So that is an exception to the rule that you have just put out?

DR JONATHAN ZORAH BLOOM: That is possible.

ADV PAUL JOSEPH PRETORIUS SC: Yes, alright. So let us get back to the box on the left hand side if we can. We now have Transnet saying I want to find someone who I can deal with to mitigate my risk of having entered into a floating rate loan of ...

DR JONATHAN ZORAH BLOOM: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: R12 billion and those parties Transnet on the one hand and the party that Transnet will deal with are called counterparties?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

10 **ADV PAUL JOSEPH PRETORIUS SC:** In the – in the terminology generally applicable ...

DR JONATHAN ZORAH BLOOM: That is right.

ADV PAUL JOSEPH PRETORIUS SC: In the circumstance.

DR JONATHAN ZORAH BLOOM: Yes Chair.

ADV PAUL JOSEPH PRETORIUS SC: And then the term is used elsewhere but here that is what the term is ...

DR JONATHAN ZORAH BLOOM: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: For both parties?

DR JONATHAN ZORAH BLOOM: Yes Chair.

20 **ADV PAUL JOSEPH PRETORIUS SC:** And we know that in this case Nedbank was the counterparty?

DR JONATHAN ZORAH BLOOM: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: And Transnet was the party seeking assistance or seeking insurance or seeking to enter into a swap arrangement to mitigate its risk?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Right. So explain to the Chair Transnet says oops I am at risk. I need help. Correct?

DR JONATHAN ZORAH BLOOM: Correct.

ADV PAUL JOSEPH PRETORIUS SC: It goes to Nedbank and says I want us to enter into an arrangement called a swap?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Which will protect me from the risk that I have entered into.

10 **DR JONATHAN ZORAH BLOOM:** That is correct.

ADV PAUL JOSEPH PRETORIUS SC: I want you – Nedbank – to insure my risk.

DR JONATHAN ZORAH BLOOM: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: How is that achieved?

DR JONATHAN ZORAH BLOOM: Chair there is normally – let us – let us look at ...

ADV PAUL JOSEPH PRETORIUS SC: Sorry – may I pause?

DR JONATHAN ZORAH BLOOM: Yes of course.

20 **ADV PAUL JOSEPH PRETORIUS SC:** If one was to extend – this is where the insurance analogy fails, right. If I was to insure against any risk for example my car being stolen I would pay a premium determined by actuaries and determined by the insurance company and if the event occurred I would be compensated for the loss of my car?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: That is not how it works here?

DR JONATHAN ZORAH BLOOM: No.

ADV PAUL JOSEPH PRETORIUS SC: Okay.

DR JONATHAN ZORAH BLOOM: There is – there is a second leg to it.

ADV PAUL JOSEPH PRETORIUS SC: Okay. Let us deal with that second leg.

DR JONATHAN ZORAH BLOOM: Okay. Chair when the two counterparties come together and start discussing the whole or the potential of entering into a swap arrangement then they would – because we are dealing with interest rates and we are going to be
10 dealing with that a lot through the testimony I would like to use that as the analogy. In other words both parties would have different or should have different views on interest rates. The one is saying interest rates are going to go up. The other one is saying interest rates will go down or will stay – or will stay more or less stable. So you have to have the two opposing views to enter into such a transaction. Now when it comes to the ...

ADV PAUL JOSEPH PRETORIUS SC: Sorry may I interrupt you here?

DR JONATHAN ZORAH BLOOM: Yes.

ADV PAUL JOSEPH PRETORIUS SC: When Transnet goes to Nedbank
20 and says please I want to enter into a swap arrangement to protect me against the risk because I am scared that they are going to go very high and I am not going to be able to pay, right.

DR JONATHAN ZORAH BLOOM: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Transnet wants a situation that it wants to pay a fixed rate?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: So having entered into a floating interest rate agreement it is now going to pay a lot of money ultimately as we will learn to achieve a situation where it is going in effect when all the books are balanced pay a fixed rate?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: So what is a swapped is the cash flow arising out of a floating interest rate with a fixed rate. Now that maybe going too fast. So you have got to unpack that slowly
10 please.

