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20

**PROCEEDINGS ON 5 JUNE 2019**

**CHAIRPERSON**: It looks like we are not ready. I will adjourn. I will adjourn for five minutes.

**ADV PAUL JOSEPH PRETORIUS SC**: My apologies Chair.

**REGISTRAR**: All rise.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON**: Good morning Mr Pretorius, good morning everybody. Thank you.

10 **ADV PAUL JOSEPH PRETORIUS SC**: Morning Chair.

**CHAIRPERSON**: Yes are we ready?

**ADV PAUL JOSEPH PRETORIUS SC**: Yes. Apologies for the delay Chair one of the technological devices on which we rely decided to give up the ghost.

**CHAIRPERSON**: Hm. Okay. No that is fine.

**ADV PAUL JOSEPH PRETORIUS SC**: Chair we are continuing with the evidence of Dr Bloom and hope to finalise today. In fact we will make every effort to finalise today and...

**CHAIRPERSON**: Yes.

20 **ADV PAUL JOSEPH PRETORIUS SC**: And we might even finish a little earlier than four o'clock.

**CHAIRPERSON**: Okay no that is fine. Dr Bloom.

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

**CHAIRPERSON**: The oath – you – you do understand that the oath you took the other day continues to apply until you have finished your

evidence?

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

**CHAIRPERSON:** You consider yourself still under that oath?

**DR JONATHAN ZORAH BLOOM:** I do Chair.

**CHAIRPERSON:** Yes thank you.

**ADV PAUL JOSEPH PRETORIUS SC:** Just by way of summary and introduction to today's evidence Dr Bloom we will deal with and have dealt with three transactions. The first is the – what was the referred to as the CDB loan the China Development Bank loan in an amount of  
10 2.5 billion dollars originally.

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

**ADV PAUL JOSEPH PRETORIUS SC:** You told the Chair that that was split into two amounts. An amount of 1.5 billion dollars and an amount of 1 billion dollars. The latter amount of 1 billion dollars was never utilized and in fact fell away.

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

**ADV PAUL JOSEPH PRETORIUS SC:** It was replaced by the second loan that you spoke about and we will also speak about today and that is a 1 billion dollar facility that was abandoned and the 12 billion club  
20 loan syndicated club loan that you spoke about?

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

**ADV PAUL JOSEPH PRETORIUS SC:** The former loan the 1.5 remaining China Development Bank loan was a cross border loan?

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

**ADV PAUL JOSEPH PRETORIUS SC:** The latter was a domestic loan?

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

**ADV PAUL JOSEPH PRETORIUS SC:** Albeit syndicated. Then you will talk later in your evidence of a third amount and that is an existing Transnet debt of R11.3 billion.

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

**ADV PAUL JOSEPH PRETORIUS SC:** That was hedged by means of a swop. In other words financial instruments used to protect against risk were utilised.

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

10 **ADV PAUL JOSEPH PRETORIUS SC:** Alright. If we can then just go back please to page 21 of Exhibit BB8[d]. Are you there?

**DR JONATHAN ZORAH BLOOM:** Yes Chair thank you.

**ADV PAUL JOSEPH PRETORIUS SC:** This is the diagram that we dealt with at the conclusion of our evidence last week explaining one of the financial instruments used to protect or hedge against risk.

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

20 **ADV PAUL JOSEPH PRETORIUS SC:** And you going to deal with an interest rate swop which was the financial instrument or hedge instrument used in this particular case in relation to the 12 billion club loan.

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

**ADV PAUL JOSEPH PRETORIUS SC:** Right. So what happens is if we can just summarise this because it is relevant to the next trip – part of your evidence. On the right hand side of the diagram you have the original loan. So there is a consortium of lenders or the club they lend

money to the borrower Transnet?

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

**ADV PAUL JOSEPH PRETORIUS SC:** The loan agreement was entered into or an amount of R12 billion?

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

**CHAIRPERSON:** 12 billion ne?

**ADV PAUL JOSEPH PRETORIUS SC:** R12 billion.

**CHAIRPERSON:** Billion hm.

**ADV PAUL JOSEPH PRETORIUS SC:** And the interest rate...

10 **CHAIRPERSON:** I think you said – you may have said 12 million.

**ADV PAUL JOSEPH PRETORIUS SC:** Oh did I? Yes that may be my sinus issue. But let us not go there Chair.

**CHAIRPERSON:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** R12 billion.

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

**ADV PAUL JOSEPH PRETORIUS SC:** Okay. And there was floating interest rate?

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

20 **ADV PAUL JOSEPH PRETORIUS SC:** Entered into and you told the Chair that that agreement was entered into on the 23 November 2015?

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

**ADV PAUL JOSEPH PRETORIUS SC:** Right. You also told the Chair that days later Transnet entered into a separate and discreet agreement involving a financial transaction the goal of which purportedly at least was to protect Transnet against the risk arising

from it having entered into a floating rate interest rate agreement?

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

**ADV PAUL JOSEPH PRETORIUS SC:** And that is on the left hand side of the page. Transnet was the one counter party and Nedbank was the other counter party.

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

**ADV PAUL JOSEPH PRETORIUS SC:** Correct. We just summarising what we would have stated to the Chair although not completely once more. So in essence what Transnet says to itself I have entered into a  
10 large loan of R12 billion at a floating interest rate.

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

**ADV PAUL JOSEPH PRETORIUS SC:** I have a risk. The interest rate may rise to the extent that it may cause financial problems. I may not be in a position to pay an ever increasing floating interest rate on this capital amount of R12 billion?

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

**ADV PAUL JOSEPH PRETORIUS SC:** It then says I am going to seek out a counter party with whom I can transact in order to protect myself against the risk?

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

**ADV PAUL JOSEPH PRETORIUS SC:** I will enter into this agreement as you explained to the Chair on the basis that I forecast that interest rates are going to rise?

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

**ADV PAUL JOSEPH PRETORIUS SC:** If I can find someone who will

enter into a transaction with me on its understanding that interest rates will not rise and that the fixed rate will always be higher than the floating rate then we can enter into a negotiation and enter into a swop?

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

**ADV PAUL JOSEPH PRETORIUS SC:** And you described the stances that each party takes – each counter party takes in entering into such an arrangement. So for as long as the floating rate is higher than the fixed rate Transnet will stand to gain?

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

**ADV PAUL JOSEPH PRETORIUS SC:** Because – and for as long as the fixed rate is lower than the – is higher than the floating rate then Nedbank stands to gain?

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

**ADV PAUL JOSEPH PRETORIUS SC:** So when you say in the diagram Nedbank pays the floating rate to Transnet and Transnet pays the fixed rate to the counter party Nedbank they do not actually do that?

**DR JONATHAN ZORAH BLOOM:** That is correct Chair it is notional.

20 **ADV PAUL JOSEPH PRETORIUS SC:** It is notional and it is just the difference between the two what you call the nett cash flow of netting off those two amounts that is paid by one party to the other?

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

**ADV PAUL JOSEPH PRETORIUS SC:** What happened in this case?

**DR JONATHAN ZORAH BLOOM:** In this particular case the rates were fixed at a – at quite a high level and Transnet as indicated were paying

the fixed rate and Nedbank would notionally be paying the floating rate and essentially what has happened up to now which we will see also later Chair is that the floating rates have never exceeded the fixed rates and they actually have never even come close to exceeding the fixed rates.

**ADV PAUL JOSEPH PRETORIUS SC:** Alright.

**CHAIRPERSON:** Well just before you proceed on that.

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

**CHAIRPERSON:** You stated that this happened within a matter of days.

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

**CHAIRPERSON:** Is that right? Now I think when we last discussed this here one of the issues I had raised was that one would have expected Transnet to have done its homework before entering into the floating interest rate regime.

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

**CHAIRPERSON:** And assuming that it had done its homework then one must conclude that it had reached the conclusion that it was better to go with the floating interest rate regime rather than a fixed rate regime?

20 **DR JONATHAN ZORAH BLOOM:** That is correct Chair.

**CHAIRPERSON:** What are the chances that if they had done their homework before entering into the floating interest rate arrangement that within a matter of days they would have a different forecast of how the interest were likely to – to go over the years of the transaction or what are the chances that like if you do your homework and you come



to the conclusion today that the – the best regime for you is a floating interest rate for the next ten years or whatever the period is that after a few days you could have a completely different opinion and now seek to have a fixed rate.

**ADV PAUL JOSEPH PRETORIUS SC:** Chair that seems to be strange because in terms of and we will see later as well that in terms of the risk management framework policy of Transnet that they would – if they made a decision to fix the rates at that point in time if that decision – given that they swapped it three days later if they made that decision  
10 then it would have been in line with the risk management framework. In this particular case it was not in line with the risk management framework policy and they would have made a call prior to actually entering into the loan on the 23 November that interest – these – this is what we expect interest rates to do in the next – in the short term, in the medium term and potentially the long term and they would have locked in the appropriate rate at that point in time not three days later.

**CHAIRPERSON:** So it is quite strange that there was this change of or what appears to be a change of view?

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

20 **CHAIRPERSON:** Yes. Okay thank you.

**ADV PAUL JOSEPH PRETORIUS SC:** I think in the course of your evidence to come your view is a little stronger than strange but let me not put words in your mouth and we will deal with the question in detail Chair. But perhaps one should flag one issue for the moment. The content of the swop arrangement between the two counter parties

Nedbank and Transnet is essentially Nedbank says you pay me the fixed rate and I will pay you the floating rate we will nett the two off and that sum will either go to you Transnet or go to Nedbank.

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

**ADV PAUL JOSEPH PRETORIUS SC:** Depending on which is the higher?

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

**ADV PAUL JOSEPH PRETORIUS SC:** Right. So Nedbank assumes the risk on the basis that if the floating rate remains low contrary to the  
10 predictions of Transnet it will profit?

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

**ADV PAUL JOSEPH PRETORIUS SC:** On the other hand Transnet says if the floating rate does rise I am protected because all I have to do is pay the fixed rate?

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

**ADV PAUL JOSEPH PRETORIUS SC:** But we should flag an issue here. The fixed rate is that the rate the market rate at which the loan could have been entered into in the first place or is it a different fixed rate?

20 **DR JONATHAN ZORAH BLOOM:** Chair there are – there are two – there are two rates. The one – when you pricing these types of transactions in other words you going into the market to find out okay so if I wanted a fixed rate who is prepared to give me a fixed rate and at what rate?

**ADV PAUL JOSEPH PRETORIUS SC:** Are you talking about in a swop

transaction?

**DR JONATHAN ZORAH BLOOM:** In a swop transaction. And you would – you would look at what the market says. Then it would become a negotiation in terms of – but this is what the market says but as the person that is demanding the fixed rate in other words I am prepared to pay it is – it will be a higher rate. So that is the – there are two – when we talk about the fixed rates in this particular context we talking about two rates. The one that is market related and the other one is – is the actual rate that is concluded in a negotiation and agreed to.

10 **ADV PAUL JOSEPH PRETORIUS SC:** In the swop

**DR JONATHAN ZORAH BLOOM:** In the swop.

**ADV PAUL JOSEPH PRETORIUS SC:** So had Transnet in November 2015 decided to enter into a loan at a fixed rate.

**CHAIRPERSON:** I am sorry. Is that outside? Is that noise from outside? Ja it looks like it is from outside.

**ADV PAUL JOSEPH PRETORIUS SC:** I am told it is outside Chair.

**CHAIRPERSON:** Yes. Well somebody will try and see if we – there is any chance of them – of the noise not affecting us in any serious way. Okay let us proceed in the meantime.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Mr Brown we were dealing then with the two fixed interest rates amounts. But in lay language if I – if Transnet had entered into a fixed rate at the time the floating rate agreement was entered into if it had decided wisely in your view to simply say I want a fixed loan not a floating interest rate loan it would have done so at a rate determined largely not totally by the market?

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

**ADV PAUL JOSEPH PRETORIUS SC:** However in this case when it enters into the swop arrangement with the counter party Nedbank the fixed rate is not the market rate it is a negotiated rate?

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

**ADV PAUL JOSEPH PRETORIUS SC:** Which in this case and ordinarily would be higher than the market rate?

**DR JONATHAN ZORAH BLOOM:** Chair yes but only – only slightly because the market rate is – from a fixed rate perspective would be the  
10 base and then there are certain small adjustments that are made for further risk that is taken by the counter party. So it would not – it would not be substantially higher it would be a couple of tenths of a percent more. But it will not be – it will not be significant. It is just merely that – that counter parties assume further – assume further risk and therefore compensate for that risk in adding a couple of tenths of a percent to a – to the fixed base rate.

**CHAIRPERSON:** Okay. Thank you.

**ADV PAUL JOSEPH PRETORIUS SC:** So when entering into the swop arrangement it is not as if I simply put myself in the position I would  
20 have been had I entered into a fixed rate. I am paying a premium on the fixed rate in the swop arrangement?

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

**ADV PAUL JOSEPH PRETORIUS SC:** In this case was the difference between the market rate or what you call the mid-market rate and the actual fixed rate paid in the swop minor or substantial?

**DR JONATHAN ZORAH BLOOM:** Substantial Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** So it seems what you are saying it was exceptional?

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

**ADV PAUL JOSEPH PRETORIUS SC:** Right if we can then go on to page 22. You say there in the first bullet and perhaps you should tell the Chair what you say by way of summary of what we have been dealing with up to now.

**DR JONATHAN ZORAH BLOOM:** So essentially as we indicated there  
10 are two – there are two counter parties in the transaction. The one that is willing to pay the fixed rate and the other one that is willing to pay a floating rate on the notional amount. In other words on the principle, the capital amount and these rates what is important and it will come out later as well are exchanged over a period of time in terms of an agreement and that could be on a – it is normally on a quarterly basis or it could be any other time frame but in this particular instance it was over a fifteen year period on every quarter.

**ADV PAUL JOSEPH PRETORIUS SC:** Then let us go to page – did you deal with the second bullet?

20 **DR JONATHAN ZORAH BLOOM:** No I have – I have not dealt with it Chair – the second bullet. So it essentially relates to the first one Chair and the base rate that they – in terms I think this is important just to clarify. That the base rate on floating because there is a base rate for fixed, there is base rate for floating is a rate that is used by – that is determined by the banks in Johannesburg called the JIBAR and

then a counter party in terms of providing or entering into a rate regime would add a margin to that. So it would be the JIBAR rate plus a percentage to – and that would become your floating rate.

**ADV PAUL JOSEPH PRETORIUS SC:** And we will deal with the differences between market and swop rates in a moment?

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

**ADV PAUL JOSEPH PRETORIUS SC:** Then if we could go to the next page please where you make further points about the swop instrument.

**DR JONATHAN ZORAH BLOOM:** Chair by way of summary the – you  
10 enter into a swop arrangement because the two counter parties have different or opposing views. Because if the one wants a fixed the other one would want a floating etcetera, etcetera. So it is a mechanism to lower the cost of money or the cost of debt if you like in terms of what one would – which one would achieve. But also that would happen initially but then the market forces kick in and it will result in either increasing or decreasing but that is why swop transactions are done because of two counter parties having opposing views.

**ADV PAUL JOSEPH PRETORIUS SC:** Right and of course it only offers you a what you term a lower cost of money if the market moves in  
20 accordance with your predictions?

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

**ADV PAUL JOSEPH PRETORIUS SC:** If it does not you stand to lose?

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

**ADV PAUL JOSEPH PRETORIUS SC:** As Transnet did in this case?

**DR JONATHAN ZORAH BLOOM:** Yes, yes Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** So you make that point in the second bullet would you just deal with that please?

**DR JONATHAN ZORAH BLOOM:** So essentially if – if Transnet entered into a fixed rate if we can use an example of 15% and the other counter party entered into a floating rate of say 12%. So Transnet would pay fixed 15 or notionally and the other – the counter party would pay 12 and then the difference would be paid depending on the situation. But if floating rates were to increase – let us assume that the floating rate went from 12 percentage points to 13 and the – remember the fixed rate  
10 – the fixed rate is still 15 then the – that is beneficial to Transnet or to the fixed rate payer in this particular case. If floating rates went in the opposite direction in other words if it went from – maybe from 12 to 11 then that is not beneficial to Transnet it is beneficial to the counter party paying the floating rate.

**ADV PAUL JOSEPH PRETORIUS SC:** So let us use an extreme example because often extreme examples illustrate the point better. Let us assume that in the swop transaction Transnet has demanded or has agreed to pay – Transnet has demanded and Nedbank the counter party has agreed to pay a fixed rate to Transnet or allow Transnet to  
20 pay a fixed rate of 15%. Right.

**DR JONATHAN ZORAH BLOOM:** Okay.

**ADV PAUL JOSEPH PRETORIUS SC:** Let us assume the interest rate, floating interest rate skyrocket to 20% then who gains and who loses?

**DR JONATHAN ZORAH BLOOM:** Transnet would gain because their rate remains fixed and the floating party or the counter party paying the

floating rate would have to...

**ADV PAUL JOSEPH PRETORIUS SC:** To Transnet?

**DR JONATHAN ZORAH BLOOM:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** Notionally.

**DR JONATHAN ZORAH BLOOM:** Would have to pay that difference between the 15 and the 20.

**ADV PAUL JOSEPH PRETORIUS SC:** If the floating rate however does not go anywhere near 15% but in fact remains around 10% who wins and who loses?

10 **DR JONATHAN ZORAH BLOOM:** Transnet would lose because they pay fixed rate irrespective of the movement in market rates and the beneficial party in this particular case then would be the counter party paying the floating rate in Nedbank [indistinct].

**ADV PAUL JOSEPH PRETORIUS SC:** So all the counter party Nedbank has to do is pay Transnet the floating rate of 12% it is receiving the equivalent of 15%?

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

20 **CHAIRPERSON:** So the – is the principle that the party that favours fixed – a fixed rate gains if the floating rate increases above the fixed rate and loses if the floating interest rate goes below the fixed rate to which they have agreed?

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

**CHAIRPERSON:** Yes okay.

**ADV PAUL JOSEPH PRETORIUS SC:** And then there is a creature in the market called the swops dealer that is the counter party that is to



go back to our earlier analogy the insurer.

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

**ADV PAUL JOSEPH PRETORIUS SC:** And the dealer makes a profit as you and the Chair have just exchanged views about, where do the dealers make their profit as it were?

**DR JONATHAN ZORAH BLOOM:** Chair the dealer makes profit because – as I indicated previously you – there are two fixed rates. The one is the market rate and the other one is if you like the negotiated rate. So the dealer would say this is what the market rate is  
10 what I would be able to get in the market and the negotiated rate is what I conclude with a – a counter party. So the difference between the market rate slightly adjusted for – as for the risks as I indicated and the actual negotiated rate is the profit that the dealer would make.

**ADV PAUL JOSEPH PRETORIUS SC:** Is part of the profit the dealer would make?

**DR JONATHAN ZORAH BLOOM:** Party – Correct.

**ADV PAUL JOSEPH PRETORIUS SC:** Yes well and that difference between the market fixed rate and the negotiated fixed rate and the swop is what the experts and yourself refer to as the

20 **ADV PAUL JOSEPH PRETORIUS SC:** They are called – a Delta.

**ADV PAUL JOSEPH PRETORIUS SC:** A Delta and we will come to that later in graphic form. But let us just clarify for the sake of completeness. If market rates move in favour of the counter party Nedbank then it makes a profit there?

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

**ADV PAUL JOSEPH PRETORIUS SC:** Or it profits put it that way

**DR JONATHAN ZORAH BLOOM:** Correct.

**ADV PAUL JOSEPH PRETORIUS SC:** There is a second source of gain for an institution such as Transnet the counter party and that is the source of gain to which you have just now referred. Because out in the market Nedbank would blown money at a fixed rate of say 12% correct?

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

**ADV PAUL JOSEPH PRETORIUS SC:** But here it is paying the fixed rate at a negotiated amount of – or it is not it is being paid a fixed rate  
10 by Transnet at 13% and that difference between 12 and 13 is an added source of gain for the counter party?

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

**ADV PAUL JOSEPH PRETORIUS SC:** Okay. I am not sure if that is clear if you want us to ...

**CHAIRPERSON:** I think it is clear but I wanted to clarify in the context of the reference to a dealer. In this transaction between Transnet and Nedbank who would be the dealer?

**DR JONATHAN ZORAH BLOOM:** Chair the – in this particular case for  
20 the club loan because that is essentially what we talking about. The counter – the one counter party was Transnet the other counter party was Nedbank as we know and Regiments was the exe- what is called the executing agent. In other word the party that does the trades. In other words actually executes the transaction or the swop every quarter. But I think it is important to also note that either of the counter parties can also be the executing agent. It is not necessary for

an external party to be able to do the types of swops that we are referring to now because these are as we will see later as well these are called vanilla swops. It is also a term that is used in the industry in other words to be put it in – to simplify Chair it is stock standard that anybody – it is not – there is nothing untoward about it. It is a very straightforward transaction.

**CHAIRPERSON**: There are no special features.

**DR JONATHAN ZORAH BLOOM**: Sorry.

**CHAIRPERSON**: So to speak, *ja*.

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

**CHAIRPERSON**: Okay, alright.

**ADV PAUL JOSEPH PRETORIUS SC**: And you have stated earlier and you will repeat today that Transnet Treasury had capacity. Was its capacity sufficient enough to execute these trades?

**DR JONATHAN ZORAH BLOOM**: That is – that is correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC**: So the appointment of Regiments as executing agency was that necessary in order for these swaps to be executed?