DR JONATHAN ZORAH BLOOM: Okay. So Chair ...

CHAIRPERSON: But – but before you do that ...

DR JONATHAN ZORAH BLOOM: Yes Chair.

CHAIRPERSON: A swap arrangement would be between the borrower and - like the bank - or who would it be between? You were saying earlier on when the two parties discuss that is the borrower and who?

DR JONATHAN ZORAH BLOOM: And a party a financial institution.

CHAIRPERSON: A - a third party?

DR JONATHAN ZORAH BLOOM: A third party.

20 **CHAIRPERSON:** *Ja*, okay.

DR JONATHAN ZORAH BLOOM: That would be interested in becoming a part of a swap agreement.

CHAIRPERSON: Okay and usually that would be a financial institution?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

CHAIRPERSON: Okay.

ADV PAUL JOSEPH PRETORIUS SC: The point that the Chair raises is for our purposes a very important point because if you look at the left hand side of the diagram – the left hand box. Counterparty Transnet and counterparty Nedbank enter into an arrangement completely separate from the static arrangement on the right hand side – the loan.

DR JONATHAN ZORAH BLOOM: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Nedbank as counterparty to the swap arrangement has nothing to do with the consortium of lenders in
10 the right hand box. It is an entirely separate third party?

DR JONATHAN ZORAH BLOOM: That is correct Chair. In this particular instance they were also part of the lending.

ADV PAUL JOSEPH PRETORIUS SC: Yes but ...

DR JONATHAN ZORAH BLOOM: (Intervenes).

ADV PAUL JOSEPH PRETORIUS SC: Notionally – and I am sorry to use that word because I am now using it in the correct sense – notionally they are separate.

DR JONATHAN ZORAH BLOOM: Correct.

ADV PAUL JOSEPH PRETORIUS SC: Correct?

20 **DR JONATHAN ZORAH BLOOM:** That is right.

ADV PAUL JOSEPH PRETORIUS SC: And the transaction in the right hand box remains intact?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Nothing is swapped in or out.

DR JONATHAN ZORAH BLOOM: No.

ADV PAUL JOSEPH PRETORIUS SC: Correct? In the left hand box however it is an entirely separate financial arrangement with entirely different financial obligations that are not dependent in anyway on the financial obligations in the original loan agreement in the right hand box?

DR JONATHAN ZORAH BLOOM: Correct.

ADV PAUL JOSEPH PRETORIUS SC: Okay. So we are dealing with a separate arrangement with not separate parties but Transnet with a different hat on. It is now protecting itself against risk?

10 **DR JONATHAN ZORAH BLOOM:** That is right Chair.

ADV PAUL JOSEPH PRETORIUS SC: And a counterparty who is entering into an arrangement to deal with Transnet in that aim?

DR JONATHAN ZORAH BLOOM: Correct.

ADV PAUL JOSEPH PRETORIUS SC: And the aim in this case in swap arrangement which was a hedging instrument would be for Transnet to be in a position where it knows and has certainty about the interest rate it will pay. In other words

DR JONATHAN ZORAH BLOOM: Correct.

20 **ADV PAUL JOSEPH PRETORIUS SC:** In other words akin to a fixed interest rate?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Alright. So you tell us then please how this deal is structured and how it works.

DR JONATHAN ZORAH BLOOM: So Chair because there are two parties the one – the one is to pay – because Transnet wants to enter

into the fixed rate in other words or assume a fixed rate on the - in this particular context. They would pay the fixed – the interest using the fixed rate to the counterparty Nedbank.

CHAIRPERSON:

ADV PAUL JOSEPH PRETORIUS SC: Sorry – you said they would pay the interest. You must be careful here. They are not paying the interest that arises from the agreement between the lender and the borrower in the right hand box.

DR JONATHAN ZORAH BLOOM: They are paying the fixed rate.

10 **ADV PAUL JOSEPH PRETORIUS SC:** They are paying a fixed rate.

DR JONATHAN ZORAH BLOOM: A fixed rate.