**DR JONATHAN ZORAH BLOOM**: No Chair.

20 **CHAIRPERSON**: At a practical level earlier on you said that - in response to one of Mr Pretorius' questions – there is no actual payment. I assume that what you meant was there is no actual payment during a particular time but at a later stage then there would be or – or are you able to clarify that more?

**DR JONATHAN ZORAH BLOOM**: I can – I can Chair. What is – what it

means is in theory the one party would pay an amount of money based on a fixed rate to the other party and the other party in theory would pay an amount of money based on the floating rate to the other counterparty. So instead of them both writing out a cheque the one to the other and the other – and vice versa they would look at what the two amounts were based on the fixed rate and based on the floating rate and then (intervenes).

**CHAIRPERSON:** The one who is supposed to pay the difference pays?

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

10 **CHAIRPERSON:** So only one pays and that is the one who is so to speak prejudiced by the - the interest rate at the time?

**DR JONATHAN ZORAH BLOOM:** That is correct Chair. There can only be one winner.

**CHAIRPERSON:** There can only be one winner?

**DR JONATHAN ZORAH BLOOM:** Yes.

**CHAIRPERSON:** Okay. Okay but how – what is the frequency of those payments during that period of the arrangement?

**DR JONATHAN ZORAH BLOOM:** Chair it depends on the agreement and the – the swap agreement – and in this particular case it is  
20 quarterly. So ever quarter a ...

**CHAIRPERSON:** Yes.

**DR JONATHAN ZORAH BLOOM:** A swap transaction occurs.

**CHAIRPERSON:** Oh, but for all intents and purposes it can be whatever the parties agree upon?

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

**CHAIRPERSON:** Yes, okay. Now a swap arrangement cannot exist without another arrangement. In this case Nedbank and Transnet their – their swap arrangement needed the arrangement of the consortium with Transnet to be their first. Is that right?

**DR JONATHAN ZORAH BLOOM:** That is correct Chair. In other words the loan.

**CHAIRPERSON:** *Ja.* The one can exist without the other but the other cannot exist without the first one?

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

10 **CHAIRPERSON:** Okay. Now once Transnet had concluded the loan agreement with the consortium and it had proceeded to conclude the swap arrangement with Nedbank what was there for Regiments to do after that? Was there anything for Regiments to continue doing after the two arrangements had been concluded?

**DR JONATHAN ZORAH BLOOM:** No Chair.

**CHAIRPERSON:** Okay.

**DR JONATHAN ZORAH BLOOM:** So in other words – except depending on how Regiments – if Regiments were doing the execution of the swaps in other words they were the executing agent. Then they would  
20 do that swap every quarter.

**CHAIRPERSON:** Oh.

**DR JONATHAN ZORAH BLOOM:** So in other words they would remain involved in order as the – as the party doing the trade. They would be involved in that for the duration of the agreement.

**CHAIRPERSON:** Oh. So the execution that you are talking about is

the execution at the time of the conclusion of the arrangement except for the payments interval – intermittent payments?

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

**CHAIRPERSON**: Okay, alright and then they get something each time they do their role to play?

**DR JONATHAN ZORAH BLOOM**: That is correct Chair. Every swap - every trade or every swap that they do ...

**CHAIRPERSON**: *Ja*.

**DR JONATHAN ZORAH BLOOM**: They would get a percentage.

10 **CHAIRPERSON**: Yes. Like a commission?

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

**CHAIRPERSON**: Okay, thank you.

**ADV PAUL JOSEPH PRETORIUS SC**: Well they would do the maths every three months?

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

**ADV PAUL JOSEPH PRETORIUS SC**: And obviously Transnet would check and itself do the maths?

**DR JONATHAN ZORAH BLOOM**: Yes. In other words ...

**ADV PAUL JOSEPH PRETORIUS SC**: And so would Nedbank. They  
20 would not just accept at face value what Regiments tell them surely.

**DR JONATHAN ZORAH BLOOM**: Well in – in this particular instance Chair the fee that was paid to Regiments was included in the rate that Transnet paid Nedbank. In other words it was not a – it was not a fee or a commission that Transnet paid Regiments. It would – because the fee was included in the - what is called the yield or the rate it would

have – they would have been paid by some other party.

**CHAIRPERSON:** So ...

**ADV PAUL JOSEPH PRETORIUS SC:** But ultimately by Transnet?

**DR JONATHAN ZORAH BLOOM:** Ultimately by Transnet through the rate.

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

**DR JONATHAN ZORAH BLOOM:** But practically or physically receiving payment would have been from somebody else.

**ADV PAUL JOSEPH PRETORIUS SC:** And that was – that fee for  
10 Regiments - as I understand your evidence – was included in the fixed rate paid as part of the swap as opposed to the midmarket rate?

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

**ADV PAUL JOSEPH PRETORIUS SC:** Right and you say that that margin – the delta as you refer to it – between the midmarket rate and the fixed rate actually incurred by Transnet in the swap was unusually high?

**DR JONATHAN ZORAH BLOOM:** That is correct Chair and it included the Regiments fee.

**CHAIRPERSON:** Yes and the role of Regiments or any entity playing a  
20 similar role in regard to a swap does it include collecting the money from whomever is supposed to pay during the intervals and then handing it over to the one who is supposed to – to receive the payment or do the two parties do the arrangement pay each other directly or whoever needs to pay directly or does it go via Regiments?

**DR JONATHAN ZORAH BLOOM:** It is - Chair it is merely an electronic

– it is an electronic transaction where the two parties – where the money is netted off but essentially what it – what it comes down to is that Nedbank as the counterparty in this particular instance would issue confirmation notices of the transaction and that – and those confirmations would then be captured by Transnet’s dealing room as ...

**CHAIRPERSON:** Yes.

**MR JONATHAN ZORAH BLOOM:** As proof that the transaction has been concluded.

**CHAIRPERSON:** Yes.

10 **DR JONATHAN ZORAH BLOOM:** So the flow of funds is – is essentially an electronic calculation exercise.

**CHAIRPERSON:** Well Dr Bloom I think I did tell you that my knowledge of some of these technological advances is limited. So I am – I still think of actual payment.

**DR JONATHAN ZORAH BLOOM:** No Chair you are doing very well.

**CHAIRPERSON:** But – but your answer seems to suggest that the payments do not – do not go via Regiments. They go from Nedbank to Transnet directly electronically and vice versa depending on who is supposed to pay?

20 **DR JONATHAN ZORAH BLOOM:** Chair in this particular – it depends on the situation. In this particular instance I am unsure how those payments were affected. In other words if – if it was done via Regiments or not I am just aware of the fact that the fee for Regiments was included in the rate paid by Transnet.

**CHAIRPERSON:** Okay. Well part of the reason why I was asking was



to try and place the role of an entity like Regiments into some other kind of role that one maybe much more used to like whether it is like an estate agent that collects rent and pays the landlord and so on. So that is what I was trying to – to figure out but I think from your answer I can take it that you do not understand these – the role of an entity such as Regiments to necessarily include that any payment that must be made either to Transnet or Nedbank has to go via Regiments?

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

**CHAIRPERSON:** *Ja, okay.*

- 10 **ADV PAUL JOSEPH PRETORIUS SC:** We will come back to these concepts in the course of your evidence and to the extent that further explanation is required in relation to any specialist concept. We will deal with it then but for the moment we can close off this part of your evidence just to summarise to say that we are dealing here with a particular risk mitigation or risk avoidance financial instrument in other words a hedge of a particular nature that is an interest rate swap.

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

**ADV PAUL JOSEPH PRETORIUS SC:** And that is particularly important where the loan is a domestic loan?

- 20 **DR JONATHAN ZORAH BLOOM:** That is correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** Right. Now there are other hedging instruments or risk protection – protection against financial risk instruments – hedging instruments and you deal with those on page 24. Now we are not going to go into any detail but to say firstly in relation to the China Development Bank loan it was a cross border loan

involving exchange rates which fluctuate?

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

**ADV PAUL JOSEPH PRETORIUS SC:** Is there a hedging instrument that is used to protect against any loss that might be incurred by an adverse movement in exchange rates?

**DR JONATHAN ZORAH BLOOM:** That is correct Chair. It is called a Cross Currency Swap and it – and it – the intention of that is to especially in our particular case to cater for volatility in the Rand as we have seen. So – because as we have – as we discussed previously it  
10 is necessary to repay the – the loan in the currency which it received it. So to – to hedge against that it costs you money but it takes the – it takes the liquidity risk – if I can put it that way – out of the – out of the equation by entering into such an agreement.

**ADV PAUL JOSEPH PRETORIUS SC:** And you also enter into it with a counterparty. It is a separate arrangement?

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

**ADV PAUL JOSEPH PRETORIUS SC:** So where I borrow money from the China Development Bank I borrow it in Dollars. I have got to exchange it into Rands and I have got to repay it across the border in  
20 Dollars as well?

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

**ADV PAUL JOSEPH PRETORIUS SC:** So there are interests – I mean – there are exchange rate on both sides of the equation on receipt and on repayment?

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

**ADV PAUL JOSEPH PRETORIUS SC:** And I can enter into an arrangement with a third party – a counterparty – in order to protect myself against a risk of exchange rates moving adverse to my interest?

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

**ADV PAUL JOSEPH PRETORIUS SC:** Okay. That is enough I think on Cross Currency Swaps. There are also credit default swaps and you mentioned two risks in your evidence last week to the Chair. The one is where the borrower – Transnet – cannot pay because of factors due to its internal financing?

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

**ADV PAUL JOSEPH PRETORIUS SC:** And there are risks associated with the failure to pay because of external factors such as a collapse in the economy or a downgrade?

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

**ADV PAUL JOSEPH PRETORIUS SC:** Okay. Would you explain how those risks are dealt with?

**DR JONATHAN ZORAH BLOOM:** Yes Chair. The - Transnet entered into an agreement for a – if we can call it - a CCDS which is the Contingent Credit Default Swap.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Which is that?

**DR JONATHAN ZORAH BLOOM:** That is the swap that you just referred to.

**ADV PAUL JOSEPH PRETORIUS SC:** No what is the risk – sorry.

**DR JONATHAN ZORAH BLOOM:** Oh the risk – sorry. The risk – the risk is twofold. The first one is the – to cover yourself against the

inability or the default of not been able to pay interest on your loan. That is the first portion of it and then linked to that would be a situation where circumstances beyond your control as a – as a company prevent you from actually making good on your requirements in terms of the agreement. So it is – it is – in other words it is actually taking out an additional portion of risk to cover that eventuality should it happen.

**ADV PAUL JOSEPH PRETORIUS SC:** So if the adverse event against which you are seeking protection or insurance occurs what happens?

**DR JONATHAN ZORAH BLOOM:** Well then the other party the party  
10 that you have entered into the swap with ...

**ADV PAUL JOSEPH PRETORIUS SC:** The counterparty?

**DR JONATHAN ZORAH BLOOM:** The counterparty - if that event occurs would pay you.

**ADV PAUL JOSEPH PRETORIUS SC:** The full amount of the loan?

**DR JONATHAN ZORAH BLOOM:** Well the – depending on what the agreement is and what the tranches are.

**ADV PAUL JOSEPH PRETORIUS SC:** Okay. To summarise then where one borrows money across the border and one faces a risk because of exchange rate fluctuations one can enter into a Cross Currency Swap  
20 which is a financial instrument entered into with a counterparty to mitigate against risk?

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

**ADV PAUL JOSEPH PRETORIUS SC:** And similarly where you wish to ensure against yourself being unable to pay interest rates or being unable to pay because of external market factors you can also enter

into a financial instrument?

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

**ADV PAUL JOSEPH PRETORIUS SC:** And those are called credit default swaps or Contingent Credit Default Swaps?

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

**ADV PAUL JOSEPH PRETORIUS SC:** And the latter is external to Transnet. The former is internal to Transnet?

**DR JONATHAN ZORAH BLOOM:** Correct.

**ADV PAUL JOSEPH PRETORIUS SC:** But we need not go into any  
10 detail on those because we are going to concentrate on the interest rate swaps. Am I correct?

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

**ADV PAUL JOSEPH PRETORIUS SC:** And you make that point on page 25. What do you say there?

**DR JONATHAN ZORAH BLOOM:** It is essentially what we have been about Chair. It is the agreement between two parties in which one stream of future interest payments is exchanged for another based on the principal amount. So in other words as we have said it is exchanging a floating rate amount related to the loan for a fixed rate  
20 the difference as we said is paid to either of the counterparties.

**ADV PAUL JOSEPH PRETORIUS SC:** Alright. What do you say on page 26 in relation to Cross Currency Swaps? Now those were actually entered into - were they?

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

**ADV PAUL JOSEPH PRETORIUS SC:** Okay. What is the point you

make on page 26 from examining the Transnet records?

**DR JONATHAN ZORAH BLOOM:** Chair in terms of the payment of fees related to the – the Cross Currency Swaps an amount of R7.5 million was paid by Transnet to Regiments for structuring and arranging the – the CCS’ – in other words the Cross Currency Swaps - but what is - and just note that Regiments was the Supply Development partner of JP Morgan. In other words they worked together but what is interesting JP Morgan was appointed to do (indistinct) or to conduct these particular transactions. So it is unclear why Regiments was paid R7.5 million by  
10 Transnet where if they were working on the transaction as JP Morgan Supply Development partner then they would be paid by JP Morgan but they issued an invoice to Transnet for an amount R7.5 million but Chair what is – just to create the necessary context – last – when we met last time on Friday I indicated there was an amount of 166 million that was applicable to so called success fees paid to Regiments and I focussed specifically on 152 million of that 166 million and explained how that was all done and where that number came from. Now included in that 166 million paid by Transnet to Regiments was this 7.5 million. So it could never have – Regiments could never have been paid that amount  
20 by Transnet for work that they did on this particular transaction. So it is – I have indicated it is nothing else but – but fraud. It is unjustified and unwarranted.

**CHAIRPERSON:** Do – do we know whether as a matter of fact JP Morgan performed the job – this – the job that Regiments was paid R7.5 million for?

**DR JONATHAN ZORAH BLOOM:** Chair they would – they did – they were appointed to pay the Cross Currency Swaps ...

**CHAIRPERSON:** Yes.

**DR JONATHAN ZORAH BLOOM:** And there were 25 drawdowns ...

**CHAIRPERSON:** Huh-uh.

**DR JONATHAN ZORAH BLOOM:** And this relates to the CDB loan.

**CHAIRPERSON:** Huh-uh.

**DR JONATHAN ZORAH BLOOM:** There were 25 drawdowns on that loan ...

10 **CHAIRPERSON:** Huh-uh.

**DR JONATHAN ZORAH BLOOM:** And they would have done – at each draw down ...

**CHAIRPERSON:** Hm.

**DR JONATHAN ZORAH BLOOM:** They would have applied a Cross Currency Swap.

**CHAIRPERSON:** Hm, hm. Well I – you say they would have and I am trying to look at would have and whether they actually did.

**DR JONATHAN ZORAH BLOOM:** Chair I given that ...

20 **CHAIRPERSON:** Are you in a position to say yes as a matter of fact they did it or I would – or you are only able to say I would have expected them to have done it?

**DR JONATHAN ZORAH BLOOM:** Chair I did not see the agreements ...

**CHAIRPERSON:** Yes.

**DR JONATHAN ZORAH BLOOM:** Which regulate the Cross Currency Swaps between Transnet and JP Morgan per se.

**CHAIRPERSON:** Yes.

**DR JONATHAN ZORAH BLOOM:** So I – I cannot say that – that it did happen ...

**CHAIRPERSON:** Yes.

**DR JONATHAN ZORAH BLOOM:** Or it did not happen ...

**CHAIRPERSON:** Yes.

**DR JONATHAN ZORAH BLOOM:** But I am in terms of the drawdowns ...

**CHAIRPERSON:** Yes.

10 **DR JONATHAN ZORAH BLOOM:** Transnet entered into an agreement to apply these swaps ...

**CHAIRPERSON:** Yes.

**DR JONATHAN ZORAH BLOOM:** And therefore I would – I would (intervenes).

**CHAIRPERSON:** JP Morgan - in terms of the agreements which you did see JP Morgan – this – performing this task fell within what they were required to do?

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

**CHAIRPERSON:** That you are able to say?

20 **DR JONATHAN ZORAH BLOOM:** That is correct Chair.

**CHAIRPERSON:** What you cannot say is whether they actually did it?

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

**CHAIRPERSON:** And that might require some other – somebody to look more closely and to whether they did it but if the payment that they were paid – JP Morgan – so the payment that they - that was made by



Transnet to them should give an indication or even their invoices would give an indication whether they actually did that part of the job and then if they did not do it – it maybe that then it might not be fraud against Regiments if they actually did the job but if JP Morgan did the job and Regiments did not do that job because it had already been done then it would be fraud. Is that right?

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

**CHAIRPERSON:** *Ja*, okay.

10 **ADV PAUL JOSEPH PRETORIUS SC:** Let us try and understand the essence of what you are saying here with reference to the content of page 26. In relation to the China Development Bank loan it was deemed necessary by Transnet to enter into a risk avoidance or a risk protection hedging mechanism. Correct?

**DR JONATHAN ZORAH BLOOM:** Correct?

**ADV PAUL JOSEPH PRETORIUS SC:** That was called a Cross Currency Swap. Correct?

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

**ADV PAUL JOSEPH PRETORIUS SC:** Regiments was not appointed to do anything in relation to the Cross Currency Swap?

20 **DR JONATHAN ZORAH BLOOM:** That is correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** JP Morgan was appointed to do that work?

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

**ADV PAUL JOSEPH PRETORIUS SC:** You say that despite the fact that it was not appointed to do the Cross Currency Swap it nevertheless

invoiced Transnet for R7.5 million and said I helped my partner to do it?

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

**ADV PAUL JOSEPH PRETORIUS SC:** And you say that that in your opinion and understanding is unjustified and unwarranted and amounts to fraud?

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

**ADV PAUL JOSEPH PRETORIUS SC:** So are you saying then that as far as your knowledge goes Regiments was not appointed to nor  
10 entitled to issue an invoice for R7.5 million?

**DR JONATHAN ZORAH BLOOM:** Not to Transnet Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** Right. It could have an internal arrangement with Regiments – sorry – an internal arrangement with JP Morgan its partner?

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

**ADV PAUL JOSEPH PRETORIUS SC:** And that – but that internal arrangement was an internal arrangement between Regiments and JP Morgan or would have been certainly no basis for placing that liability in the hand of Transnet. Is that what you are saying?

20 **DR JONATHAN ZORAH BLOOM:** That is correct Chair.

**CHAIRPERSON:** I understand part of what you are saying to be that Regiments was not appointed to do – perform this task ...

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

**CHAIRPERSON:** By Transnet?

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

**CHAIRPERSON:** And before you can perform – it could perform this task it would have had to be appointed and – and also to be able to put in an invoice to Transnet. It – it could not put in an invoice without having been appointed unless it was just some fraud?

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

**CHAIRPERSON:** Yes.

**DR JONATHAN ZORAH BLOOM:** If there was an underlying agreement ...

**CHAIRPERSON:** Yes.

10 **DR JONATHAN ZORAH BLOOM:** Of sorts.

**CHAIRPERSON:** There was no underlying agreement.

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

**CHAIRPERSON:** The only – the only thing that would – would remain is whether for this kind of thing there could be any appointment of Regiments that is not formal to do the job. I would imagine. So whether somebody could say just please do this and put in an invoice and we will pay you and they actually do the job. That is what we do not know. Is that right?

20 **DR JONATHAN ZORAH BLOOM:** That is correct Chair and how that relates to Supply Chain Management.

**CHAIRPERSON:** *Ja, ja.* So one does not expect that to – to happen.

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

**CHAIRPERSON:** *Ja* but just in case it happened and they actually did the job then - then it might not be fraud as such but it might be something else but that – that might not be something that you – you

want to say much about. I do not know. I am just to – I am working it out in my own mind.

**DR JONATHAN ZORAH BLOOM:** No unfortunately – yes Chair you are right.

**CHAIRPERSON:** Yes, yes.

**DR JONATHAN ZORAH BLOOM:** If there was any underlying agreement ...

**CHAIRPERSON:** *Ja.*

**DR JONATHAN ZORAH BLOOM:** Or a side agreement or whatever the  
10 case ...

**CHAIRPERSON:** Hm.

**DR JONATHAN ZORAH BLOOM:** Maybe for ...

**CHAIRPERSON:** Hm.

**DR JONATHAN ZORAH BLOOM:** This type of work I was not aware of that and ...

**CHAIRPERSON:** Hm.

**DR JONATHAN ZORAH BLOOM:** I did not see anything.

**CHAIRPERSON:** So if – if there was a genuine job that was done and Regiments – you know - had done the job and genuinely believed that it  
20 was entitled to put in an invoice that would be something else but in the normal course of these types of – of jobs one expects that they would have been formally appointed in one way or another or there would be an agreement and in the absence of an agreement they are putting in an invoice for this type of job. It seems very strange to use my term – very strange - and you say it may well have been fraud?

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

**CHAIRPERSON:** Okay, thank you. I do not know whether I have helped to clarify Mr Pretorius or whether I have compound it.

**ADV PAUL JOSEPH PRETORIUS SC:** No, Chair. The – I will deal with the issues you have raised in a moment but it does seem that in the final report some qualification will be necessary in order to make it accurate and the qualification would be the following Dr Bloom. Are you aware having been given access to the relevant records the records which deal with these issues – these financial transactions  
10 about which you are testifying – are you aware of any agreement or written arrangement or verbal arrangement that would justify Regiments charging Transnet for R7.5 million?