ADV PAUL JOSEPH PRETORIUS SC: Not the fixed rate.

DR JONATHAN ZORAH BLOOM: *Ja.*

ADV PAUL JOSEPH PRETORIUS SC: The fixed rate belongs ...

DR JONATHAN ZORAH BLOOM: In this context.

ADV PAUL JOSEPH PRETORIUS SC: No, well – they are paying a fixed rate negotiated between Nedbank and Transnet?

DR JONATHAN ZORAH BLOOM: Correct.

20 **ADV PAUL JOSEPH PRETORIUS SC:** They are paying an amount equivalent to a fixed rate?

DR JONATHAN ZORAH BLOOM: That is right.

ADV PAUL JOSEPH PRETORIUS SC: But let us not get into that detail.

DR JONATHAN ZORAH BLOOM: And Chair Nedbank would do the same. In this particular case they would be paying the floating rate.

So – so they – they would have the view that interest rates would remain stable or might increase slightly or whatever the case may be. So that would as I – as I indicated previously they have to have opposing views in what – how interest rates would move but what is important to understand it says there pays the floating rate and – and Transnet pays the fixed rate. The – they do not literally pay the rates to each other. They would – they would – because there is a – we are talking about an amount. The one – you would calculate the amount using the floating rate and you would calculate the amount using the
 10 fixed rate and you would subtract the from each other and depending on how the move – the interest rates have moved only the net portion – the net part of that amount – would be paid to either or one of the – either of the parties. Does that make sense?

CHAIRPERSON: Well let us go back to the role players.

DR JONATHAN ZORAH BLOOM: Okay.

CHAIRPERSON: You have Transnet wanting to borrow R12 billion and then you have a consortium that is prepared to lend R12 billion to Transnet?

DR JONATHAN ZORAH BLOOM: Correct Chair.

20 **CHAIRPERSON:** Okay. They enter into an agreement in terms of which the interest rate that Transnet will pay will be a floating interest rate. Is that right?

DR JONATHAN ZORAH BLOOM: That is correct.

CHAIRPERSON: Yes. Now Transnet becomes concerned about the – the fluctuation of the interest rate. Is that right?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

CHAIRPERSON: And wants to protect itself against that?

DR JONATHAN ZORAH BLOOM: Correct.

CHAIRPERSON: That is where the hedging comes in and the swap coming in as well as form of hedging?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

CHAIRPERSON: Now normally would the lender in the main agreement – if we can call it that relating to R12 billion – the lender in that transaction would not be the one that takes part in the swap arrangement or would it?

DR JONATHAN ZORAH BLOOM: Chair that ...

CHAIRPERSON: In other words if I am getting the 12 million – R12 billion from you and there is a fluctuating interest rate that we have agreed and now I want to protect myself against the fluctuation of the floating interest. I need somebody else to talk to or can it also be you?

DR JONATHAN ZORAH BLOOM: It can be the same Chair.

CHAIRPERSON: Sorry.

DR JONATHAN ZORAH BLOOM: It can be the same.

CHAIRPERSON: It can be the same?

20 **DR JONATHAN ZORAH BLOOM:** Correct.

CHAIRPERSON: But what is the norm?

DR JONATHAN ZORAH BLOOM: No there is no norm in that regard.

CHAIRPERSON: There is no norm, *ja*.

DR JONATHAN ZORAH BLOOM: It depends on the transaction ...

CHAIRPERSON: Yes.

DR JONATHAN ZORAH BLOOM: And it depends on the parties involved.

CHAIRPERSON: So in other words I can – you can say to me well we are agreeing on a floating rate – floating interest rate in regard to this R12 billion but should you want a swap we can talk about that but that would be a separate transaction.

DR JONATHAN ZORAH BLOOM: That is correct Chair.

CHAIRPERSON: Is that right?

DR JONATHAN ZORAH BLOOM: That is correct.

10 **ADV PAUL JOSEPH PRETORIUS SC:** It is important Chair in an entirely separate transaction.

DR JONATHAN ZORAH BLOOM: Yes.

CHAIRPERSON: Yes an entirely separate transaction. So in this case you have pointed out that Nedbank was – was a member of the consortium ...

DR JONATHAN ZORAH BLOOM: Correct Chair.

CHAIRPERSON: That was lending Transnet the R12 billion ...

DR JONATHAN ZORAH BLOOM: That is correct.

20 **CHAIRPERSON:** But it was also a party that was dealing with Transnet with regard to concluding a swap arrangement?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

CHAIRPERSON: Okay, thank you.

ADV PAUL JOSEPH PRETORIUS SC: Alright. So just to summarise. In the right hand box of this diagram on page 21 Transnet has borrowed R12 billion at a floating interest rate. Those obligations remain fixed

for the duration of the loan?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Transnet sits down however and thinks about what it has done and says but I think interest rates may go through the roof. They may go to such a high level that it is going to put us in financial difficulty. Correct?

DR JONATHAN ZORAH BLOOM: Correct.

ADV PAUL JOSEPH PRETORIUS SC: So it says I need to find someone – a counterparty – in this case Transnet to enter into a
10 financial arrangement to hedge my risk. Correct?

DR JONATHAN ZORAH BLOOM: Correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: It then sits down with a counterparty Nedbank. Now Nedbank on the other hand (intervenes).

CHAIRPERSON: Okay. Sorry Mr Pretorius. I just want to make sure I follow. I do not know whether you made a mistake or I misunderstand the way you – you put it. It was as if a concern would arise from Nedbank.

ADV PAUL JOSEPH PRETORIUS SC: Then I was wrong.

CHAIRPERSON: I thought it would arise from Transnet?

20 **ADV PAUL JOSEPH PRETORIUS SC**: Yes. Transnet sits down ...

CHAIRPERSON: Yes, yes.

ADV PAUL JOSEPH PRETORIUS SC: And says – did I say Nedbank?

CHAIRPERSON: Okay.

ADV PAUL JOSEPH PRETORIUS SC: Late Friday afternoon. I could easily have said ...

CHAIRPERSON: Well I may have misunderstood but that is how I – I understood.

ADV PAUL JOSEPH PRETORIUS SC: Alright. Well let us – let us not argue that point (intervenes).

CHAIRPERSON: *Ja*, okay alright. So the concern from the borrower?

ADV PAUL JOSEPH PRETORIUS SC: Yes. The borrower says look I have entered ...

CHAIRPERSON: *Ja*.

ADV PAUL JOSEPH PRETORIUS SC: I have - now I am thinking about
10 it. I have entered into a loan arrangement with a floating interest rate. What if interest rates go through the roof? I better protect myself. So it goes to counterparty Nedbank and moves into a discreet separate transaction using a swap as a hedging instrument.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Right and it says to – Nedbank on the other hand say your fear may not be so real. I will insure you, right?

DR JOATHAN ZORAH BLOOM: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: I will let you pay me the
20 equivalent of a fixed rate and I will pay you floating rate.

DR JONATHAN ZORAH BLOOM: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Right. So if interest rates go through the roof all you have to pay me is the fixed rate.

DR JONATHAN ZORAH BLOOM: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: I will pay you the floating rate

and then you can pay your lender.

DR JONATHAN ZORAH BLOOM: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: So Nedbank also takes a risk now in this hedging?

DR JONATHAN ZORAH BLOOM: Yes Chair they do if – if the – the rate – the floating rate starts to increase then it is to the benefit of Transnet because remember they said they – they worked on a certain floating rate. So if that – if floating rates start to edge off or rates start to edge up then – then that would be to the benefit of the – of the party that is
10 paying the fixed rate.

ADV PAUL JOSEPH PRETORIUS SC: Right. So let us just talk about the insurance policy – the hedging – the swap – for the moment.