**DR JONATHAN ZORAH BLOOM:** No Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** Okay.

**CHAIRPERSON:** Hm.

**ADV PAUL JOSEPH PRETORIUS SC:** Would you have expected to find such documentation in your work?

**DR JONATHAN ZORAH BLOOM:** No Chair not – not between Transnet and Regiments.

20 **CHAIRPERSON:** Hm.

**DR JONATHAN ZORAH BLOOM:** It would have been because JP Morgan were appointed. So if - that would – if – if Transnet said that they actually did the work then it would have been in addition to what JP Morgan were potentially doing and then some form of agreement or an arrangement would have been reduced to writing at that point.

**ADV PAUL JOSEPH PRETORIUS SC:** Between?

**DR JONATHAN ZORAH BLOOM:** Between Transnet and Regiments if

...

**ADV PAUL JOSEPH PRETORIUS SC:** Yes, no but – sorry. What I am – what I am alluding to is something different.

**DR JONATHAN ZORAH BLOOM:** Okay.

**ADV PAUL JOSEPH PRETORIUS SC:** In the volume of documentation and records that you examined had there been such an agreement – an extra agreement – between Regiments and Transnet albeit strange  
10 would you have come across it?

**DR JONATHAN ZORAH BLOOM:** Yes Chair. Well I would have hoped to have come across but I did not.

**ADV PAUL JOSEPH PRETORIUS SC:** Okay. So subject to the existence of a special arrangement between Transnet and Regiments for the payment of R7.5 million in the absence of such you would stand by your opinion on this page?

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

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

**ADV PAUL JOSEPH PRETORIUS SC:** It is qualified however to the  
20 extent that there may be such an arrangement recorded in writing elsewhere and that would have to be examined against different criteria such as procurement criteria and the like?

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

**ADV PAUL JOSEPH PRETORIUS SC:** But as I understand your evidence even if there was such an arrangement it would be strange?

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

**ADV PAUL JOSEPH PRETORIUS SC:** Why?

**DR JONATHAN ZORAH BLOOM:** Because Regiments was the Supply Development partner or the partner in the – in the transaction or for conducting these transactions of JP Morgan. So they were ...(intervention)

**ADV PAUL JOSEPH PRETORIUS SC:** Regiments was part of the JP Morgan stable?

**DR JONATHAN ZORAH BLOOM:** Yes for all purposes ja.

10 **ADV PAUL JOSEPH PRETORIUS SC:** Yes, so if it had done any work for JP Morgan in executing the swops you would have expected arrangement to be between Regiments and JP Morgan.

**DR JONATHAN ZORAH BLOOM:** That's correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** And you wouldn't have expected Transnet to foot the bill?

**DR JONATHAN ZORAH BLOOM:** That's correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** Of course there may exist information which explains how it came about that Regiments was informed that it could bill Transnet for 7.5million rand and Transnet  
20 would pay but that evidence would exist elsewhere in email communications and the like.

**DR JONATHAN ZORAH BLOOM:** That's possible Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** And then you deal with the contingent credit default swap which is the swap necessitated to avoid or protect against risk where external factors such as a market dip

would require protection.

**DR JONATHAN ZORAH BLOOM:** That's correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** What do you say there on page 27?

**DR JONATHAN ZORAH BLOOM:** Chair it's very similar to the previous slide, in other words the fee that Regiments charged for the cross-currency swap. This is related to the contingent credit default swap and the principles that apply there also apply here. The only difference is the 5.7million fee that Regiment claimed was also paid by Transnet  
10 as part of the 166million that we're referring to previously so that is how the 166million was comprised of the 152million related to the debt origination and lead arranging fees, the fee payable for the cross-currency swap and the fee payable for the contingent credit default swap, that would make up the 166million. So the 5.7million in terms of structuring the CCDS' is even more intriguing if I can use that word, merely because – this is a very, very complex transaction as you may appreciate and the – JP Morgan had certain intellectual property that they applied in the execution of this transaction which actually was a benefit to Transnet. So – and the IP related thereto, in other words in  
20 – to execute this transaction was that of JP Morgan's and not of Regiments. So this is what is also quite strange in terms of, if I can use the word, in terms of this particular transaction because this is – this would have been a – this is a highly complex thing and the IP, as I said was JP Morgan's.

**ADV PAUL JOSEPH PRETORIUS SC:** So again, JP Morgan is



appointed to do a particular hedging swap.

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

**ADV PAUL JOSEPH PRETORIUS SC:** It would have used its own intellectual property to execute this complex financial instrument.

**DR JONATHAN ZORAH BLOOM:** That's correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** Notwithstanding that Regiments was paid separately, an amount of 5.7million rand for apparently doing the work that JP Morgan was formerly appointed to do.

**DR JONATHAN ZORAH BLOOM:** That's correct Chair, for structuring  
10 and arranging.

**ADV PAUL JOSEPH PRETORIUS SC:** Similarly are you aware of any other arrangement directly between Transnet and Regiments to pay it that separate amount of 5.7million rand?

**DR JONATHAN ZORAH BLOOM:** No Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** On the face of it, had such existed would have been proper?

**DR JONATHAN ZORAH BLOOM:** It would have been strange because there was already an agreement between JP Morgan and Transnet for the execution of these particular types of transactions, so how  
20 Regiments fitted in and how they would align with Transnet in performing these functions is where the link is missing.

**ADV PAUL JOSEPH PRETORIUS SC:** Alright, we're going to go back now to the interest rate swaps and perhaps we should use the few minutes before the short adjournment because Chair, the witness does really need to finish today and so we will make our best attempt to do

so.

**CHAIRPERSON**: Yes, no we'll – if need be work till five.

**ADV PAUL JOSEPH PRETORIUS SC**: I hope that won't be necessary  
Chair.

**CHAIRPERSON**: Ja, just indicating that from my side I will be available  
to do that if we need to, yes okay.

**ADV PAUL JOSEPH PRETORIUS SC**: Thank you Chair but let's deal as  
far as we can with the return to interest rate swaps. You say, in the  
first bullet – and I think you've already told the Chair that interest rate  
10 swaps were only applicable to the domestic syndicated loan of 12billion  
rand called the Club Loan.

**DR JONATHAN ZORAH BLOOM**: That's correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC**: Right and you say the swaps  
were executed in two tranches, what does that mean?

**DR JONATHAN ZORAH BLOOM**: In other words there was 12billion  
rand applicable and the first tranche or in other words the first amount  
of that 12billion rand was 4.5billion rand that was executed or the  
transaction occurred on the 4<sup>th</sup> of December and then on the 7<sup>th</sup> of  
March – ag 2015 and on the 7<sup>th</sup> of March 2016 a further 7.5billion rand  
20 of the 12billion rand was swapped – was executed.

**ADV PAUL JOSEPH PRETORIUS SC**: So are you saying that the  
financial arrangement, the hedging or interest rate swap was put into  
effect in respect of 4.5billion rand in December 2015 and the remaining  
7.5billion rand in March 2016?

**DR JONATHAN ZORAH BLOOM**: That's correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** And the third bullet you've already explained to the Chair but because it's quite a neat summary would you just place that third bullet on record.

**DR JONATHAN ZORAH BLOOM:** I can, so Chair what is swapped are the cash flows associated with the two interest rates, the floating and the fixed. The one is floating that moves with the market and the other is fixed for a certain duration. The one party received the amount attached to the floating rate and the other party pays an amount attached to the fixed interest rate. Only the difference, as we've  
10 discussed, amount, based on the fixed and floating rates are paid to either of the parties, that's correct.

**ADV PAUL JOSEPH PRETORIUS SC:** Alright, and you then will proceed, hopefully after the short adjournment with your observations on page 29. We'll deal with the by way of summary because you've alluded to them previously, would this be a convenient time Chair.

**CHAIRPERSON:** Yes it would be but before that, that bullet point at page 28, is it an answer to what Mr Pretorius said on the first day of your evidence, I don't know if that was Friday, when he was saying that you people talk about – in this sector talk about a swap but there's  
20 nothing swapped, or was that a different context?

**DR JONATHAN ZORAH BLOOM:** No Chair this is – you're absolutely right, it's the same context in other words...(intervention).

**CHAIRPERSON:** Because I can see what is swapped here, I hope I'm right.

**DR JONATHAN ZORAH BLOOM:** No Chair, you're absolutely right, in

other words, it's actually only the difference between the two rates that's paid to either of the parties. So it's not – as you alluded to previously Chair, the one party doesn't write out a cheque to the other one and the other party doesn't write out a cheque visa versa and then they- and then it's – and then the one received more and the other one received less, it's literally the difference between the two.

**CHAIRPERSON:** But going back to the meaning of swapping that Mr Pretorius was talking about, can one say when parties such as Transnet and Nedbank in the transaction that we dealt with, enter into that swap  
10 arrangement, in effect what they are swapping are the risks.

**DR JONATHAN ZORAH BLOOM:** That's correct Chair because...(intervention).

**CHAIRPERSON:** So Transnet has entered into an arrangement with the consortium in terms of which it is running a risk associated with a floating interest rate.

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

**CHAIRPERSON:** But it's not happy with that, it goes to Nedbank and say, assume or take this risk because I'd rather have a fixed interest rate risk and Nedbank says, well I can give you a fixed interest rate  
20 risk, I'm happy to take the floating rate interest risk.

**DR JONATHAN ZORAH BLOOM:** That's correct Chair.

**CHAIRPERSON:** So is it more or less correct, you are swapping risks?

**DR JONATHAN ZORAH BLOOM:** Yes, in other words, from a Transnet perspective they would be the ones that say, I want to de-risk or take out the risk of future interest rate increases and I'm prepared to pay for

that.

**CHAIRPERSON:** Yes okay alright one is trying so it may be that Mr Pretorius, my example of swapping a risk is not a hundred percent accurate, it's my way of trying to understand these things, as you know, as lawyers we always want to make sure that the definition fits or a term fits the definition.

**ADV PAUL JOSEPH PRETORIUS SC:** Chair however one looks at it, in essence one is swapping risks, one is saying to the counter party you take my risk and I'll take your risk and then the financial results  
10 which follow are just a netting off of the financial implications, the cash-flow resulting from both – but what – the point that was made last week Chair was a different one slightly and that was that the original agreement remains in-tact.

**CHAIRPERSON:** Yes, yes.

**ADV PAUL JOSEPH PRETORIUS SC:** So the original Club Loan remains in-tact and Transnet must always pay that, nothing is swapped in or out of that arrangement.

**CHAIRPERSON:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** The swap takes place with the  
20 counter party and it's a risk swap so that was the point that we were trying to make.

**CHAIRPERSON:** So at a practical level as between Transnet and the consortium, that risk remains.

**ADV PAUL JOSEPH PRETORIUS:** Correct, nothing is swapped.

**CHAIRPERSON:** All that happens is that Transnet goes and

approaches a party and says cover me in terms of this risk because it still stands.

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

**CHAIRPERSON:** But in effect by doing so it takes care of the risk.

**ADV PAUL JOSEPH PRETORIUS SC:** Not in this case but it ought to have taken of the risk.

**CHAIRPERSON:** Well the purpose is to take care of the risk ja.

**ADV PAUL JOSEPH PRETORIUS SC:** So that's clear.

**CHAIRPERSON:** No thank you.

10 **ADV PAUL JOSEPH PRETORIUS SC:** We'll take the tea adjournment and resume at twenty-five to twelve. We're adjourned.

**INQUIRY ADJOURNED**

**INQUIRY RESUMES**

**CHAIRPERSON:** Yes we may proceed.

**ADV PAUL JOSEPH PRETORIUS SC:** Thank you Chair. Doctor Bloom page 29 of your presentation makes further comments in relation to the interest swops. Would you go through that page please?

20 **DR JONATHAN ZORAH BLOOM:** Certainly Chair. As we know there were two parties to these transactions related to the 12 billion club loan Transnet and Nedbank and each one of them assumes a certain risk. The – as indicated there is a – there is normally a market executing agent or a market agent that does the trades and as indicated previously this could also be the either of the counter parties but in this particular case there was external – an external party Regiments was used as the executing agent of the execution agent for

all the trades related to the club loan. And then Nedbank as indicated was the counter party for all the swop transactions related to the club loan. Then in the last bullet Chair the Transnet dealing room was more than capable and had the requisite capacity to execute the trades. As indicated previously these are – these types of swops that were performed were – as – I use the word Vanilla. They are stock standard swops. There was nothing untoward, nothing strange or anything about them in terms of their execution. It could be done by anybody that is a...

10 **CHAIRPERSON**: Nothing complex?

**DR JONATHAN ZORAH BLOOM**: Nothing complex Chair.

**CHAIRPERSON**: Yes.

**DR JONATHAN ZORAH BLOOM**: That could be done by any person that has been on a – on a trading floor.

**CHAIRPERSON**: Yex.

**DR JONATHAN ZORAH BLOOM**: As such. So...

**CHAIRPERSON**: So there cannot be a justification that there was something particularly complex about them?

**DR JONATHAN ZORAH BLOOM**: Not...

20 **CHAIRPERSON**: And that is why somebody from outside was required who may have had better expertise?

**DR JONATHAN ZORAH BLOOM**: That is correct Chair. So I have also indicated that this – this will be a point of contention by Mr Ramosebudi and because there is a belief that there was not sufficient capacity and skill within Transnet to perform these transactions. Which is actually to

the contrary and therefore fees paid to Regiments would therefore be unjustified as the – as the capacity and the skill existed within Transnet to perform these transactions.

**CHAIRPERSON**: Talking about that potential point of contention you have made the point that this swop transaction was ordinary?

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

**CHAIRPERSON**: There was really nothing requiring any exceptional expertise. But have you been able to look at the qualifications, expertise and experience of the people that Regiments used for this  
10 swop transaction and compared them with the people that Transnet would have used if it had used its dealing room to deal with this and be able to say I have looked at their qualifications, I have looked at their expertise, I have looked at their experience really there is – there was nothing that the dealing room people at Transnet did not have?

**DR JONATHAN ZORAH BLOOM**: Chair I did not look at Regiments specifically.

**CHAIRPERSON**: Yes.

**DR JONATHAN ZORAH BLOOM**: But I looked at – I looked at Transnet.

20 **CHAIRPERSON**: Yes.

**DR JONATHAN ZORAH BLOOM**: And I do have – I would just need to go there.

**ADV PAUL JOSEPH PRETORIUS SC**: You deal with it at page 40 for example?

**DR JONATHAN ZORAH BLOOM**: That is correct Chair. That is where I



was going. Page 40.

**ADV PAUL JOSEPH PRETORIUS SC:** And 41.

**DR JONATHAN ZORAH BLOOM:** That is right. Chair...

**CHAIRPERSON:** Please talk to it because I have not read it.

**DR JONATHAN ZORAH BLOOM:** Okay the – I will just read it.

“The Transnet treasury team had and still has the expertise to handle these transactions without the support of external transaction advisors or execution agents.”

10 The relevant transactions as indicated Chair are typically termed Vanilla, they are stock standard swops and the treasury dealing room has done these and does these periodically without external assistance.

“The normal process in terms of doing these type of swops would be for Transnet treasury dealing team to obtain indicative pricing of the proposed structure from the Transnet approved counter parties and then depending on the size of the proposed transaction the number of participating counter parties will be  
20 reduced to three based on achievable prices.”

In other words they will go into the market, they look at who is going to give us the best price for what we are trying to achieve or in realising our objective and they would do it on that basis.

**ADV PAUL JOSEPH PRETORIUS SC:** Before you go would such swop be anything new to the Transnet dealing room?

**DR JONATHAN ZORAH BLOOM:** Not in – not the swops that we are referring to here Chair.

**CHAIRPERSON:** I – I guess what I am looking at seeing that you were – you made the point that there could be a point of contention with regard to whether or not the – Transnet had the requisite capacity. I guess what I am looking at is a situation where if somebody has a contrary view to yours and says as you say Mr Ramosebudi is likely to say – says no but we did not have the capacity. Quite apart from debating what the actual expertise you can actually say but look at the  
10 people you used or Regiments used. Look at what they have in terms of qualification, experience and expertise. Maybe you are able to – you would be able to say, when you compare it with those – with the ex – qualifications, experience and expertise of those that Transnet had there is nothing really special. So I am looking at doing an even if kind of argument. You understand what I mean?

**DR JONATHAN ZORAH BLOOM:** I do. I do Chair.

**CHAIRPERSON:** So – but if – if your starting point is this – this was an ordinary swop transaction?

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

20 **CHAIRPERSON:** It did not need special expertise I know – what experience. It was just a normal swop transaction.

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

**CHAIRPERSON:** The experience that Transnet had was enough but I am saying I am going beyond that to say let us assume that there was something exceptional about it you look at the people that Regiments

that use for it and you compare them to the people that Transnet had in its dealing room and you are able then to say there is no justification for not having used Transnet's own capacity.

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

**CHAIRPERSON**: Thank you.

**ADV PAUL JOSEPH PRETORIUS SC**: Perhaps you should while we are dealing with it then go to page 41 and deal with it there. Of course Chair the question arises as you have stated which will be put before you in due course with the answer hopefully will be put before you in  
10 due is did Regiments have any capacity at all or did they outsource but we will come to that.

**CHAIRPERSON**: Yes. They are not – that becomes very important ja. Thank you.

**DR JONATHAN ZORAH BLOOM**: Chair on page 41 until 30 April 2017 this was now well after the – this swop transactions commenced the Transnet treasury dealing room team comprised four traders and a market analyst and the team members had a combined experience of almost a hundred years in the local money capital and forex markets. So as we – as we also discussed previously Chair the Transnet treasury  
20 was also rated as one of the best in the world by McKinsey in their survey in 2010 excuse me and therefore my conclusion was looking at the CV's of these gentlemen they had the ability, the skills and qualifications as well as experience to raise debt but also to execute the financial transactions we are talking about.

**CHAIRPERSON**: Thank you.

**ADV PAUL JOSEPH PRETORIUS SC:** Yes. If we can go back then to page 31. The Chair has already raised with you issues related to the R12 billion club loan, the domestic loan and he has asked you why if the agreement was entered into on the 23 November 2015 at a floating interest rate one could reasonably and explicably swop and I use that term advisedly the risk with a counter party to place yourself in the position that you would have been had you entered into a fixed rate loan. And the question then arises this swop transaction was done a few days later how does one explain that and you deal with that in the  
10 next section of your presentation.

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

**ADV PAUL JOSEPH PRETORIUS SC:** Alright. So let us go to page 31 please if you would take the Chair through what you say on that page?

**DR JONATHAN ZORAH BLOOM:** Chair in order to – for Transnet to swop such large amounts of money remember we talking about the 12 billion club loan, we talking about a further amount of Transnet debt of 11.3 billion which we will get to. It would have required them to first understand what the impact of that is on the structure of their debt book. If I can put it that way. In other words all the floating – the debt  
20 that they had on their book in terms of floating rates and the debt they had on their book in terms of fixed rates.

**ADV PAUL JOSEPH PRETORIUS SC:** Now the debt book is all the loans and all the debt which Transnet has at any particular point in time?

**DR JONATHAN ZORAH BLOOM:** That is correct Chair that could be in

bonds issued by Transnet, it could mean straight debt raised by Transnet etcetera, etcetera.

**ADV PAUL JOSEPH PRETORIUS SC:** All loans?

**DR JONATHAN ZORAH BLOOM:** All loans that is right. So – so essentially what Transnet had to – well what had to happen is the – Transnet have a policy the risk management framework which deals with exactly that point. What the ratio should be between fixed rated debt and floating rate debt. And in order for them to do these transactions in other words to convert from floating to fixed they might  
10 have to have or they would have needed to potentially and we can see it did happen, potentially change the ratio between floating and fixed. In other words because they wanted to execute interest rate swaps at fixed rates they would have had to increase their debt or the debt ratio from reducing floating and increasing fixed to a accommodate that. So they would have had to check are they still within the bounds of the policy or not? And if they were not within the bounds of the policy in terms of what they were trying to do then they would have to amend the policy. And that is what is being referred to Chair as the fixed rate strategy in the second bullet. In the third bullet...

20 **CHAIRPERSON:** Yes.

**DR JONATHAN ZORAH BLOOM:** In the third bullet there one has an indication of what happened. In 2012 the – and remember Chair the – what we are talking about here is that there are ranges for floating in other words it is between a certain percentage and a certain percentage and fixed would be between a certain percentage and a

certain percentage so there were ranges. So each one of those ranges would have to add up to 100. So if you have a look we can use an example...

**CHAIRPERSON**: Well let me ask this before you proceed. Is the ration that you talking about in relation to all the debts of Transnet? In other words if you look at all the debts they have and you look at the – at where they have used a floating interest rate and where they have used fixed rate that is what they must have in – they must bear in mind and the policy is that when you have regard to all of those this is the ratio  
10 that should be or is it something else that you talking about?

**DR JONATHAN ZORAH BLOOM**: No Chair that is – that is correct.

**CHAIRPERSON**: Hm.

**DR JONATHAN ZORAH BLOOM**: In other words Transnet make a – a determined judgment on how much floating debt they would like to have.

**CHAIRPERSON**: To have ja.

**DR JONATHAN ZORAH BLOOM**: And how much fixed debt.

**CHAIRPERSON**: Yes, yes.

**DR JONATHAN ZORAH BLOOM**: But do – and that is the basis.

20 **CHAIRPERSON**: Yes.

**DR JONATHAN ZORAH BLOOM**: So that can change.

**CHAIRPERSON**: Yes.

**DR JONATHAN ZORAH BLOOM**: Periodically depending on circumstances.

**CHAIRPERSON**: Hm

**DR JONATHAN ZORAH BLOOM:** But we will...

**CHAIRPERSON:** But until it is changed that is what you must be within if you enter into any transaction?

**DR JONATHAN ZORAH BLOOM:** Correct Chair in the terms of the risk management framework.

**CHAIRPERSON:** In terms of risk management ja. Okay thank you. The idea being that Transnet does not want to be beyond certain parameters in terms of either fixed or floating interest rate at any one time. Does not want to outside of the parameters it fixes for itself?

10 **DR JONATHAN ZORAH BLOOM:** That is correct Chair. So if they want to take on new debt.

**CHAIRPERSON:** Ja.

**DR JONATHAN ZORAH BLOOM:** Or they want to swop.

**CHAIRPERSON:** Yes.

**DR JONATHAN ZORAH BLOOM:** Then they would need to consider the impact.

**CHAIRPERSON:** Yes.

**DR JONATHAN ZORAH BLOOM:** Of that decision.

**CHAIRPERSON:** Yes.

20 **DR JONATHAN ZORAH BLOOM:** On the existing policy.

**CHAIRPERSON:** Yes. So that their approach should primarily to be to fall within the policy and if the circumstances of that transaction are such that they think that they should go against what is there in the policy then the policy should be changed first to accommodate that?

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

**CHAIRPERSON:** Ja okay. Thank you.

**ADV PAUL JOSEPH PRETORIUS SC:** I understand the exercise that you have not done is to look at the policy as it existed on the 23 November 2015, look at the debt book as a whole and the proportion of fixed to floating in the debt book and concluded whether it was appropriate to enter into a floating rate policy in the first place.

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

**ADV PAUL JOSEPH PRETORIUS SC:** But you do talk of trends in the fourth bullet.

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

**ADV PAUL JOSEPH PRETORIUS SC:** So it is one thing to say look there must be a policy in place which will allow you to swop from floating to fixed as they did in December 2015 but what about the original agreement? Should that not also accord with the policy because the original agreement was to enter into a floating rate loan and then a few days later they enter into a fixed rate and we have no indication that the policy was changed in the interim.

**DR JONATHAN ZORAH BLOOM:** That is correct Chair because if you – what they did was they – because they – the intention was to have a lot  
20 more fixed rate debt they had to change the policy and that policy changed significantly to having a 90% at the upper bound, 90% fixed and 10% floating. If you look at the third bullet the last sentence those are the ranges but if you look at the highest on fixed and the lowest on floating it would be 90/10. So that was the policy that was adopted and they would have needed to do something like that and as Advocate



Pretorius quite correctly says further work is required and further investigation is needed in this – in this context more specifically to the timing of the transaction at that point – in November 2015. But this was a clear indication of what the intention was and that was to increase the fixed rate component of the debt book through a policy change.

**ADV PAUL JOSEPH PRETORIUS SC:** But if one just goes on the information that you have to hand Doctor Bloom if the swop to fixed in December 2015 was within the bounds of policy then it follows that it  
10 would also have been in accordance with policy to enter into a fixed rate loan a few days earlier?

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

**ADV PAUL JOSEPH PRETORIUS SC:** And so what is the point you make in the fourth bullet?

**DR JONATHAN ZORAH BLOOM:** The fourth bullet. In other words because of the circumstances and the timing of the transaction that the club loan on the 23 November should have been entered into a fixed rate loan if that was the intention. It was not necessary to first enter into a floating rate loan and then into a fixed rate loan later. Because  
20 the – Chair the financial risk management policy also clearly says that you must fix the rate at source. In other words once – at the point where you conclude the agreement – in other words – the club loan on the 23 November it should have been fixed at that point, that is the source and not a week later as it was done in terms of the swops.

**ADV PAUL JOSEPH PRETORIUS SC:** Alright. For the moment all you

are saying on page 31 as I understand it that subject to a more detailed analysis the trends and the policy would indicate that the loan should have been entered into on a fixed rate basis in the first place?

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

**ADV PAUL JOSEPH PRETORIUS SC:** And we have applied a little logic to corroborate that, correct?

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

**ADV PAUL JOSEPH PRETORIUS SC:** You are going to get later to the policy but in relation to another aspect. In other words as I understand  
10 what you are saying the policy says make up your mind when you enter into the loan do not change your mind a week later. Is that in effect what the policy says?

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

**ADV PAUL JOSEPH PRETORIUS SC:** Alright. Let us get there to page 32 then. What do you say in page 32?

**DR JONATHAN ZORAH BLOOM:** So Chair this unpacks a little further the timing of these transactions. As we know the club loan was concluded on the 23 November. On the 1 November the first portion of the R12 billion the R4.5 billion was drawn down and...

20 **CHAIRPERSON:** No that is 1 December hey?

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

**CHAIRPERSON:** Ja.

**DR JONATHAN ZORAH BLOOM:** So it is the – so in terms of the...

**CHAIRPERSON:** Ja I think you may have said November.

**DR JONATHAN ZORAH BLOOM:** Sorry Chair.

**CHAIRPERSON**: Yes 1 December.

**DR JONATHAN ZORAH BLOOM**: So it was the 23 November it was concluded.

**CHAIRPERSON**: Yes.

**DR JONATHAN ZORAH BLOOM**: The 1 December the first portion was drawn down the R4.5 billion.

**CHAIRPERSON**: Yes.

**DR JONATHAN ZORAH BLOOM**: And three days later on the 4 December the interest rate swops from floating to fixed was concluded.

10 So from a timing perspective now in terms of the following transaction the second portion of the draw down the other R7.5 million that was also – was drawn down on the R12 billion this occurred on the 1 March 2016 and a couple of days later ...

**ADV PAUL JOSEPH PRETORIUS SC**: Alright not three.

**DR JONATHAN ZORAH BLOOM**: Pardon?

**ADV PAUL JOSEPH PRETORIUS SC**: It is six days later.

**DR JONATHAN ZORAH BLOOM**: Six days ja. Six days later on the 7 March the...

**CHAIRPERSON**: Oh should – that [indistinct] should be 6?

20 **DR JONATHAN ZORAH BLOOM**: It should be 7.5.

**CHAIRPERSON**: Is that right?

**DR JONATHAN ZORAH BLOOM**: It should be six days.

**CHAIRPERSON**: Ja okay.

**DR JONATHAN ZORAH BLOOM**: And then the – and then the 4.5 should be 7.5 just as one carries on. On the – then on the 7 March the

R7.5 billion that was – was concluded at floating was then fixed – was then changed or converted to fixed. So what comes out Chair from this analysis is that a certain trend that the first portion was done on the – in December the second portion was done in March and so it is clear that there was some kind of understanding of how this execution of these transactions would take place.

**ADV PAUL JOSEPH PRETORIUS SC:** In short on the 23 November 2025 you enter into a floating rate policy in effect a few days later you change it to a fixed rate police at great cost to Transnet.

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

**ADV PAUL JOSEPH PRETORIUS SC:** And great benefit to counter parties and execution agents?

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

**ADV PAUL JOSEPH PRETORIUS SC:** Now you go into the implications of those facts now in the following pages and you say – you asked the question in the second bullet on page 32 why did this take place? What is the explanation for this?

20 **DR JONATHAN ZORAH BLOOM:** Chair the – in the number of memoranda that I – that I perused the group treasurer was at pains to indicate that for – interest rates were expected to increase substantially. It – so as part of the analysis I went and looked exactly what happened. And there was – they took a two year view of interest rates and remember they entered into the swop agreements for fifteen years. So the problem that exists here so based on two years of forecasts which were not – which did not indicate anything exponential

in terms of growth or increase of interest rates was used as the basis to justify the fixing of the rates.

**CHAIRPERSON**: Of the interest rate yes. Yes. But what is the norm or what is the logic if you do a forecast of interest rates in respect of a fifteen year transaction loan should the forecast not cover the whole period or it is fine if it covers the lesser period provided certain things happen or what is – what is normally expected professionally?

**DR JONATHAN ZORAH BLOOM**: Chair you will – you will rarely find that institutions will forecast a fifteen year interest rate. It is just  
10 almost impossible.

**CHAIRPERSON**: Because there are too many variables over the period?

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

**CHAIRPERSON**: So what is the norm? What do – what kind of period does the forecast normally cover?

**DR JONATHAN ZORAH BLOOM**: Chair that took...

**CHAIRPERSON**: Or 50% of the duration or a quarter or it just goes maybe by five years, five years or three years, three years?

**DR JONATHAN ZORAH BLOOM**: Chair there is no norm per se.

20 **CHAIRPERSON**: Yes.

**DR JONATHAN ZORAH BLOOM**: But in Transnet's case they subscribe to the – to forecasts of interest rates provided by the Bureau For Economic Research at Stellenbosch University. They – and they use that as the justification. So they – they use – they do not do forecasts for longer than two years.

**CHAIRPERSON**: Okay.

**DR JONATHAN ZORAH BLOOM**: From a service provider that is actually providing information to the market

**CHAIRPERSON**: Yes.

**DR JONATHAN ZORAH BLOOM**: On this particular matter.

**CHAIRPERSON**: Yes.

**DR JONATHAN ZORAH BLOOM**: They do have five year forecasts but it is not a – it is a more a deposit rate but as you can see Chair the problem with that and as you correctly said is – has got to do with the  
10 fact that it is very – there are many variables that impact on it and as a consequence this was a justification but for a fifteen year period which the two components of this – of what we talking about do not align.

**CHAIRPERSON**: But what I was trying to establish is whether there is anything to be made of the fact that they base their forecast on two years. So – but from what you are saying it seems that the fact that they based their forecast on two years is – has no significance?

**DR JONATHAN ZORAH BLOOM**: Yes Chair in other words they used information at hand that was available in the market that people can – institutions can access. So yes it was – in other words they based  
20 their decision on two years given a fifteen year duration.

**CHAIRPERSON**: But that is what they did immediately before they went for the fixed interest rate swop, is that right? Not before they entered into the floating rate.

**ADV PAUL JOSEPH PRETORIUS SC**: Yes that is the point Chair.

**DR JONATHAN ZORAH BLOOM**: They – Chair that is exactly the

question.

**CHAIRPERSON**: Yes.

**DR JONATHAN ZORAH BLOOM**: The – in other words you would not – you would – will start doing this type of analysis not to try and justify a swop.

**CHAIRPERSON**: Yes.

**DR JONATHAN ZORAH BLOOM**: You would be doing that analysis to justify should I be fixing at source or should I rather keep – let us stick to floating and I can always fix a portion of it later.

10 **CHAIRPERSON**: And on what you had a look at in terms of documentation and memoranda and whoever you may have spoken to if you spoke to any of the people who were involved did you – are you able to say whether or not that there was a forecast that was done before the floating interest rate regime was done or you have not been able – you have not come across anything that suggests that it was done?

**DR JONATHAN ZORAH BLOOM**: No Chair the only – the only – as you say only in terms of the memoranda that I perused and so on.

**CHAIRPERSON**: Hm.

20 **DR JONATHAN ZORAH BLOOM**: It – the argument was based – was for the swop.

**CHAIRPERSON**: Yes.

**DR JONATHAN ZORAH BLOOM**: So it was – that became the *modus operandi* in essence ...

**CHAIRPERSON**: Hm.

**DR JONATHAN ZORAH BLOOM:** And in terms of analysis related to deciding to fix off or retain floating at the source. In other words when the loan was concluded – no I do not have ...

**CHAIRPERSON:** You have not found?

**DR JONATHAN ZORAH BLOOM:** They – I have not found any information that actually speaks to that particular ...

**CHAIRPERSON:** Hm.

**DR JONATHAN ZORAH BLOOM:** Aspect but more – only – more to the swap.

10 **CHAIRPERSON:** To the swap, *ja*. Okay, thank you.

**ADV PAUL JOSEPH PRETORIUS SC:** Well what we know Dr Bloom is that within a few days Transnet changed its mind from floating to fixed. It justified the fixed interest rate swap on the basis of long terms forecasts by the Bureau for Economic Research. Do you know whether Transnet subscribed to that service?

**DR JONATHAN ZORAH BLOOM:** Yes they do Chair.

20 **ADV PAUL JOSEPH PRETORIUS SC:** So leave aside the question of fixed or floating as absolute concepts for the moment but concentrate on the change of mind within a few days. Is there any explanation for that? In other words is the long term forecast a valid explanation for changing of approach between floating to fixed within a few days?

**DR JONATHAN ZORAH BLOOM:** No Chair.

**CHAIRPERSON:** I do not know whether this question will be the same as the one that Mr Pretorius has just asked but I wanted to ask it much earlier. To do a forecast with regard to interest rates you need a



certain state of affairs or you need to inform yourself of a certain state of affairs or factors that influence the fluctuation of interest I would imagine. Now that material how - how is he - is it for it to change within just a matter of a few days?

**DR JONATHAN ZORAH BLOOM:** Chair it – it is unlikely and as you rightly said these – these forecasts of interest rates are based on – on various modelling approaches which take into account various variables but in order to that forecast - I am getting a little technical – but in order to do that forecast you would have to – all the variables that you  
10 consider that would impact on interest rates in the future you would have to forecast. So you would have to forecast those variables in order to forecast the interest rate which in itself is a very difficult task but – yes, I mean that is the – the premise ...

**CHAIRPERSON:** Yes.

**DR JONATHAN ZORAH BLOOM:** Which was used.

**CHAIRPERSON:** Yes, yes okay.

**ADV PAUL JOSEPH PRETORIUS SC:** So let us just put it in a different way perhaps to conclude that page at least and move on. If Transnet – the Transnet Treasurer – sought to justify the swap at huge costs to  
20 Transnet to fixed on 4 December sought to justify it by reference to economic forecasts. The question arises surely that information should have informed the decision made on 23 April and applying those same forecasts one should have entered into a fixed agreement on the 23<sup>rd</sup>. It would take some explanation to explain that anomaly.

**DR JONATHAN ZORAH BLOOM:** That is correct Chair. I think in –

what is important – important to understand is that these forecasts would have been available. So they would have done – been done previously and as a consequence you would not – even if you wanted to fix rates at that time on 23 November you might not have fixed the entire portion of the loan. You would have said okay we see there is an uptick in interest rates potentially happening according to these forecasts. So let us – let us fix a portion and then we will – if – if interest rates start to increase significantly whatever the case maybe then we can fix more and more but to – to say I am going to fix the  
10 entire amount in one – in one tranche is very unusual in that.

**ADV PAUL JOSEPH PRETORIUS SC:** So what would require an explanation from the Treasurer would be the following: he says I did my homework and therefore entered into the swap on 4 December. Presumably he should have done his homework as the Chair said before entering into the loan in the first place.

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

**ADV PAUL JOSEPH PRETORIUS SC:** One does not do ones homework after the event after the examination surely.

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

20 **ADV PAUL JOSEPH PRETORIUS SC:** And there may be some explanation but you could not find any on the record and the indications are that there is no explanation?

**DR JONATHAN ZORAH BLOOM:** That is correct Chair. Except the - the two year forecast.

**ADV PAUL JOSEPH PRETORIUS SC:** Well the only explanation will be

there that suddenly the two year forecast landed on the Treasurer's desk after 23 November?

**DR JONATHAN ZORAH BLOOM:** Yes it was – it was for the purposes of justification.

**ADV PAUL JOSEPH PRETORIUS SC:** And – but you say that these forecasts are prepared long in advance.

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

**ADV PAUL JOSEPH PRETORIUS SC:** Do you know when that forecast came out?

10 **DR JONATHAN ZORAH BLOOM:** No Chair.

**CHAIRPERSON:** Do you – do you get – did you get to know whether the persons involved in choosing – in going with the floating rate – floating interest rate regime in regard to the loan were the same people who decided on the fixed term rate for the swap or could it have been different people or is that something you could not tell?

**DR JONATHAN ZORAH BLOOM:** Chair that – if you look at the departments within Transnet or the divisions one would – it would have been the Debt Raising Department or the Funding Department – as they are called now – and then the Treasury Department and within Treasury  
20 there are various – there are various sections that deal with various aspects ...

**CHAIRPERSON:** Yes.

**DR JONATHAN ZORAH BLOOM:** Of Treasury matters.

**CHAIRPERSON:** Yes.

**DR JONATHAN ZORAH BLOOM:** So collectively ...

**CHAIRPERSON:** Hm.

**DR JONATHAN ZORAH BLOOM:** They would have – they would have to sit ...

**CHAIRPERSON:** Yes.

**DR JONATHAN ZORAH BLOOM:** And get an understanding of what is the best strategy ...

**CHAIRPERSON:** Yes.

**DR JONATHAN ZORAH BLOOM:** Within the Risk Management or the Financial Risk Management framework.

10 **CHAIRPERSON:** Hm. Okay, thank you.

**ADV PAUL JOSEPH PRETORIUS SC:** Alright. Let us approach this conundrum from a different angle and you deal with that on page 33, right. There may be information placed before the Chair in due course that the planning for the fixed interest rate swap took place before 23 November. In other words when the floating rate interest agreement was entered into they already knew that they were going to swap.

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

20 **ADV PAUL JOSEPH PRETORIUS SC:** So that subject matter of investigation and evidence will be placed before you in due course but applying your knowledge and experience is the transaction – the swap transaction capable of being concluded in a few days after a change of mind?

**DR JONATHAN ZORAH BLOOM:** Chair not if you – because if we can just sort of unpack it and raise it and note a couple of points. First of all they would have to go to the market and do their pricing. They

would have had to – they would have had to consider who was – who would have been given the best options in terms of pricing. They would have – they would have also had to go through various processes in terms of approval and authorisation. So it – this does not happen in three days – in four days. It – it – there is a – there is a process and – and it could have taken – it could easily take a month or it could take three weeks potentially but yes it is not a – it is not something that happens very swiftly. Yes it could – it could be – it could be expedited if there is a crisis. In other words interest rates for some or other reason suddenly shoot up for – for whatever – whatever reason. So –

10 but in - in the normal course of – of events it would take – it would take a couple of weeks to – in order to – to decide – because they would also Chair as – as indicated previously would have to understand what the impact is on the debt structure. So it is not only going out to the market for pricing. There is a lot of calculations and a lot of understanding and authorisations that need to happen. So in my opinion it cannot take – it cannot happen in three days.

**ADV PAUL JOSEPH PRETORIUS SC:** Right and so what is the opinion that you offer as a matter of probability on page 33 – second bullet?

20 **DR JONATHAN ZORAH BLOOM:** That:

“Prior to entering into the club loan on a floating rate basis Transnet Officials would have intended to effect interest rate swaps effectively converting the loan into a fixed interest rate loan.”

**ADV PAUL JOSEPH PRETORIUS SC:** So you say given your

knowledge and experience of the way these things happen the way these financial transactions are negotiated and constructed and the time that it takes to do so in the ordinary course - when they entered into the floating rate loan on 23 November - Transnet Officials already knew as a matter of probability - leave aside other evidence. That they were going to swap to fix rate at a higher cost later?

**DR JONATHAN ZORAH BLOOM:** That is correct Chair. Just given the – the very short timeframes and the decisions taken in the context thereof.

10 **ADV PAUL JOSEPH PRETORIUS SC:** And then that therefore begs the question why enter into a floating rate policy when you know you are going to change to a fixed rate later and why do you not simply enter into a fixed rate loan in the first place.

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

**ADV PAUL JOSEPH PRETORIUS SC:** And we deal with that question in the next few pages, okay. What you say on page (intervenes)?

**CHAIRPERSON:** I am sorry. Before you go to that page so you – you are quite positive that in your professional opinion it is highly unlikely that within – that they entered into a fixed interest rate swap three days  
20 after the loan agreement involving a floating interest rate. It is highly unlikely that they did so because of any change in circumstances that occurred within that two/three days. Is that correct?

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

**CHAIRPERSON:** You say that is highly unlikely that that is the case. They must have known before they concluded the loan agreement

include that – included the floating interest rate arrangement. They must have known that they were planning to do a fixed rate – interest rate swap soon afterwards?

**DR JONATHAN ZORAH BLOOM:** That is correct Chair. There was nothing in the market at that point ...

**CHAIRPERSON:** Yes.

**DR JONATHAN ZORAH BLOOM:** That alluded to a – in that specific period of time ...

**CHAIRPERSON:** Yes.

10 **DR JONATHAN ZORAH BLOOM:** Up to 4 December – we will talk about the later periods later ...

**CHAIRPERSON:** Well I was about to ask whether it was anywhere around the 9<sup>th</sup>/10 December 2015.

**DR JONATHAN ZORAH BLOOM:** We are going to get that Chair.

**CHAIRPERSON:** Okay, but this was before?

**DR JONATHAN ZORAH BLOOM:** This was before. So there was nothing ...

**CHAIRPERSON:** *Ja.*

**DR JONATHAN ZORAH BLOOM:** From a market perspective ...

20 **CHAIRPERSON:** Yes.

**DR JONATHAN ZORAH BLOOM:** That could have said but now something is – is drastically going to happen ...

**CHAIRPERSON:** Yes, yes.

**DR JONATHAN ZORAH BLOOM:** And we have to – we have to make a problem. We have ...

**CHAIRPERSON:** (Intervenes).

**DR JONATHAN ZORAH BLOOM:** There was – there was talk of downgrades and – and things like that ...

**CHAIRPERSON:** *Ja.*

**DR JONATHAN ZORAH BLOOM:** But it never – there was ...

**CHAIRPERSON:** Concretised into anything?

**DR JONATHAN ZORAH BLOOM:** Exactly Chair.

**CHAIRPERSON:** Yes.

**DR JONATHAN ZORAH BLOOM:** And – and that is why it – it was very  
10 odd ...

**CHAIRPERSON:** Yes.

**DR JONATHAN ZORAH BLOOM:** That this happened.

**CHAIRPERSON:** Yes. You mentioned earlier on you made the point earlier on that in relation to the loan they could have limited the floating interest rate arrangement to a shorter period than the full duration of the loan. Did I understand you correctly?