CHAIRPERSON: But before you do that Mr Pretorius please do not forget the point you wanted to put. I just want to follow this correctly. You – you emphasised at some stage earlier that for a swap arrangement it is important that the two parties should have different views as to what is likely to happen with regard to interest rates?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

CHAIRPERSON: And the more we talk about it the more I begin to
20 understand why it is necessary to have that but you will talk more about that in due course but a swap arrangement would not be necessary – would it – for a borrower who before entering into the main agreement would have done his or her homework properly. Is that right?

DR JONATHAN ZORAH BLOOM: That is correct Chair.

CHAIRPERSON: If you do your homework properly in terms of what is

likely to happen in the interest rates in the years to come and you are confident of the assessment you have made. You would choose whether you go for the floating interest rate or the fixed rate and you would then say because I am comfortable I do not need that – a swap arrangement. Is that right?

DR JONATHAN ZORAH BLOOM: Chair that ...

CHAIRPERSON: Generally speaking?

DR JONATHAN ZORAH BLOOM: Absolutely right and that is actually ...

10 **CHAIRPERSON:** Yes.

DR JONATHAN ZORAH BLOOM: A fundamental part of the testimony ...

CHAIRPERSON: Yes, yes.

DR JONATHAN ZORAH BLOOM: That we will get to.

CHAIRPERSON: Because when you go to – in this case – when Transnet having concluded its agreement with the consortium for the loan of R12 billion when it goes to Nedbank it then enters into a fixed term kind of rate.

DR JONATHAN ZORAH BLOOM: Correct.

20 **CHAIRPERSON:** Which it could ...

ADV PAUL JOSEPH PRETORIUS SC: At huge costs.

CHAIRPERSON: *Ja* at – at whatever cost which it could have done with – with the consortium?

ADV PAUL JOSEPH PRETORIUS SC: Yes.

DR JONATHAN ZORAH BLOOM: That is correct Chair and as I said

that would be – that is going to be a fundamental part of - of how ...

CHAIRPERSON: Of your evidence?

DR JONATHAN ZORAH BLOOM: Of the evidence and the timeline.

CHAIRPERSON: Yes.

DR JONATHAN ZORAH BLOOM: That we are talking about.

CHAIRPERSON: Yes, okay thank you.

ADV PAUL JOSEPH PRETORIUS SC: Chair it is 4 o' clock and I do not know what your arrangement are (intervenes).

CHAIRPERSON: Oh, yes we did not talk.

10 **ADV PAUL JOSEPH PRETORIUS SC**: But I just what to highlight two issues ...

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: If I may at this stage?

CHAIRPERSON: Yes. I will – I will allow you ...

ADV PAUL JOSEPH PRETORIUS SC: You have raised a very important point ...

CHAIRPERSON: Yes.

20 **ADV PAUL JOSEPH PRETORIUS SC**: Which is fundamental to the evidence to come that within days of entering into this floating rate agreement Transnet is entering into the swap arrangement on the basis of a fixed rate. The second point is the fixed rate in the swap is much higher than the fixed rate it would have entered into on a market loan and the added point is the only party benefitting here - the only parties to benefit from this arrangement are the service providers who are arranging these swaps.

CHAIRPERSON: And not Transnet?

ADV PAUL JOSEPH PRETORIUS SC: Not Transnet.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: It is all at the cost of Transnet.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: So Chair the question arises is why was it done in by this way. By whom was it done for whose benefit and those are the questions that arise in this testimony and hopefully will be answered in full by the end of the ...

10 **CHAIRPERSON:** Yes.

ADV PAUL JOSEPH PRETORIUS SC: The Transnet testimony as whole.

CHAIRPERSON: Yes. No, no thank you. We did not talk about when we will end today but we normally end at four unless we have made other arrangements. Today we are going to end at four but we are not done with Dr Bloom. So we will have to continue on Monday. Is that in order? I know there is a witness for ...

ADV PAUL JOSEPH PRETORIUS SC: Monday we have a witness ...

CHAIRPERSON: Yes.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Who must be called on Monday.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: So it will have to be fitted in after that and I will discuss it with you Chair having discussed it with the legal teams planners.