**DR JONATHAN ZORAH BLOOM:** Yes Chair. What I – what I meant was that instead of fixing the entire amount of 4.5 billion they could – they could enter – they could take the loan on – at floating. Say using  
20 the 4.5 billion as an example and then if the need arose they could have – they could fix a portion of it.

**CHAIRPERSON:** Oh a portion of the – of the amount not of the – of the duration of the ...?

**DR JONATHAN ZORAH BLOOM:** That – that is correct Chair.

**CHAIRPERSON:** Yes. The duration has to remain 15 – 15 years?



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

**CHAIRPERSON:** It is just the portion of the amount.

**DR JONATHAN ZORAH BLOOM:** That is right.

**CHAIRPERSON:** But to some extent you might achieve the same whether you – you know - even if you were to have been given maybe seven and a half years to use a particular regime and another seven and a half years to use another regime. If you half the amount and use one and use another one for a year you might end up achieving the same thing or not – not as simple as that?

10 **DR JONATHAN ZORAH BLOOM:** It is not as simple as that Chair.

**CHAIRPERSON:** I suspected. Okay, alright thank you. Your point is they could have made sure that it was not the whole amount that was put under a certain regime?

**DR JONATHAN ZORAH BLOOM:** Chair that – that is what risk mitigation is all about.

**CHAIRPERSON:** Yes. Not putting all your eggs in one basket?

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

**CHAIRPERSON:** Okay, thank you.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Of course Chair interesting point arises out what happened later in December. I suppose one explanation could considerably be I knew what was going to later in December but that would create further problems for the decision makers.

**CHAIRPERSON:** No that is true.

**ADV PAUL JOSEPH PRETORIUS SC:** But we do not have any

indication of that yet Chair. Let us deal then with page 34. Again just to place page 34 in context you are talking about the change of mind?

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

**ADV PAUL JOSEPH PRETORIUS SC**: And the justification - possible justification for any fixed rate swap. Would you deal with the four bullets then on page 34 – the four sub bullets?

**DR JONATHAN ZORAH BLOOM**: Chair I would like to address the four sub bullets as Advocate Pretorius indicates that the strategy adopted ...

**ADV PAUL JOSEPH PRETORIUS SC**: Well ...

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

**ADV PAUL JOSEPH PRETORIUS SC**: If you could deal with the introduction as well.

**DR JONATHAN ZORAH BLOOM**: Okay. In my view there could be no justification for the execution of the extreme change of the floating debt to fixed debt and the manner considered and ultimately executed and the reason for those are the following: the strategy that was adopted this fixed rate strategy that I am referring to assumes an environment of high interest rates and because we are referring to the club loan over a period of 15 years. This would – this would imply that Transnet  
20 is locked into the interest rate swap agreement for 15 years. So that - that – it is the point that we were discussing previously Chair where you are using two year forecasts to make your decision of fixing rates and then you still fix the whole amount and – but you forget about you are actually locking in Transnet for 15 years and it is not a question of swapping back from fixed to floating. It is a – it is – it is the other

around.

**CHAIRPERSON:** *Ja*, once it is fixed it is fixed. Once it is floating it is floating?

**ADV PAUL JOSEPH PRETORIUS SC:**

**DR JONATHAN ZORAH BLOOM:** Yes you can –you can swap from floating to fixed ...

**CHAIRPERSON:** *Ja*.

**ADV PAUL JOSEPH PRETORIUS SC:**

**DR JONATHAN ZORAH BLOOM:** But if you – if you for instance enter  
10 into an agreement with a counterparty and that counterparty says you pay me fixed and I will pay you floating. Then there is a risk involved. So the counterparty says listen I am – I am entering into this agreement over a long period of time. So if you want to get out at any point in time or exit the position - as it is called - you are going to have to pay for that and that is what – and that is where this whole situation becomes (intervenes).

**ADV PAUL JOSEPH PRETORIUS SC:** We will come to that calculation later.

**DR JONATHAN ZORAH BLOOM:** Yes Chair. So the second one is in  
20 my view it is not possible to predict interest rates so far into the future. Adopting an extreme (intervenes).

**CHAIRPERSON:** They so far relates to – to 15 years?

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

**CHAIRPERSON:** Okay, alright.

**DR JONATHAN ZORAH BLOOM:** So in – it is not possible to predict

interest rates so far into the future adopting an extreme adjustment to the debt structure from floating to fixed rates. In my view it is irresponsible. This – this is particularly important because it confers the large risk and potential loss on Transnet.

**ADV PAUL JOSEPH PRETORIUS SC:** And you will tell the Chair that Transnet is in fact suffering losses now?

**DR JONATHAN ZORAH BLOOM:** That is correct Chair. I will give you the numbers.

**CHAIRPERSON:** Just to interrogate that second bullet point before you  
10 move on. Were you – whether one is talking about a fixed rate or a  
floating interest rate regime one does take the risk that things might  
ultimately turn out in such a way that one regrets having chosen a  
particular regime at the beginning of the transaction but that is  
something you can only make a judgment on at the end of the whole  
period. Is it not? You – you – if it is a 15 year loan you cannot  
necessarily blame the person who made a judgment call at the  
beginning if three years down the line it looks like it was such a terrible  
mistake because you do not know whether by the end of the 15 year  
period you will actually be smiling saying actually it has worked out  
20 quite fine. Is it not?

**DR JONATHAN ZORAH BLOOM:** Chair that is possible but I would –  
when we get to discussing the numbers a little later on ...

**CHAIRPERSON:** Yes.

**DR JONATHAN ZORAH BLOOM:** I will – I will give you an indication of  
– of the dilemma ...

**CHAIRPERSON:** Yes.

**DR JONATHAN ZORAH BLOOM:** That exists and therefore ...

**CHAIRPERSON:** Yes.

**DR JONATHAN ZORAH BLOOM:** It brings me back to the point that you are right. Over a period time it could equal out or it could be beneficial ...

**CHAIRPERSON:** Hm.

**DR JONATHAN ZORAH BLOOM:** Or whatever the case maybe ...

**CHAIRPERSON:** Hm.

10 **DR JONATHAN ZORAH BLOOM:** But in this particular – it is – it is also important to understand that that you mitigate your risk by making decisions that are taken over a period of time. For instance - as we were discussing – only taking a small portion of the debt and fixing it ...

**CHAIRPERSON:** Hm.

**DR JONATHAN ZORAH BLOOM:** Given the upward movement in rates ...

**CHAIRPERSON:** Hm.

**DR JONATHAN ZORAH BLOOM:** And then doing that same process as you – as you proceed.

20 **CHAIRPERSON:** Hm.

**DR JONATHAN ZORAH BLOOM:** In other words the balance that you achieve ...

**CHAIRPERSON:** Hm.

**DR JONATHAN ZORAH BLOOM:** Would be because then you would bring more floating at a later stage in from other debt into your ...

**CHAIRPERSON:** Hm.

**DR JONATHAN ZORAH BLOOM:** Your debt book – if I can call it that.

**CHAIRPERSON:** Hm.

**DR JONATHAN ZORAH BLOOM:** And that would start balancing it out.

**CHAIRPERSON:** Hm.

**DR JONATHAN ZORAH BLOOM:** So – so there – it is all about a strategy ...

**CHAIRPERSON:** Yes, yes.

**DR JONATHAN ZORAH BLOOM:** But what we see here is extreme ...

10 **CHAIRPERSON:** Yes.

**DR JONATHAN ZORAH BLOOM:** Movements ...

**CHAIRPERSON:** Yes.

**DR JONATHAN ZORAH BLOOM:** Or extreme decisions to – to fix or to enter into agreements for very large amounts of money.

**CHAIRPERSON:** So basically the strategies seek to make sure that over – for example – a 15 year period you are not going to just keep on hoping that at the end of the 15 year period things will work out fine. As things go bad during the 15 year period you just hope that at the end it will work out 15. The strategies are meant to mitigate so that  
20 your expectation is based on what you have put in place to try and mitigate any possible adverse changes.

**DR JONATHAN ZORAH BLOOM:** That is correct Chair but it must be done correctly.

**CHAIRPERSON:** Must be done correctly, *ja*.

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

**CHAIRPERSON:** It cannot be guess work?

**DR JONATHAN ZORAH BLOOM:** That is true Chair.

**CHAIRPERSON:** Okay, alright.

**ADV PAUL JOSEPH PRETORIUS SC:** If you would then go through because you have now dealt with some of the issues that you intended to deal with. The four sub bullets on page 34 as part of the first paragraph. You dealt with the first one.

**DR JONATHAN ZORAH BLOOM:** And the second one. In – in the third one in my view to mitigate against paying significant fees and as - this  
10 we have discussed Chair- a phased approach in small increments would have been prudent based on evolving market conditions when circumstances dictated.

**ADV PAUL JOSEPH PRETORIUS SC:** The last bullet.

**DR JONATHAN ZORAH BLOOM:** Then the last bullet is the Transnet Group Treasurer although relying on the Bureau for Economic Research interest rate forecasts assumed a very steep trajectory with – of long term interest rates and there was no indication at that point in time that such a dramatic upward movement in interest rates would – would occur.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Right. So far we have an unexplained change of mind from floating to fixed – 23 November 2015 to 4 December 2015?

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

**ADV PAUL JOSEPH PRETORIUS SC:** It is inexplicable and unreasonable on your assessment and in your opinion?

**DR JONATHAN ZORAH BLOOM:** That is true Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** To put it simply in lay language had the proper investigations been done upfront that – and the policy been followed the fixed rate if it was advisable should have been entered into in the first place?

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

**ADV PAUL JOSEPH PRETORIUS SC:** And not involving a change of mind over a few days but what was the certain outcome of this change of mind? You deal with that in the second bullet on page 34.

- 10 **DR JONATHAN ZORAH BLOOM:** Chair as a consequence of the – the way that the transactions were structured and implemented or executed. This would result in significant fees for Regiments and cash flow for the counterparty. At – obviously at the expense of Transnet because as we – as we have discussed there can only be one winner in this – in this transaction and therefore this outcome was in fact the only reliable predictable outcome at the time. So in summary I am of the view that this was irresponsible, unfounded and unwarranted to fix such a large portion of the debt at that time. If a portion of the debt was too be fixed it should have been a small portion in reaction to an –
- 20 an anticipated increase in interest rates or some other strategy that might have been part of the Transnet requirement but to – to fix 4.5 billion at that point in time and then a further 7.5 billion in the – in the next couple of months appear to – did not appear to be justified in the context of the information available.

**ADV PAUL JOSEPH PRETORIUS SC:** And you explain that or you are



about to explain the losses incurred by Transnet as a result of these arrangements.

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

**ADV PAUL JOSEPH PRETORIUS SC:** Which you say were ill advised in the first place?

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

**ADV PAUL JOSEPH PRETORIUS SC:** Let us go to page 35 then and you say in relation to a graph that we are about to introduce two points should be made. What are those points?

10 **DR JONATHAN ZORAH BLOOM:** So in – in other words it was unacceptable to enter into a floating rate alone and thereafter effectively enter into a fixed rate loan as we have been discussing. By doing this Transnet ended up paying interest at a fixed rate substantially higher than it would have had it entered into a fixed rate loan in the first place.

**ADV PAUL JOSEPH PRETORIUS SC:** Right. Just pause there. You say there indications that make it more probable than not in your expert opinion that even when they entered into the floating loan – floating interest rate loan – they knew already and would have claimed for  
20 entering - changing it effectively to a fixed loan – fixed rate loan – later?

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

**ADV PAUL JOSEPH PRETORIUS SC:** Right but when it decided in December to effectively - well no because that is wrongly put because we know that on your opinion the decision was made even before

23 November. When it implemented the swap effectively to change the floating rate loan to a fixed rate loan early in December 2015 did it pay a fixed rate in the swap equivalent to the fixed rate it would have paid had the loan been entered into on a fixed term – fixed rate basis in the first place?

**DR JONATHAN ZORAH BLOOM:** No Chair because the rate – the rate that was ultimately agreed as part of the swap agreement and compared to the market fixed rate – if I can call it that – at that point in time were substantially different. As I indicated previously the market  
10 fixed rate or the midmarket rate that one would use would have been adjusted slightly to make provision for a couple of other little risk factors that one would – that – that counterparties normally include but not at the same level as the rates that they were finally entered into.

**ADV PAUL JOSEPH PRETORIUS SC:** In fact what you are going to tell the Chair in graphic form in a moment is that the floating – the fixed rate ultimately paid or payable by Transnet was much higher than the fixed rate, substantially higher in your view than the fixed rate that Transnet would have paid had it entered into a fixed term rate – a fixed rate agreement in the first place.

20 **DR JONATHAN ZORAH BLOOM:** Correct in terms of the market.

**ADV PAUL JOSEPH PRETORIUS SC:** And you say that's quite apart from fees and cost?

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

**ADV PAUL JOSEPH PRETORIUS SC:** Let's go to page 36 then and put up the graph. Now this is a – what you call a stats bar graph,

statistical bar graph.

**DR JONATHAN ZORAH BLOOM:** That's correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** Okay what do the blue lines indicate?

**DR JONATHAN ZORAH BLOOM:** Chair the blue lines indicate the floating rate over the period starting on the 01/12/2015 it was when the drawn down of the loan occurred to 01/10/2018 by way of example.

**ADV PAUL JOSEPH PRETORIUS SC:** Yes and on the left-hand side we see from nought to 12 interest rate levels.

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

**ADV PAUL JOSEPH PRETORIUS SC:** So if one looks at each blue bar, one will see how interest rates floated between 8 and 10 percent over that period.

**DR JONATHAN ZORAH BLOOM:** That's correct Chair and if you look at that you will also see – okay one needs to look at the axis, I mean, in other words on the left-hand side that you were referring to but also you will also see that there's no – there's no substantial movement in the blue bars, they all hover around the same area, if I can put it that way and then the line at the top, the black line where it...(intervention).

20 **ADV PAUL JOSEPH PRETORIUS SC:** Right at the top of the graph the solid black line.

**DR JONATHAN ZORAH BLOOM:** That's correct Chair, where it indicates 11.83 in the corner, that is the fixed rate that was concluded, not the market rate, the fixed rate that was concluded as part of the agreement between Transnet and Nedbank and that's what Transnet

pays Nedbank every quarter when a swap occurs.

**ADV PAUL JOSEPH PRETORIUS SC:** Okay so what is the difference between the blue and the black?

**DR JONATHAN ZORAH BLOOM:** Chair the difference is, is the – is an indication that the floating rates, in other words – or the floating rates, ja have not increased or have not reached the fixed rate level of 11.83 at any time over that period that we are assessing at the moment.

**ADV PAUL JOSEPH PRETORIUS SC:** So instead of paying the rate indicated by the blue bars, between 8 and 10 percent on a floating rate basis, Transnet has ended up paying a much higher rate of interest indicated by the black line?

**DR JONATHAN ZORAH BLOOM:** That's correct Chair and – so simplistically put, I want to emphasise that, the red bars represent all the losses that Transnet occurred – that accrued to Transnet.

**ADV PAUL JOSEPH PRETORIUS SC:** Just arising from the swap?

**DR JONATHAN ZORAH BLOOM:** That's just arising from the swap.

**ADV PAUL JOSEPH PRETORIUS SC:** Just arising from the difference in interest rate basis.

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

20 **ADV PAUL JOSEPH PRETORIUS SC:** Though you say there are other costs factored in.

**DR JONATHAN ZORAH BLOOM:** That's right, I think it's important to also note that the – included in the 11.83 would be execution fees because that is how – so the rate paid to Nedbank would include the execution fees within that 11.83 fee...(intervention).

**ADV PAUL JOSEPH PRETORIUS SC:** And the rate paid to Regiments too would come out of the losses of Transnet.

**DR JONATHAN ZORAH BLOOM:** That's correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** Okay can we go to page 37 then, here you deal with losses to Transnet on a different basis. It's a little bit more complicated would you explain it please?

**DR JONATHAN ZORAH BLOOM:** Chair I'm going to focus on the totals, if I may at the bottom of the table.

**ADV PAUL JOSEPH PRETORIUS SC:** Alright but before you go there,  
10 perhaps we should explain the column on the right-hand side, second from the right-hand side or the right-hand margin called costs, it reads of exist, that should read, cost of exit.

**DR JONATHAN ZORAH BLOOM:** That's correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** A concept you've referred to. Basically if at any point in time the parties to the swap were to sit down and Transnet would say to it's counterpart Nedbank, look, I'm not happy with our arrangement I want out, Transnet would say, as I understand your evidence to date, yes I'll let you out but then you must pay me what I would have earned in the balance of the term.

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

**ADV PAUL JOSEPH PRETORIUS SC:** The present day value of what I would have earned for the remainder of the term.

**DR JONATHAN ZORAH BLOOM:** That's correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** So that's what you refer to as the, cost of exit.

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

**ADV PAUL JOSEPH PRETORIUS SC:** But it's a reliable forecast on the other hand by way of corollary of Transnet's losses, not only would it be a forecast imposed by Nedbank of what it would have profited for the balance after the exit to the termination of the arrangement but it would also be an indicator, as I understand your evidence of the losses that Transnet would have continued to incur, so the one matches the other.

**DR JONATHAN ZORAH BLOOM:** Correct Chair at the 14<sup>th</sup> of May in  
10 terms of this particular table but what is important, Chair, is just to note that – if I may, the realised cash-flows, in other words the third column from the right, the 850million rand is the loss that Transnet has occurred – or the loss that has accrued to Transnet to date. In other words, put another way, that is the cash-flow – that's the amount of money that Transnet have actually paid to the counter party as the – as part of the agreement.

**ADV PAUL JOSEPH PRETORIUS SC:** In relation to each portion of the loan?

**DR JONATHAN ZORAH BLOOM:** In relation to each portion of the  
20 loan, correct. So this is the total 12billion rand Club Loan, in terms of the cost of exit...(intervention).

**ADV PAUL JOSEPH PRETORIUS SC:** Well let's first explain what is the realised cash-flow, what is that amount?

**DR JONATHAN ZORAH BLOOM:** Those are the differences, remember we said that Transnet does not write out a cheque to Nedbank and

Nedbank does not write out a cheque to Transnet so the difference...(intervention).

**ADV PAUL JOSEPH PRETORIUS SC:** Ultimately paid now we know by Transnet to Nedbank.

**DR JONATHAN ZORAH BLOOM:** Is 850million correct.

**ADV PAUL JOSEPH PRETORIUS SC:** Over that period of time up to 14 May 2019.

**DR JONATHAN ZORAH BLOOM:** That's correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** From December 2015.

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

**ADV PAUL JOSEPH PRETORIUS SC:** So it has, on this swap of risk lost, you say, 850million rand?

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

**ADV PAUL JOSEPH PRETORIUS SC:** And if one was to forecast the loss over the whole period of this swap arrangement what information would you use?

**DR JONATHAN ZORAH BLOOM:** Then one would look at the last column Chair, so this would cost Transnet, just on the 12billion Club Loan, 1.8billion.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Ja well no, you would add to the 850million what amount?

**DR JONATHAN ZORAH BLOOM:** 980million.

**ADV PAUL JOSEPH PRETORIUS SC:** That's the cost to the exit.

**DR JONATHAN ZORAH BLOOM:** That's correct.

**ADV PAUL JOSEPH PRETORIUS SC:** That's the forecast loss of profit

to Nedbank, it's corollary is the forecast expense and loss to Transnet.

**DR JONATHAN ZORAH BLOOM:** That's correct.

**ADV PAUL JOSEPH PRETORIUS SC:** It would have lost over the period?

**DR JONATHAN ZORAH BLOOM:** That's correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** Okay that's 980million giving a total loss of this whole exercise amounting to?

**DR JONATHAN ZORAH BLOOM:** 1.8billion rand.

**ADV PAUL JOSEPH PRETORIUS SC:** So this exercise, constructed in  
10 the way it was constructed cost Transnet or will cost Transnet over the full term 1.8billion rand?

**DR JONATHAN ZORAH BLOOM:** That's correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** The parties to profit are whom?

**DR JONATHAN ZORAH BLOOM:** Well included in these costs would be the fee – well the fee paid to the executing agent and the benefit, if one can put it that way, to the counter party. So included in those realised cash-flows are the fees paid to the counter party.

**ADV PAUL JOSEPH PRETORIUS SC:** Alright on the next page you deal with the Transnet policy entitled the Financial Risk Management  
20 Framework, would you just – you've dealt with it but by way of summary would you please just place page 38 on record.

**DR JONATHAN ZORAH BLOOM:** So Chair we've referred to the Financial Risk Management Framework Policy on several occasions this morning but it regulates, amongst others, the dead portfolio and transaction parameters, in other words, amongst other things the size



of the debt book the ratio of fixed to floating etcetera and then the risk management practices within the Transnet Treasury environment in terms of hedging the swaps or hedging the risks through the use of swaps.

**ADV PAUL JOSEPH PRETORIUS SC:** So how big the debt book can be, in other words, how much you can borrow and how much you should be in debt and the ratio of fixed to floating, we have dealt with that as well as how you should go about hedging risk.