CHAIRPERSON: Yes. Let me – let me just say I do not know what

your plans are. What I had in mind based on the understanding that at some stage you may have thought that Dr Bloom's evidence would take one day. I was thinking that depending on how much more time we need with him it would be good if we did not break the evidence but I do not know the other witness whether he is going to be here for a few days or he would have to leave.

ADV PAUL JOSEPH PRETORIUS SC: The planning is rigid around that I am afraid given the travel arrangements ...

CHAIRPERSON: Hm.

10 **ADV PAUL JOSEPH PRETORIUS SC:** Health and planning ...

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: But maybe ...

CHAIRPERSON: Because I was thinking from my side – I do not know – I was thinking if we needed for example another two hours or three hours or how much more ...

ADV PAUL JOSEPH PRETORIUS SC: Chair ...

CHAIRPERSON: What do you think?

ADV PAUL JOSEPH PRETORIUS SC: Almost a day.

CHAIRPERSON: Almost a day?

20 **ADV PAUL JOSEPH PRETORIUS SC:** Yes Chair.

CHAIRPERSON: Oh, okay. No that – that is fine. It is just that it would – it is a pity if we are going to have a long break.

ADV PAUL JOSEPH PRETORIUS SC: Yes.

CHAIRPERSON: This kind of technical evidence once you are in to it – it would be better to go on and finish but there are things that we

cannot disturb in terms of

ADV PAUL JOSEPH PRETORIUS SC: Correct.

CHAIRPERSON: Next week's arrangements.

ADV PAUL JOSEPH PRETORIUS SC: Chair and we will when we resume review this particular point

CHAIRPERSON: *Ja.*

ADV PAUL JOSEPH PRETORIUS SC: We will make sure that we understand ...

CHAIRPERSON: Yes.

10 **ADV PAUL JOSEPH PRETORIUS SC:** The terminology to allow us then to ...

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Refer to these concepts ...

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: As we do frequently.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Because these – this swap arrangement ...

CHAIRPERSON: Hm.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Hm.

CHAIRPERSON: Is fundamental?

ADV PAUL JOSEPH PRETORIUS SC: Is fundamental to ...

CHAIRPERSON: To his evidence.

ADV PAUL JOSEPH PRETORIUS SC: A point that the witness will make.

CHAIRPERSON: *Ja*. Let us look early next week in terms of fixing the date when Dr Bloom would come back ...

ADV PAUL JOSEPH PRETORIUS SC: Yes.

CHAIRPERSON: As soon as possible.

ADV PAUL JOSEPH PRETORIUS SC: Yes Chair.

CHAIRPERSON: It should ...

ADV PAUL JOSEPH PRETORIUS SC: It will be next week.

CHAIRPERSON: *Ja*. It should

ADV PAUL JOSEPH PRETORIUS SC: Given availability.

10 **CHAIRPERSON:** Oh, it – it can be sometime next week?

ADV PAUL JOSEPH PRETORIUS SC: Yes. Yes, Chair.

CHAIRPERSON: Oh, *ja* that – that would be very helpful.

ADV PAUL JOSEPH PRETORIUS SC: Yes it would.

CHAIRPERSON: That would be very helpful, *ja*. Okay. Then we are going to adjourn now until Monday. Mr Pretorius you – I know you are not leading the evidence of the witness on Monday but do you – do you know whether he is likely to finish in one day or should we start earlier than normal?

ADV PAUL JOSEPH PRETORIUS SC: Hm.

20 **CHAIRPERSON:** You do not have any idea?

ADV PAUL JOSEPH PRETORIUS SC: Yes two days have been allocated to the witness. 10 o' clock would be in order.

CHAIRPERSON: Okay, alright. We - we will adjourn then for now and we will start at 10 o' clock on Monday. Dr Bloom thank you very much but you will still come back to continue with – with your evidence.

Hopefully it can be sometime next week before one forgets the – the part that you have given today.

DR JONATHAN ZORAH BLOOM: Thank you Chair.

CHAIRPERSON: Thank very much.

DR JONATHAN ZORAH BLOOM: Pleasure.

CHAIRPERSON: We will then adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 3 JUNE 2019