**DR JONATHAN ZORAH BLOOM:** That's correct Chair.

10 **ADV PAUL JOSEPH PRETORIUS SC:** Okay then the second bullet?

**DR JONATHAN ZORAH BLOOM:** The framework dictates that the decision to secure funding on a fixed or floating interest rate basis should be taken at the time of concluding the funding transaction. We've used the term at the source and that is what it's about, to avoid unnecessary costs of revising the position at a later date and had this been done, Transnet would have saved billions because it wouldn't be necessary to pay execution fees and it wouldn't have been – and no interest rate swap would have been required.

20 **ADV PAUL JOSEPH PRETORIUS SC:** On page 39, apart from summarising much of what you've told the Chair you deal with events which might imply and need to change mind from floating to fixed or from fixed to floating, would you deal with that please?

**DR JONATHAN ZORAH BLOOM:** So Chair in terms of the timeline and justification for the Club Loan, by way of summary the Club Loan was concluded – contracted on the 23<sup>rd</sup> of November, the first draw down of

the 4.5billion occurred on the 1<sup>st</sup> of December and three days later the first tranche of those interest rate swaps, in other words the 4.5billion was changed or swapped from floating to fixed...(intervention).

**ADV PAUL JOSEPH PRETORIUS SC:** Effectively swapped?

**DR JONATHAN ZORAH BLOOM:** Effectively swapped correct Chair.

As indicated previously Mr Ramosebudi argued a volatile economic environment with high inflation and volatile exchange rates as the basis for fixing interest rates. To the extent that this was true he should have known this prior to the 23<sup>rd</sup> of November 2015 and certainly would

10 have known this had he listened to his treasury team because the treasury – the decisions are based on significant research that the treasury team does before they enter into any agreement and therefore they would have assessed various rates, they would have assessed various circumstances and made that call. In terms of the following point, this argument of substantially higher increase in interest rates, a volatile rand, high inflation which would necessitate from an economic point of view an increase in interest rates to keep it in check, would have only been able to hold water if some, what's called in the financial world, a Black Swan event, could trigger exchange rate volatility or

20 high inflation which would invariably drive interest rates higher. Five days after the execution of the first swaps with Nedbank the Finance Minister at the time Mr Nhalanhla Nene was sacked and this could have been considered as a Black Swan event and caused significant volatility in the rand and caused long-term and short-term interest rates to spike. So – but what is interesting is the rates never stayed high,

they rarely do. In other words, you might have a spike but then there's a decrease to another position where it finds itself. So – however the rates stabilise quickly at slightly higher levels after the appointment of Pravin Gordhan and moved in a very narrow band after that. The rates never reached levels that were close to the fixed rates concluded for the swapped transactions and this is the ultimate. So Chair, my view is that – as was indicated previously, although the situation or event was triggered it never had the effect that was anticipated, in other words that interest rates would increase. Even if interest rates increased

10 they would still stabilise thereafter. Interest rates never remain at the levels that were executed or were used in this transaction for 15 years. It might have been there for a couple of weeks, whatever the case may be but it would have then stabilised, given intervention at that point.

**ADV PAUL JOSEPH PRETORIUS SC:** Alright and then on page 40 and 41 you deal with the expertise within Transnet dealing room, it's expertise, it's capability, it's international reputation, the regard it was held in by McKinsey for example and you deal with what the capability was particularly in relation to the swaps that we're dealing with here, you've given that evidence to the Chair.

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

**ADV PAUL JOSEPH PRETORIUS SC:** Unless there's any question we could move on then to page 43. Would you go to page 43 please, here we deal in more detail with the cost of these transactions, cost of the change of mind, cost of the entry into the swap entailing a fixed interest rate risk mitigation measure and you do so by reference to a

schedule. Please take the Chair through page 43 and explain what you have portrayed here in this schedule under the second bullet.

**DR JONATHAN ZORAH BLOOM**: Chair the – because this is a syndicated loan various parties to the loan would have different floating rates depends on negotiation. So various financial institutions would agree a certain rate for their loan...(intervention).

**ADV PAUL JOSEPH PRETORIUS SC**: This is the floating loan part?

**DR JONATHAN ZORAH BLOOM**: That's the floating loan part, so in the context of the 4.5billion loan that was a portion of the 12billion loan  
10 that was executed as a swap on the 4<sup>th</sup> of December we can look at the rates which are the more important aspect of this table. You would see that the floating rate for the different parties at that point in time was 9.18 for Absa and then 9.22 percent for Bank of China, Nedbank, Future Growth and Old Mutual Finance. So that's an important – they concluded the loan on the 23<sup>rd</sup> of November at those rates. Then, why it's important to hen bring in the next column just alongside that, what's called the, midmarket blended rate is to understand what the market was indicating at that point in time should the loan have been fixed.

**ADV PAUL JOSEPH PRETORIUS SC**: On the 23<sup>rd</sup> of November 2015?

20 **DR JONATHAN ZORAH BLOOM**: Yes this was – Chair the midmarket rate that we're referring to here was not for the 23<sup>rd</sup> of November it was for the – applicable to the interest rate swap, so this was on the 4<sup>th</sup> of December.

**ADV PAUL JOSEPH PRETORIUS SC**: Yes but would there have been a significant difference?

**DR JONATHAN ZORAH BLOOM:** It wouldn't have been significant but there would have been a couple of bases points difference, potentially.

**ADV PAUL JOSEPH PRETORIUS SC:** Okay.

**DR JONATHAN ZORAH BLOOM:** So if one – if Transnet weren't interested in entering into a fixed rate swap at that point in time, they would have said, okay to the treasury, let's have – what are the midmarket rates, in other words, what are the rates in the market that we should be able to fix at and Chair on the 4<sup>th</sup> of December it would have been 11.16 and this is extracted from market information that's  
10 provided by sources, if I may, Bloomberg and Reuters and these – that provide these types of – this type of information. So the 11.16 would have been the basis added to that, as I've indicated previously would have been a couple of basis points or a couple of extra percent – points of a percent to make provision for some other risks, market execution fees, etcetera, etcetera but what is important to note is, what was the actual fixed rate that was paid by Transnet.

**ADV PAUL JOSEPH PRETORIUS SC:** In the swap?

**DR JONATHAN ZORAH BLOOM:** In the Swap, that's correct Chair, so it's 11.83 which remains consist – which remains fixed for 15 years, at  
20 that point in time versus 11.16 which would have been a little higher than that given the – as I indicated given some of the other risk factors that one would work into that but it would not come close to that fixed rate that was actually charged.

**ADV PAUL JOSEPH PRETORIUS SC:** So we need to ask your opinion at this stage, the midmarket blended rate is the fixed rate basis upon

which a fixed rate loan would have been entered into in the first place?

**DR JONATHAN ZORAH BLOOM:** That is what the market rate was at that point, so you would use that as the basis for your – to start off your understanding.

**ADV PAUL JOSEPH PRETORIUS SC:** And you would add on little bits, but they would be little bits.

**DR JONATHAN ZORAH BLOOM:** That's correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** Right not significant for the purposes of the question to follow I understand.

10 **DR JONATHAN ZORAH BLOOM:** No.

**ADV PAUL JOSEPH PRETORIUS SC:** But when it entered into the swap it paid a much higher or the equivalent of a much higher fixed rate.

**DR JONATHAN ZORAH BLOOM:** That's correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** Right, now to the ordinary person the difference between 11.16 and 11.83 doesn't seem huge, would you comment on that.

**DR JONATHAN ZORAH BLOOM:** Chair from the perspective of the amount of money we're talking about, in other words, 4.5 billion rand it is the difference of 67 basis points or 0.67 percent in this particular case is significant.

**ADV PAUL JOSEPH PRETORIUS SC:** Alright and that's – the difference between the midmarket blended rate and the fixed rate ultimately paid as part of the swap, you've referred to as the Delta.

**DR JONATHAN ZORAH BLOOM:** That's correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** Is this Delta that you see here in your schedule 11.16 to 11.83, is it normal, you used a word in consultation earlier that was more descriptive.

**DR JONATHAN ZORAH BLOOM:** Yes Chair I did, I think the important thing is, this is not normal because the rate that would have been – the rate that one would have fixed at is – remember it would have been the market rate plus the execution fees that the counter party would have charged plus a – what’s called a CVA, a credit value adjustment, let’s not go there but it’s little extra risk factors that are built into the rate  
10 and that would have been the rate at which they fixed. So this rate of 11.83 was substantially higher than what would have actually happened.

**ADV PAUL JOSEPH PRETORIUS SC:** Abnormally higher would that fit your description?

**DR JONATHAN ZORAH BLOOM:** It’s abnormally high Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** Alright we’re going to deal with the second tranche but perhaps we should do that after the long adjournment on page 44 and the prospects of finishing by 4 o’clock are increasing.

20 **CHAIRPERSON:** We’ll take the lunch adjournment and resume at two, we’re adjourned.

**INQUIRY AJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** We may proceed.

**ADV PAUL JOSEPH PRETORIUS SC:** Thank you Chair. Doctor Bloom

on page 44 you deal with the schedule in relation to the second tranche of the club loan of R12 billion.

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

**ADV PAUL JOSEPH PRETORIUS SC:** Please place that information on record please?

**DR JONATHAN ZORAH BLOOM:** The second tranche Chair was – involved an amount of R7.5 billion and the execution of the swops took place on the 7 March in the same manner as presented for the first tranche 4.5 billion the same is done over – is done for the 7.5 billion.

10 So if you – if you look at the floating rate transactions are very similar. It would have – the rates would be different but in terms of – in terms of the floating rate if you add them up it comes to 9.62 and 9.71 so those were the floating rates but I think what is more important Chair is the – is the mid-market blended rate. So that would have been the market rate that we as the same in the previous example but would have been 11.44% and the actual rate concluded or agreed in terms of the swop agreement was 12.27% with – between Transnet and Nedbank.

**ADV PAUL JOSEPH PRETORIUS SC:** And again a similar amount as

20 what you have described as the Delta.

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

**ADV PAUL JOSEPH PRETORIUS SC:** And do the same comments apply in relation to whether that is abnormally high, low?

**DR JONATHAN ZORAH BLOOM:** It is in exactly the same realm of the first tranche which is excessive if you think 11.44 versus 12.27 that is



quite a jump or in the fixed rate and so in my opinion it is – it is high.

**ADV PAUL JOSEPH PRETORIUS SC:** And so what do you conclude in the second last bullet on page 44?

**DR JONATHAN ZORAH BLOOM:** So Chair Transnet overpaid for the swop transactions insofar as they incurred substantial losses as a consequence. And they also paid excessive fees as – that is included in those rates and that is essentially very similar to the same – to the same situation occurred for the 4.5 billion. But Chair I would just like to indicate an interesting outcome of both tranches and that is if you – if  
10 you subtract in the 4.5 billion the fixed rate from the floating rate not the mid-market just the fixed to the floating in the 4.5 billion and the fixed to the floating in the 7.5 billion the difference between those two rates it is exactly the same. So in other words it was 2.65% which is – it does not work like that in practice. In other words where the floating rate and the fixed rate payable it is as if it was aligned to be the same spread between

**CHAIRPERSON:** Yes.

**DR JONATHAN ZORAH BLOOM:** The floating and the fixed for both tranches.

20 **CHAIRPERSON:** Oh.

**ADV PAUL JOSEPH PRETORIUS SC:** What conclusion do you draw from that?

**DR JONATHAN ZORAH BLOOM:** Well that appears to indicate that – that the fixed rate of both loans or both swops was intended to have a spread, a very high spread of 2.65% between the floating and the fixed

rate. In other words that is – that is excessive.

**ADV PAUL JOSEPH PRETORIUS SC:** And who would benefit from that spread?

**DR JONATHAN ZORAH BLOOM:** Well...

**ADV PAUL JOSEPH PRETORIUS SC:** Excessive as you describe it?

**DR JONATHAN ZORAH BLOOM:** The counter party would benefit and then essentially and then Regiments obviously because their fee is included in the 2.27.

**ADV PAUL JOSEPH PRETORIUS SC:** Alright.

10 **CHAIRPERSON:** Would Regiments be the only party that would stand to benefit from that?

**DR JONATHAN ZORAH BLOOM:** Chair they were a point for these transactions they were appointed as the executing agent.

**CHAIRPERSON:** Yes.

**DR JONATHAN ZORAH BLOOM:** So they would fulfil that role as trading the swops so yes they would the party and Nedbank as the counter party would benefit from the difference in the interest rates.

**CHAIRPERSON:** Yes. So would – would your conclusion be that probably this was done to benefit Regiments and if in the process  
20 Nedbank benefited that might have been just an unintended consequence.

**DR JONATHAN ZORAH BLOOM:** Well Chair coming to the fees.

**CHAIRPERSON:** Ja.

**DR JONATHAN ZORAH BLOOM:** It was – yes because in order Regiments were paid 20 basis points.

**CHAIRPERSON**: Hm.

**DR JONATHAN ZORAH BLOOM**: On each one of the swops.

**CHAIRPERSON**: Hm.

**DR JONATHAN ZORAH BLOOM**: So by splitting it – by splitting the loan into two tranches etcetera, etcetera was – would have benefitted them also in terms and Nedbank would have had a very high – would have had a benefit from the fact that the fixed rate payable by Transnet was so high. And we have seen that is why the losses incurred by Transnet to date have accrued as a consequence.

10 **CHAIRPERSON**: Is it – what are the chances that this might have been simply a result of the negotiations between Nedbank and Transnet without anybody aiming to benefit Regiments as such and that Regiments just happened to benefit in the process? What are the chances of that scenario having been the scenario?

**DR JONATHAN ZORAH BLOOM**: I do not think Regiments would have just benefitted. I think this was planned.

**CHAIRPERSON**: Yes.

**DR JONATHAN ZORAH BLOOM**: In respect of the fact that entering into the swops would result in significant fees for them.

20 **CHAIRPERSON**: For them ja.

**DR JONATHAN ZORAH BLOOM**: From the other perspective and from what I have seen Nedbank indicate that the – the fixed rate paid or the 2.2 – the 12.27 in this particular case was provided to them by Transnet and Transnet advisors as they say.

**CHAIRPERSON**: Yes.

**DR JONATHAN ZORAH BLOOM:** So it was a question of Nedbank would have not entered into something like this if it was not beneficial to them.

**CHAIRPERSON:** Hm.

**DR JONATHAN ZORAH BLOOM:** Or it did not make business sense for them to enter into such an arrangement.

**CHAIRPERSON:** Hm.

**DR JONATHAN ZORAH BLOOM:** So obviously at that point in time they saw the rate as being an – beneficial.

10 **CHAIRPERSON:** Beneficial to them ja.

**DR JONATHAN ZORAH BLOOM:** And it is – and that is what they concluded at.

**CHAIRPERSON:** Yes. And to the extent that the two figures or percentages that you talked about as having probably – having probably been aligned to the extent that they were aligned are you able to say they could not have been any bona fide innocuous motive or trying to align them?

**DR JONATHAN ZORAH BLOOM:** Not Chair – not when it comes to interest rates or when it comes to marking rates to the market.

20 **CHAIRPERSON:** Yes.

**DR JONATHAN ZORAH BLOOM:** Which is what is required in an exercise like this.

**CHAIRPERSON:** Yes.

**DR JONATHAN ZORAH BLOOM:** So it does seem – it does seem out of place or a little odd.

**CHAIRPERSON:** Yes. It is not something you have seen in your experience over the years?

**DR JONATHAN ZORAH BLOOM:** No Chair.

**CHAIRPERSON:** Yes okay. Thank you.

**ADV PAUL JOSEPH PRETORIUS SC:** Alright. So you make the conclusion then on page 44 that at the very least what the above schedule shows is that Transnet significantly overpaid for swop transaction, is that still your opinion?

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

10 **ADV PAUL JOSEPH PRETORIUS SC:** Alright let us go to page 45. A new challenge to explain this graph to us.

**DR JONATHAN ZORAH BLOOM:** Okay Chair the – if – this a graph that takes a couple of things into account. The first one is this is – this relates – the – has to do – first of all. This relates to the cost of debt in other words the interest paid by Transnet. But – and it relates to the two transactions that we have been talking about the 4.5 billion and the 7.5 billion and the rates – the fixed rates ...

**ADV PAUL JOSEPH PRETORIUS SC:** Which made up the China Development – sorry made up the 12 billion?

20 **DR JONATHAN ZORAH BLOOM:** The 12 billion club loan.

**ADV PAUL JOSEPH PRETORIUS SC:** Club loan?

**DR JONATHAN ZORAH BLOOM:** Correct.

**CHAIRPERSON:** Yes.

**DR JONATHAN ZORAH BLOOM:** And that – the idea behind this is to – to indicate how does that relate to the overall cost of debt within

Transnet? As a – as a benchmarking exercise if I can...

**ADV PAUL JOSEPH PRETORIUS SC:** Okay no let us take a step back.

**DR JONATHAN ZORAH BLOOM:** Okay.

**ADV PAUL JOSEPH PRETORIUS SC:** What you have done in this graph is you have attempted to show the cost of debt in interest rate terms to Transnet on average?

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

**ADV PAUL JOSEPH PRETORIUS SC:** Okay and there are two ways in which you portrayed that and the blue line and the red line and we will  
10 explain that in a moment. And then in comparison to that you have attempted to show what the cost of debt was in relation to the club loan?

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

**ADV PAUL JOSEPH PRETORIUS SC:** And your comparison illustrates the basis of your conclusion which you will make at the end of this presentation?

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

**ADV PAUL JOSEPH PRETORIUS SC:** Alright what is the blue line?

**DR JONATHAN ZORAH BLOOM:** The blue line with the dots that  
20 represents the weighted average cost of debt at Transnet. Each month for the period 1 September 2015 on the lower axis up until the 1 March 2018.

**ADV PAUL JOSEPH PRETORIUS SC:** Okay so the blue line and all its dots show what interest rate was being paid by Transnet on average in respect of all its debt at a particular date?

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

**ADV PAUL JOSEPH PRETORIUS SC:** What is weighted average?

**DR JONATHAN ZORAH BLOOM:** Weighted average that is where WAC  
D comes in. It is – because Transnet have different types of debt and  
the magnitude of the debt differ. In other words they have different  
sizes like in – if I can indicate it like that. They – in order to get an  
overall indication of what the cost of debt is you cannot just add up all  
the interest rates applicable to each of the loans or the etcetera you  
have to – you have to weight each one of those rates in terms of the  
10 size of the loan and that creates the average. So that is why it is  
called a weighted average cost of debt and it refers to all Transnet  
debt.

**ADV PAUL JOSEPH PRETORIUS SC:** Alright.

**CHAIRPERSON:** You specified from what period to what period earlier  
on. Do you want to just repeat that in regard to that blue line?

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

**CHAIRPERSON:** It represents the weighted average cost of debt at  
Transnet from a certain date to a certain date?

**DR JONATHAN ZORAH BLOOM:** That is correct Chair. From the 1  
20 September 2015 until the 1 March 2018. Now...

**ADV PAUL JOSEPH PRETORIUS SC:** That is the horizontal axis of the  
graph?

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

**CHAIRPERSON:** Okay thank you.

**DR JONATHAN ZORAH BLOOM:** So if you take then the red line ...

**ADV PAUL JOSEPH PRETORIUS SC:** Well let us just

**DR JONATHAN ZORAH BLOOM:** Okay.

**ADV PAUL JOSEPH PRETORIUS SC:** Make a general observation about the blue line. Over that three year period 1 September 2015 to 1 March 2018 the cost of debt on a weighted average basis increased from approximately 9.4 % to 10.7%, is that correct?

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

**ADV PAUL JOSEPH PRETORIUS SC:** A gradual increase over that period of time?

10 **DR JONATHAN ZORAH BLOOM:** It – that is – Chair that is a significant increase.

**ADV PAUL JOSEPH PRETORIUS SC:** Is it a significant increase?

**DR JONATHAN ZORAH BLOOM:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** And it is what Transnet was paying on average for its debt?

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

**ADV PAUL JOSEPH PRETORIUS SC:** Alright. The red line?

**DR JONATHAN ZORAH BLOOM:** The red line represents the average – it is a normal average of the different dots on the blue line. In other  
20 words if you add all the interest rates the weighted average cost of debt rates on each on the blue line together and you divide it by the number of periods that we are talking about you get to an average of 10.23.

**ADV PAUL JOSEPH PRETORIUS SC:** Alright. Put differently the red line indicates the average rate of interest paid by Transnet for its debt



over that whole three year period?

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

**ADV PAUL JOSEPH PRETORIUS SC:** Okay and that average...

**CHAIRPERSON:** Is that during the same period?

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

**ADV PAUL JOSEPH PRETORIUS SC:** Yes. So that is one average of all the debt over that whole period?

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

**CHAIRPERSON:** Let me just make sure I have got it right. The red line  
10 represents the normal average cost of debt at Transnet for the period 1  
September 2015 to 1 March 2018.

**DR JONATHAN ZORAH BLOOM:** Yes Chair but just for clarification.

**CHAIRPERSON:** Hm

**DR JONATHAN ZORAH BLOOM:** It includes – it is the average of all the dots on the blue line. In other words it is taking all the dots just to obtain an average over that period.

**ADV PAUL JOSEPH PRETORIUS SC:** In fact...

**CHAIRPERSON:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** They should perhaps not be on  
20 the same graph because they different measures.

**DR JONATHAN ZORAH BLOOM:** It is merely to indicate trend that is why it is there.

**ADV PAUL JOSEPH PRETORIUS SC:** Alright so the blue line tells you at any particular date what the average cost of debt was. So in September 2015 it was relatively low 9.4% but in March 2018 it was you

say significantly higher 10.7% say.

**DR JONATHAN ZORAH BLOOM:** Yes Chair but I think what is important to understand is that to look at the dotted blue line from the 1 April 2016. In other words just under the red line and to look at – from that point to the end of the period which is the 1 March 2018. That slightly upward movement is not significant. It is the normal trend – it is the normal trending of interest rates higher.

**CHAIRPERSON:** Hm.

**DR JONATHAN ZORAH BLOOM:** In terms of the cycle.

10 **CHAIRPERSON:** Hm.

**DR JONATHAN ZORAH BLOOM:** So that is not abnormal if I can use that term.

**CHAIRPERSON:** Hm.

**DR JONATHAN ZORAH BLOOM:** But what is interesting and this is caused by and we will get to the differences now but what is caused by the fact that they swapped so much debt from floating to fixed you could see there that from the 1 February there was a – there was an – let us start on the 1 – from the 1 December there was a slight increase and then – but from the 1 February up to the 1 April.

20 **CHAIRPERSON:** Hm.

**DR JONATHAN ZORAH BLOOM:** There was quite a significant increase.

**ADV PAUL JOSEPH PRETORIUS SC:** Spike.

**DR JONATHAN ZORAH BLOOM:** A spike. And that was when the 12.27 fixed rate swop was entered into. So we changed the –

essentially changed the debt profile of Transnet increasing the weighted average cost of debt up to that point.

**ADV PAUL JOSEPH PRETORIUS SC:** Alright so you say what is significant here is that the blue line which reflects the weighted average of all debt spikes and that spike is caused by the fact that expensive interest rate swops are being entered into?

**DR JONATHAN ZORAH BLOOM:** Yes in other words more fixed debt is being added or fixed – ja fixed debt is being added to the total debt of Transnet.

10 **ADV PAUL JOSEPH PRETORIUS SC:** At high interest rates.

**DR JONATHAN ZORAH BLOOM:** At a high interest rate correct.

**CHAIRPERSON:** And that we say is from around 1 February 2015 to around 1 April 2016?

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

**CHAIRPERSON:** Okay.

**ADV PAUL JOSEPH PRETORIUS SC:** So at any particular date on this graph one can see on the blue line what the weighted average is?

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

20 **ADV PAUL JOSEPH PRETORIUS SC:** Cost of debt in interest rate terms.

**DR JONATHAN ZORAH BLOOM:** Correct.

**ADV PAUL JOSEPH PRETORIUS SC:** Correct. And one can see the spike and you have explained the cause of the spike?

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

**ADV PAUL JOSEPH PRETORIUS SC:** Those two vertical boxes relates

that spike to the information that you are about to describe at the top of the graph.

**DR JONATHAN ZORAH BLOOM:** So the green line and the...

**ADV PAUL JOSEPH PRETORIUS SC:** No, no before we go to the green line we must explain the red line. The red line is a single average over the whole period?

**DR JONATHAN ZORAH BLOOM:** Okay. Yes it is the single average over the whole...

**ADV PAUL JOSEPH PRETORIUS SC:** And one can see that from the  
10 time of the spike more or less Transnet is paying above average rates for its debt, correct?

**DR JONATHAN ZORAH BLOOM:** Correct.

**ADV PAUL JOSEPH PRETORIUS SC:** Alright the green line is?

**DR JONATHAN ZORAH BLOOM:** The green line represents the fixed rate of the first tranche of 4.5 billion across that period and I will explain now the purple line represents the fixed interest rate of the R7.5 billion of the 12 billion on – in March 2016 – well the other one was in April – ag in December 2015.

**ADV PAUL JOSEPH PRETORIUS SC:** Those are the fixed interest  
20 rates consequent upon the swop?

**DR JONATHAN ZORAH BLOOM:** Correct Chair. So the parallel lines or not the parallel lines the arrows between the average debt 10.23 and the green line that represents how higher – how much higher the actual overall cost of debt was that was entered in – although the – how much higher the interest rate – fixed rate was entered into in the first tranche

of swops when compared to the average. In other words 11.83 compared to 10.23 on average. And that represents 1.6% which is on a type of debt book such as Transnet has is a significant impact. On the dotted arrow which is drawn from the average 10.23 to the 12.27 the second tranche of the 12 billion that percentage is just over 2% which is also compared to the higher rates at which those swops were entered into also seems to be out of place.

**ADV PAUL JOSEPH PRETORIUS SC:** Alright.

**DR JONATHAN ZORAH BLOOM:** And Chair just by the way I think it  
10 just adds a little bit of context the last dot on the blue line on the 1  
March 2018 is actually 10.64 just for interest sake. Because – so you  
can see that it is moving – it is trending up but it is not showing signs  
of exponential growth in rates.

**CHAIRPERSON:** Thank you.

**ADV PAUL JOSEPH PRETORIUS SC:** Alright. An unskilled or non-  
expert observer may say look the difference between the average debt  
over the period 10.23% and what was paid in the first and second swop  
1.6% or 2.04% more is only one or two percent it is not much. What  
would your response to that be?

20 **DR JONATHAN ZORAH BLOOM:** Chair as I indicated on the debt – on  
the size of the debt book especially on the fixed side that Transnet  
have it represents a substantial amount - it can represent a substantial  
difference in financing cost. In other words it means it is just – it is  
extra – it is extra funds that Transnet have to find or – to settle just the  
cost of debt which is then – which is out of kilter with the market.

**ADV PAUL JOSEPH PRETORIUS SC:** On page 46 you refer to the fees that accrued to or were paid to Regiments as fees for executing the swops.

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

**ADV PAUL JOSEPH PRETORIUS SC:** You say that the manner of calculation of the fees and the resultant amount accrued to or paid to Regiments is the subject matter of further investigation?

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

**ADV PAUL JOSEPH PRETORIUS SC:** So we will deal with that Chair at  
10 another stage. You are now going to move to a completely different transaction and that is the transaction that involved the Transnet second defined benefit fund.

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

**ADV PAUL JOSEPH PRETORIUS SC:** It involved Transnet and it involved Regiments?

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

**ADV PAUL JOSEPH PRETORIUS SC:** Alright. What is the TSDBF? Transnet Second Defined Benefit Fund?

**DR JONATHAN ZORAH BLOOM:** Chair it is one of Transnet's funds ag  
20 pension funds but in terms if you look at its name it is a defined benefit fund in other words it pays out benefits to beneficiaries but does not receive ...

**CHAIRPERSON:** Contributions.

**DR JONATHAN ZORAH BLOOM:** Contributions correct.

**ADV PAUL JOSEPH PRETORIUS SC:** And those benefits are fixed?

Transnet has to pay them?

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

**ADV PAUL JOSEPH PRETORIUS SC:** You cannot say I am in financial trouble?

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

**ADV PAUL JOSEPH PRETORIUS SC:** Or it cannot say my investments are not doing too well?

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

**ADV PAUL JOSEPH PRETORIUS SC:** Right it has to pay those  
10 benefits in terms of its rules?

**DR JONATHAN ZORAH BLOOM:** And in terms of the agreements with the beneficiaries.

**ADV PAUL JOSEPH PRETORIUS SC:** Yes okay. Well let us not go into that detail. It is just that in relation to the performance of the fund Transnet itself is risk?

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

**ADV PAUL JOSEPH PRETORIUS SC:** Alright. So you say there was an amount of R11.3 billion of Transnet debt.

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

20 **ADV PAUL JOSEPH PRETORIUS SC:** Now this is just Transnet debt in general it is not necessarily a particular loan it is just part of Transnet's debt at a particular time?

**DR JONATHAN ZORAH BLOOM:** That is correct Chair and it does not align also with the financing that we have been talking about for the loco – for the Chinese locomotives.

**CHAIRPERSON**: Hm.

**DR JONATHAN ZORAH BLOOM**: This is a separate transaction but it is dealt with in terms of interest rate swops.

**CHAIRPERSON**: Hm.

**ADV PAUL JOSEPH PRETORIUS SC**: Right. And this debt had been incurred by Transnet as I understand your evidence as a floating rate of interest?

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

**CHAIRPERSON**: Just to go back to the terminology of hedging. In this  
10 context where it says at a stage it was decided to hedge R11.3 billion of Transnet debt which was at floating rate which was under the floating rate regime – swop with the company – so it goes back to the normal where – meaning that we gave it to protect – to protect.

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

**CHAIRPERSON**: So it was decided to protect this amount – this debt?

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

**CHAIRPERSON**: Okay.

**ADV PAUL JOSEPH PRETORIUS SC**: You will recall an earlier  
20 question from the Chair where he asked was it always the case that a hedging transaction would be preceded by another transaction such as a loan agreement?

**DR JONATHAN ZORAH BLOOM**: That is not entirely always the case. In this particular case this was existing debt within Transnet.

**ADV PAUL JOSEPH PRETORIUS SC**: So one can take your existing debt and hedge it?



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

**ADV PAUL JOSEPH PRETORIUS SC**: Or you can take a particular loan at a time and hedge the implications of that loan?

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

**ADV PAUL JOSEPH PRETORIUS SC**: Alright thank you.

**CHAIRPERSON**: Well I do not know I am trying to look at the – what appeared to me initially to be a subtle distinction that may – you may be seeking to make here in regard to the earlier question I had asked whether a swop or a transaction must always be preceded by another  
10 transaction. It seems to me that even here you do have a pre – a pre-existing transaction or transactions because you do already have a loan. Those loans – that loan must be based on a transaction or based on a number of transactions?

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

**CHAIRPERSON**: Yes. So going back to the answer you had given to my question earlier it should still apply that you cannot have a swop arrangement without a pre-existing transaction. It can be a transaction or transactions maybe?

**DR JONATHAN ZORAH BLOOM**: That is correct Chair you need debt.

20 **CHAIRPERSON**: Yes there must a debt.

**DR JONATHAN ZORAH BLOOM**: You need to have...

**CHAIRPERSON**: Ja.

**DR JONATHAN ZORAH BLOOM**: You need to have incurred debt.

**CHAIRPERSON**: Yes, yes.

**DR JONATHAN ZORAH BLOOM**: To be able to do the transaction.

**CHAIRPERSON:** Yes and the debt cannot come about without some transaction?

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

**CHAIRPERSON:** Ja okay alright. I just want to make sure I – because I had come to understand it in a certain way and I want to make sure that it is still fine – still applies.

**DR JONATHAN ZORAH BLOOM:** Yes.

**CHAIRPERSON:** Okay.

**ADV PAUL JOSEPH PRETORIUS SC:** So as I understand what  
10 happened here was that someone or other earmarked R11.3 billion of Transnet debt from its book?

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

**ADV PAUL JOSEPH PRETORIUS SC:** And said we are going to hedge this?

**DR JONATHAN ZORAH BLOOM:** That is right.

**ADV PAUL JOSEPH PRETORIUS SC:** From floating to fixed?

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

**ADV PAUL JOSEPH PRETORIUS SC:** Alright. Now what is interesting here is the role that Regiments or Regiments related entities played.  
20 The person in debt at this stage – the person liable for the debt was Transnet.

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

**ADV PAUL JOSEPH PRETORIUS SC:** The counterparty in the hedging transaction was who?

**DR JONATHAN ZORAH BLOOM:** The Pension Fund.

**ADV PAUL JOSEPH PRETORIUS SC:** Transnet's Pension Fund?

**DR JONATHAN ZORAH BLOOM:** Yes, TSDBF.

**ADV PAUL JOSEPH PRETORIUS SC:** So we have the situation - whether extraordinary or not that is for a later comment - where Transnet is as - you described to the Chair earlier – betting against its Pension Fund?

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

**ADV PAUL JOSEPH PRETORIUS SC:** And there can only be one winner?

10 **DR JONATHAN ZORAH BLOOM:** I was just going to say that. There can only be one winner, correct.

**CHAIRPERSON:** Let me make sure I follow that. This 11.3 billion debt that Transnet had – had is not connected with the fund. The fund is going to be another party to the swap transaction?

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

**CHAIRPERSON:** Oh, okay alright.

**ADV PAUL JOSEPH PRETORIUS SC:** So if one goes back to our explanatory boxes that we started off this morning the right hand side of your explanatory diagram is Transnet debt to various creditors ...

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

**ADV PAUL JOSEPH PRETORIUS SC:** That remains but Transnet says I am now going to hedge the floating interest rate debt and the counterparty in this hedge is going to be Transnet Second Defined Benefit Fund?

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

**ADV PAUL JOSEPH PRETORIUS SC:** Alright.

**CHAIRPERSON:** So – so it is not a requirement that in a – in a swap transaction it is not a requirement that one of the parties be a bank of financial institution or is it a – an essential requirement?

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

**CHAIRPERSON:** I see this is a fund as opposed to Nedbank or Absa.

**DR JONATHAN ZORAH BLOOM:** Chair this is – this is very unusual. You would – because the fund is – is – has sufficient collateral and funds that is why they would – that is why they would be able to enter  
10 into this type of transaction. In other words if – if the rate or if the swap went against them then they would be able to pay.

**ADV PAUL JOSEPH PRETORIUS SC:** From pensioners' money?

**DR JONATHAN ZORAH BLOOM:** From pensioners' money. So that is what makes the – that is what makes this transaction very unusual in terms of using a – a pension fund as a counterparty for a swap transaction.

**CHAIRPERSON:** I – I can understand that in the context of a bank being party to a swap transaction that there may be – the motive for engaging in a swap transaction would be that they are confident with  
20 their forecast on interest rates and they think they will – they stand a good chance of making money.

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

**CHAIRPERSON:** And they are in the financial sector. That is – that forms part of their core business. Now if it is somebody else I guess the principle – the same motive might still apply except that in a certain

set of facts an entity that may not be a bank may be unnecessarily taking a risk. Is that right?

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

**CHAIRPERSON**: Okay, thank you.

**ADV PAUL JOSEPH PRETORIUS SC**: Yes Chair the further implications will emerge as we proceed in evidence. What is significant about this transaction quite apart from what the Chair has questioned you about is the role that Regiments played or Regiments related entities played. Who were the Fund Managers of the benefit fund?

10 **DR JONATHAN ZORAH BLOOM**: Chair Regiments Fund Managers which is another company a different company to the Regiments providing consulting or advisory services to Transnet were also – were the fund appointed by the Pension Fund as their Fund Managers.

**CHAIRPERSON**:

**ADV PAUL JOSEPH PRETORIUS SC**: Are they related companies?

**DR JONATHAN ZORAH BLOOM**: Well they are from the same stable. I am not sure if they – how the parties relate to each other.

**ADV PAUL JOSEPH PRETORIUS SC**: Well you say so.

20 **DR JONATHAN ZORAH BLOOM**: Yes. They related in terms of the – in terms of the group.

**ADV PAUL JOSEPH PRETORIUS SC**: Right. So they part of the same group or stable?

**DR JONATHAN ZORAH BLOOM**: Yes.

**CHAIRPERSON**: So ...

**ADV PAUL JOSEPH PRETORIUS SC**: So Regiments Fund Managers

are the

**CHAIRPERSON:** Huh-uh.

**ADV PAUL JOSEPH PRETORIUS SC:** Fund Managers of the Defined Benefit Fund of Transnet?

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

**ADV PAUL JOSEPH PRETORIUS SC:** And obviously as Fund Managers they play a role in the decision making regarding investments?

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

**ADV PAUL JOSEPH PRETORIUS SC:** Right. Sorry Chair did I  
10 interrupt?

**CHAIRPERSON:** No you asked exactly the same question I wanted to ask. So that is okay – that is okay.

**ADV PAUL JOSEPH PRETORIUS SC:** And the other Regiments in the stable what role did they play in relation to Transnet itself?

**DR JONATHAN ZORAH BLOOM:** Chair they were the – the party that were the advisory – the advisors to Transnet on various transactions. So it was – there appeared to be the two parties discussing the transactions with each other together with Transnet.

**ADV PAUL JOSEPH PRETORIUS SC:** So go back to your earlier  
20 comments regarding one counterparty “betting” against the other counterparty on different premises and forecasts and your comment in addition to that there can only be one winner and therefore one loser.

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

**ADV PAUL JOSEPH PRETORIUS SC:** Regiments in whatever part of the stable are on the one hand conducting the transaction on behalf of

Transnet and advising Transnet. Correct?

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

**ADV PAUL JOSEPH PRETORIUS SC:** And on the other hand are the Fund Managers in control of the investments of the Pension Fund?

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

**ADV PAUL JOSEPH PRETORIUS SC:** Alright. The question of conflict of interest obviously arises but that is a legal issue.

**CHAIRPERSON:** Yes. So in the third bullet point at page 48 Regiments Fund Managers Pty Ltd you say there:

10                    “At the time of this transaction a party related to  
                          Regiments (Regiments Fund Managers (Pty) Ltd).”

Is that – is that the party that – that was the Fund Manager for TSDBF or Regiments Fund Managers was the one that Regiments were using?

**DR JONATHAN ZORAH BLOOM:** Regiments Fund Managers were the fund managers of the TSDBF. That is correct Chair.

**CHAIRPERSON:** Oh okay, okay. Okay. It is a – it is a question of – for me once you have got brackets there it means something else but if you put commas on either side it means exactly what you are saying. So ...

20   **DR JONATHAN ZORAH BLOOM:** Apologies Chair.

**CHAIRPERSON:** Okay, alright.

**ADV PAUL JOSEPH PRETORIUS SC:** Okay. You make the point then that we have just alluded to on page 49 at the first bullet. Would you state or explain that with the Chair?

**DR JONATHAN ZORAH BLOOM:** Yes Chair I think in this – this

transaction is no different to the transactions concluded previously on the – the R12 billion club loan. Transnet in this particular case would pay the fixed rate to the TSDBF and receive the floating rate notionally. As we have been discussing and the funds of the pensioners would be used to cover the position if floating rates exceeded the fixed rate.

**ADV PAUL JOSEPH PRETORIUS SC:** So if the fund lost the gamble and was the loser who would fund that loss?

**DR JONATHAN ZORAH BLOOM:** The fund would, *ja* – if the – if the floating rates exceeded the fixed rates that Transnet were paying the  
10 fund then the fund would have to pay Transnet from the – from the (intervenes).

**ADV PAUL JOSEPH PRETORIUS SC:** Pensioners?

**DR JONATHAN ZORAH BLOOM:** *Ja*.

**CHAIRPERSON:** So they were going to put the pensioners' money at risk?

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

**ADV PAUL JOSEPH PRETORIUS SC:** Yes and we will come to one of the possible reasons why in a moment Chair. In any event under the second bullet you raise a question which you do not answer. It says  
20 merely under investigation. The question whether it would be lawful in terms of Pension Legislation Rules and Policies to put funds at risk in this manner.

**DR JONATHAN ZORAH BLOOM:** That is correct because Chair in terms of the - normally an investment policy statement which is underscored by the – by the Fund Rules would place restrictions on the



types of investment or the types of instruments that one could use and that – the intention behind that is just to prevent taking too much risk ...

**CHAIRPERSON:** Yes, ja.

**DR JONATHAN ZORAH BLOOM:** At the expense of – of ...

**CHAIRPERSON:** Pensioners.

**DR JONATHAN ZORAH BLOOM:** Of the pensioners' funds.

**CHAIRPERSON:** Hm.

**DR JONATHAN ZORAH BLOOM:** So yes the – as Advocate Pretorius  
10 indicated one must also remember that the Transnet Pension Fund is not a South African – a Regulation 28 Pension Fund. It falls under the auspices of Transnet but there – but it works on exactly the same basis. There are Fund Rules. There are investment policies etcetera. So this is – this also needs to be understood in the – in the broader context as – as was indicated it is a legal matter but in – in other words was – was the TSDBF committed to actually engage in this transaction.

**ADV PAUL JOSEPH PRETORIUS SC:** Yes and as you say it is not the Pension Fund Act. It is the Transnet Pension Fund Act that is at issue here.

20 **DR JONATHAN ZORAH BLOOM:** That is correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** But there are also Fund Rules and investment policy statements?

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

**ADV PAUL JOSEPH PRETORIUS SC:** But you have a situation here where one would think general principles would apply. Regiments

under one guise is duty bound to act in the interest of the fund because it is the Fund Manager.

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

**ADV PAUL JOSEPH PRETORIUS SC**: Regiments in another guise is duty bound to act in the interest of Transnet ...

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

**ADV PAUL JOSEPH PRETORIUS SC**: Because it is employed by Transnet to execute the funds and pay the fee to do so.

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

10 **ADV PAUL JOSEPH PRETORIUS SC**: To execute the transactions. It was paid a fee to do so. Correct?

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

**ADV PAUL JOSEPH PRETORIUS SC**: Conflict of interest seems pretty obvious but we will do that in due course Chair. We will not deal with it here.

**CHAIRPERSON**: Is – is there any possible significance in the closeness of the amounts involved in these two transactions where swap arrangements were involved? The one was R12 billion. The other one is r11.3 billion or is it a coincidence.

20 **DR JONATHAN ZORAH BLOOM**: Chair that is a very good question. I do not know but in my conclusions I will venture an opinion in terms of – of the various transactions.

**CHAIRPERSON**: Yes. It is quite strange. Maybe it is not strange to ...

**DR JONATHAN ZORAH BLOOM**: Yes.

**CHAIRPERSON**: People who are in the financial sector. It is – it is –

when you have a transaction involving R12 billion for which you decide there should be a swap arrangement and then among all your debts you say okay debts amounting to R11.3 billion also I will have a swap transaction.

**ADV PAUL JOSEPH PRETORIUS SC:** Well the question arises and this question will hopefully be answered at the end of all the evidence.

**CHAIRPERSON:** Hm.

**ADV PAUL JOSEPH PRETORIUS SC:** A very lucrative for certain parties arrangement ...

10 **CHAIRPERSON:** Hm.

**ADV PAUL JOSEPH PRETORIUS SC:** Hedging arrangement is entered into ...

**CHAIRPERSON:** Hm.

**ADV PAUL JOSEPH PRETORIUS SC:** Relating to R12 million.

**CHAIRPERSON:** Hm.

**ADV PAUL JOSEPH PRETORIUS SC:** Did someone not say well let us do it again?

**CHAIRPERSON:** And of course you have just told us that there seemed to be – there was some relationship between the Fund Managers that  
20 were used for in this one and Regiments in the other one?

**DR JONATHAN ZORAH BLOOM:** That is correct Chair. I think I might just then comment ...

**CHAIRPERSON:** Hm.

**DR JONATHAN ZORAH BLOOM:** On what Advocate Pretorius has just said. One must realise and it also relates back to your question is a

coincidental that we are talking about 12 billion and very close to another 12 billion. If you look at it – if you look at how the transactions were structured in other words we started off with 4.5 billion and that went through very easily. If you look in that – if that works why not do it again. So then let us try 7.5 - the other portion of the 12 billion and if that works great let us try it again and each time it increased by a significant factor from 4.5 to 7.5 to 11.3. So – so the question is this – this was an interesting trend that was – that was emerging in terms of this continuously swapping of floating to fixed rates.

10 **CHAIRPERSON**: Yes, thank you.

**ADV PAUL JOSEPH PRETORIUS SC**: In any event we know that these issues which you are now making comment on and rendering your opinion are indeed the subject of litigation.

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

**ADV PAUL JOSEPH PRETORIUS SC**: And also the subject of further investigation.

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

**ADV PAUL JOSEPH PRETORIUS SC**: Which we hope to conclude at least to a degree from the part of the investigators and legal team in  
20 due course Chair. Now there is a schedule on page 50 where like the schedules that you dealt with this morning the loss to Transnet is quantified.

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

**ADV PAUL JOSEPH PRETORIUS SC**: Alright. What are these losses?

**DR JONATHAN ZORAH BLOOM**: Chair the – the approach to

understanding the table is exactly the same as – as the previous table. In other words if you look at the third column from the right the realised cash flow. This is also at 14 May. Transnet have incurred actually losses. In other words they physically paid R720.8 million.

**ADV PAUL JOSEPH PRETORIUS SC:** So in addition to the interest they are paying to the lender in the original transaction?

**DR JONATHAN ZORAH BLOOM:** Yes Chair because this has got to do with a swap.

**ADV PAUL JOSEPH PRETORIUS SC:** Yes and that is a discreet  
10 separate transaction as we have learnt?

**DR JONATHAN ZORAH BLOOM:** That is correct and then the – that is the 720. Then if Transnet were to – to exist this – this particular transaction that the 14<sup>th</sup> – on 14 May it would have cost them 815 million. So if we take the third and the second column from the right and we add them together the potential loss would be 1.5 billion which is then an actual loss at this point in time or at least on 14 May of 720 and if they wanted to exit the transaction if they went – if they went to the TSDBF and that is what makes this thing very complicated. They went to the TSDBF now and said listen. We now went to – we are  
20 paying you. You can see we are paying you and we want to exit the transaction. Then the TSDBF just based on market – market inputs would tell them that you need to pay us because we have entered into a – a 15 year agreement. You need to pay us R815 million.

**ADV PAUL JOSEPH PRETORIUS SC:** Because that would be our loss if you exit?

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

**ADV PAUL JOSEPH PRETORIUS SC:** And according to that is that what Transnet would have lost over the full period?

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

**ADV PAUL JOSEPH PRETORIUS SC:** So this swap this hedging exercise has already cost Transnet R720 million and over the full period of the swap transaction would on present day calculations cost R1.5 billion?

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

10 **ADV PAUL JOSEPH PRETORIUS SC:** Now the interesting fact. You say there can be a winner and a loser in equivalent amounts. Who benefitted here?

**DR JONATHAN ZORAH BLOOM:** The Pension Fund.

**ADV PAUL JOSEPH PRETORIUS SC:** By an amount of so far anyway?

**DR JONATHAN ZORAH BLOOM:** 720 million.

**ADV PAUL JOSEPH PRETORIUS SC:** 720 million but here is a further question. Regiments are the Fund Managers. There will be evidence Chair that as Fund Managers Regiments are entitled to a significant portion of the investment upside. So they would get a cut of that R720  
20 million?

**CHAIRPERSON:** And – and is that in addition to fees or that is the form of their fees?

**ADV PAUL JOSEPH PRETORIUS SC:** No they would get their fees from Transnet.

**CHAIRPERSON:** Separate, yes, yes. Oh, in addition ...

**ADV PAUL JOSEPH PRETORIUS SC:** For – for doing the swap.

**CHAIRPERSON:** In addition get some percentage of this amount that must go to ...

**ADV PAUL JOSEPH PRETORIUS SC:** So insofar as it is Regiments ...

**CHAIRPERSON:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** Is one the two entities are ...

**CHAIRPERSON:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** Are of the same stable.

**CHAIRPERSON:** Yes.

10 **ADV PAUL JOSEPH PRETORIUS SC:** They get paid by Transnet on the one hand ...

**CHAIRPERSON:** Yes.

**ADV PAUL JOSEPH PETORIUS:** For doing the swap ...

**CHAIRPERSON:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** And on the other hand they get a cut of the profits made by the Pension Fund ...

**CHAIRPERSON:** Hm.

**ADV PAUL JOSEPH PRETORIUS SC:** To a significant amount ...

**CHAIRPERSON:** Hm.

20 **ADV PAUL JOSEPH PRETORIUS SC:** And that may for the moment only a question mark Chair ...

**CHAIRPERSON:** Hm.

**ADV PAUL JOSEPH PRETORIUS SC:** Explain ...

**CHAIRPERSON:** Yes.

**ADV PAUL JOSEPH PRETORIUS SC:** Why this happened.

**CHAIRPERSON:** *Ja.*

**ADV PAUL JOSEPH PRETORIUS SC:** What is your view?

**DR JONATHAN ZORAH BLOOM:** Yes, I think just to answer Chair's question ...

**CHAIRPERSON:** Hm.

**DR JONATHAN ZORAH BLOOM:** From a fund management perspective ...

**CHAIRPERSON:** Hm.

**DR JONATHAN ZORAH BLOOM:** Regiments would get a - a fund  
10 management fee ...

**CHAIRPERSON:** Hm.

**DR JONATHAN ZORAH BLOOM:** And if they did performance  
benchmarks ...

**CHAIRPERSON:** Hm.

**DR JONATHAN ZORAH BLOOM:** Which refers to the upside ...

**CHAIRPERSON:** Hm.

**DR JONATHAN ZORAH BLOOM:** Then they would get an additional  
fee.

**CHAIRPERSON:** Hm.

20 **DR JONATHAN ZORAH BLOOM:** So – so there are – you are right  
Chair.

**CHAIRPERSON:** Hm.

**DR JONATHAN ZORAH BLOOM:** There are two fees involved ...

**CHAIRPERSON:** Yes.

**DR JONATHAN ZORAH BLOOM:** Over and above the execution of the



transactions.

**CHAIRPERSON:** Yes. So it will be important to establish how Regiments got to be the Fund Managers for the Fund – for the Pension Fund.

**ADV PAUL JOSEPH PRETORIUS SC:** Yes and could sit in this transaction on both sides of the fence.

**CHAIRPERSON:** Yes, yes. *Ja*, okay.

**ADV PAUL JOSEPH PRETORIUS SC:** Profiting from both sides.

**CHAIRPERSON:** *Ja*.

10 **ADV PAUL JOSEPH PRETORIUS SC:** When the duty of good faith is held to both not one but those will be – those questions will be addressed in the fullness of time.

**CHAIRPERSON:** *Ja*.

**ADV PAUL JOSEPH PRETORIUS SC:** For the moment we are laying the basis for possible questions to be asked and perhaps answered in due course. Conclusions on page 52 Dr Bloom.

**DR JONATHAN ZORAH BLOOM:** Chair I have identified five – we have spoken a lot about various aspects and I have identified five points that I think are – are relevant in terms of a conclusion. The first one deals  
20 with the expertise and skills within Transnet to – to execute these transactions. These – these people who had the knowledge and the understanding and the skill were side-lined when it came to these transactions. In other words there was almost like a parallel process being run and – and as a consequence this was in the context of – of highly questionable agreements with third party advisors. So that is my

first conclusion. The second – the second point has to do with the club loan. Entering into the swap transactions as we have discussed on a floating rate basis and then deliberately changing the scope of the transaction by fixing the rates immediately thereafter or within a very, very short period is – is questionable. So that is the second part. The third point ...

**ADV PAUL JOSEPH PRETORIUS SC:** You make another point in paragraph 2.

**DR JONATHAN ZORAH BLOOM:** Okay.

10 **ADV PAUL JOSEPH PRETORIUS SC:** When you say in your view what the reason was for entering into the loan on a floating rate basis. What is your conclusion there?

**DR JONATHAN ZORAH BLOOM:** That the – that it could have been – it would have been in contravention to the Risk Management or the Financial Risk Management Policy of Transnet. Entering into the Floating Rate Agreement would have been deliberate if you are within three days going to change the – the basis of your cost of debt to fixed. So this was – it cannot be anything else really because as we have determined there would have been sufficient information on which to  
20 base the decision prior the conclusion of the loan.

**CHAIRPERSON:** But also is the position not that whoever it is at Transnet who decided that in regard to the 12 – in regard to the R12 billion loan the interest rate regime should be a floating one – floating interest rate? Whoever would have been would have had authority to make that decision would have known that before you make that

decision you must do some homework. You must base it on – on proper analysis of the relevant factors and – and do a focused. Is that right.

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

**CHAIRPERSON:** And if he or she decided not to do that focus to say the least that would have been grossly negligent.

**DR JONATHAN ZORAH BLOOM:** That is correct Chair. It would have been and then it would have been almost a preconceived ...

**CHAIRPERSON:** Yes.

**DR JONATHAN ZORAH BLOOM:** Idea.

10 **CHAIRPERSON:** Yes. It is – it is almost inconceivable that when such big amounts are involved that person could have negligently not done the focused.

**DR JONATHAN ZORAH BLOOM:** Correct Chair and not followed policy?

**CHAIRPERSON:** Yes.

**DR JONATHAN ZORAH BLOOM:** Why is policy then ...

**CHAIRPERSON:** Yes.

**DR JONATHAN ZORAH BLOOM:** Applicable.

**CHAIRPERSON:** *Ja.*

20 **DR JONATHAN ZORAH BLOOM:** So, yes.

**CHAIRPERSON:** But the very decision that he or she was called upon to take necessarily required that a focus be done because otherwise how do you make an informed decision whether it should be a floating interest rate regime or a fixed rate regime.

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

**CHAIRPERSON:** To choose between those two you must – you must have before you the focused.

**DR JONATHAN ZORAH BLOOM:** Absolutely that is correct.

**CHAIRPERSON:** So – and if that person did the focused before choosing the floating interest rate regime the information before him or her would have been the same as the information that was before him or her when she decided or he decided there should be a swap and it should be a fixed rate.

10 **DR JONATHAN ZORAH BLOOM:** That is correct Chair. They used the same system.

**CHAIRPERSON:** And on the same facts you cannot on the one hand arrive on the decision that a floating rate – floating interest rate regime is the correct one and on the same facts a few days later arrive at the decision that the – the correct regime – interest rate regime is a fixed one. Is that alright or am I – am I overstating any of these things?

**DR JONATHAN ZORAH BLOOM:** No Chair. You are not over – you are not oversimplifying. It is just the – it is a very clear unusual set of circumstances ...

**CHAIRPERSON:** Yes.

20 **DR JONATHAN ZORAH BLOOM:** Coming to different conclusions using exactly the same information ...

**CHAIRPERSON:** Yes.

**DR JONATHAN ZORAH BLOOM:** But not only that it is – it is the – it is the scope of how those conclusions were arrived at.

**CHAIRPERSON:** Yes.

**DR JONATHAN ZORAH BLOOM:** Which is – which is interesting because it was not as if the two parties might have been close together in terms of the decision. It - it appears as if there were very or totally divergent views potentially on – on the decision where to remain floating, go fixed or start with fixed etcetera.

**CHAIRPERSON:** It is highly unlikely that the person who made that decision could come here and say I did not do the focused or there was not a focused on which I relied?

**DR JONATHAN ZORAH BLOOM:** That is correct Chair because you  
10 have to – for – for decisions from – from reading memoranda and - and so on ...

**CHAIRPERSON:** Hm.

**DR JONATHAN ZORAH BLOOM:** From Transnet ...

**CHAIRPERSON:** Hm.

**DR JONATHAN ZORAH BLOOM:** Everything has to be motivate and ...

**CHAIRPERSON:** *Ja.*

**DR JONATHAN ZORAH BLOOM:** And justified.

**CHAIRPERSON:** *Ja* but even if it had not been motivated by somebody else I cannot see how any organisation would allow you to or you would  
20 think you would be allowed to make such a decision with such far reaching financial implications for the organisation without doing that homework.

**DR JONATHAN ZORAH BLOOM:** That is – that is correct Chair.

**CHAIRPERSON:** And if that person were to come here and say I did do the homework then they would have to explain how they came to two

contradicting – contradictory decisions on the same material within a matter of days.

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

**CHAIRPERSON**: Yes, okay thank you.

**ADV PAUL JOSEPH PRETORIUS SC**: Well you deal with one certainty in paragraph 4 on page 52 and that is the ability to forecast the amount of fees paid to third parties. What is the point you make there?

**DR JONATHAN ZORAH BLOOM**: In other – Chair are you talking about point 3 or four?

10 **ADV PAUL JOSEPH PRETORIUS SC**: Point 4 ...

**DR JONATHAN ZORAH BLOOM**: Point 3.

**ADV PAUL JOSEPH PRETORIUS SC**: But you can go back to point 3 if you wish.

**DR JONATHAN ZORAH BLOOM**: Okay. Yes the resulting hedging transactions were in themselves questionable as we have – as we have discussed and as we have seen in the numbers that the – the hedging cost to Transnet have been excessive. In other words Chair they have – Transnet have not been in the money. That is a – that is a market term where you either – it is either working to your – the transaction is  
20 working to your benefit or it is not working to your benefit and that is what is – what is interesting about this but I would just like to add to – that if I may and that is to do with – the question is would Transnet be able to get into the money, in other words would at some stage over this fifteen year period would Transnet be able to in other words actually receive a benefit from entering into these swap transactions.

I think what is important is that it's – one doesn't – it doesn't happen at a point in time, you have to take into consideration the losses that they incurred up to to date and even if interest rates, the floating rates went above the fixed rates, as we've been speaking it would have to increase significantly for an extended period of time for them to be able to recoup the losses and then actually receive the benefit, so from – in my view is it's going to be difficult to achieve that, it's not to say it's impossible, who knows what happens over 15 years or the remaining 12 odd years that are left, but it's – one mustn't be,  
10 one mustn't lose sight of the fact that you can't just ignore what happened in the past, you have to understand what that was and then what the implication of the future is if you get into a position where you actually benefit from the transaction.

**ADV PAUL JOSEPH PRETORIUS SC:** So if interest rates in relation to the swaps were to turn in favour of Transnet it would still have to recoup its losses before it benefits from the change of interest rates.

**DR JONATHAN ZORAH BLOOM:** That's correct Chair and an extremely high interest rate for an extended period of time would be required.

**ADV PAUL JOSEPH PRETORIUS SC:** And one of course must keep  
20 this in perspective, the losses resulting from the hedging transactions in relation to the R12billion loan, almost 10% of that loan, are in addition to the interest that Transnet is paying to the lenders in terms of the original transaction.

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

**ADV PAUL JOSEPH PRETORIUS SC:** Then in point four what is the

point you make?

**DR JONATHAN ZORAH BLOOM:** The transactions involving Regiment and others related to the above resulted in the payment of excessive amount of fees to them, with the corresponding cost to Transnet, as I've indicated that is a subject of further investigation currently, to get an understanding of exactly how much fees are we talking about, and how those fees were calculated.

The – in terms of the last point Chair in the conclusions, the transaction involving the TSDBF Transit and Regiments there appears  
10 to be an intolerable conflict of interest, in especially with regard to the TSDBF and that needs to be understood and unpacked in going forward.

**ADV PAUL JOSEPH PRETORIUS SC:** And that will still be done.

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

**ADV PAUL JOSEPH PRETORIUS SC:** And in particular what you haven't dealt with which still has to be dealt with is how did Regiments as fund managers benefit from the profit or upside experienced by the defined benefit fund.

**DR JONATHAN ZORAH BLOOM:** That's correct Chair, the performance  
20 fee.

**ADV PAUL JOSEPH PRETORIUS SC:** Yes, alright some final remarks in relation to your evidence before we conclude, this is not in your statement but it's merely a summary highlighting certain points that you've made. The first point is that we have in your presentation, or you have in your presentation attempted to explain concepts in a way



that is accessible to ourselves and the public, and have attempted to simplify the processes involved to enable understanding.

**DR JONATHAN ZORAH BLOOM:** That's correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** But in reality these transactions, for example a loan involving syndicated loan funding, long-term repayment dates, and at times offshore, involving exchange are these simple, complex transactions, are they easily entered into and negotiated?

**DR JONATHAN ZORAH BLOOM:** No Chair they are not simple  
10 transactions and they take some time to conclude so yes there's – because there are various dimensions to each one of these and in many cases what we're talking about here are inter-related, so the matters are inter-related and you need to unpack each component as part of a broader understanding.

**ADV PAUL JOSEPH PRETORIUS SC:** And then you've also dealt with and explained risk mitigation processes, financial instruments used to hedge as you've described it?

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

**ADV PAUL JOSEPH PRETORIUS SC:** Hedging instruments the  
20 involvement of counterparties, the negotiation and conclusion of a hedging deal, the involvement of agents again are these straightforward matters that can be concluded within a very short period of days?

**DR JONATHAN ZORAH BLOOM:** No Chair not if you have to adhere to various policies, and various processes related to entering into the transactions. Our planning information from the market is relatively

simple, you would phone a couple of counterparties or financial institutions and get the information you're looking for, but to unpack that information consider the impact on your debt book, which is what we are referring to here, is a – it takes a while and then you still have to go through the processes of getting approval and authorisation to enter into the transactions.

**ADV PAUL JOSEPH PRETORIUS SC:** And then of course you've got to negotiate the transaction.

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

10 **ADV PAUL JOSEPH PRETORIUS SC:** With each party serving its own interests.

**DR JONATHAN ZORAH BLOOM:** That's correct.

**ADV PAUL JOSEPH PRETORIUS SC:** Right, so would it be fair to say that these are highly complex transactions?

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

**ADV PAUL JOSEPH PRETORIUS SC:** Requiring detailed preparation.

**DR JONATHAN ZORAH BLOOM:** And negotiations.

**ADV PAUL JOSEPH PRETORIUS SC:** And negotiation. You have studied these transactions?

20 **DR JONATHAN ZORAH BLOOM:** Yes Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** And according to your own general knowledge and expertise and your particular knowledge of these transactions about which you've given evidence as I understand it you are able to make some observations.

**DR JONATHAN ZORAH BLOOM:** That's correct Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** Express some opinion. Let me ask this question then, these transactions, the original Club Loan for example, and the changes made to decisions concerning these transactions, for example the decision now to hedge in effect to pay a fixed interest rate in the swap transaction, were these *ad hoc* changes caused by an intervening market change, or simply a change of mind or can you say whether they were pre-planned in your opinion?

**DR JONATHAN ZORAH BLOOM:** Chair in my view this was pre-planned and one of the reasons for that is there are so many  
10 components to these various transactions that have occurred, they've also occurred in a very short period of time, in order to orchestrate something like this substantial planning needs to have occurred. We just have to look at the Club Loan as you've indicated, signed on the 23<sup>rd</sup> of November, the first draw was on the 1<sup>st</sup> of December, it was hedged on the – the hedge approval in other words the approval for the hedge was on the 3<sup>rd</sup> of December and it was executed on the 4<sup>th</sup> of December, so in order to do all of that it would not have taken those couple of days, it would have been pre-planned and ...(intervention)

**ADV PAUL JOSEPH PRETORIUS SC:** By pre-planned you mean before  
20 the 23<sup>rd</sup> of November signature to the floating interest rate loan?

**DR JONATHAN ZORAH BLOOM:** Yes Chair, and as a consequence of that it resulted in significant ...(intervention)

**CHAIRPERSON:** I'm sorry, before you deal with the consequence what would you say would be the minimum period that would have been taken by the preparation, are you talking about a month, are you talking

about a week, two weeks, three months before that date?

**DR JONATHAN ZORAH BLOOM:** Chair it would have taken a couple of weeks, as I said it's not only, it's easy to get the information from the market but then you have internal processes and Transnet's internal processes would have resulted – they would have had to check the impact on the risk management or the finance risk management policy, they would have had to understand what the impact that – it would have had on the mix of floating to fixed rates, does it still remain within the – within that structure, all of those types of calculations and  
10 assessment would have been required prior to this, then they would have still had to obtain approvals to move into the space of providing or executing the transactions.

**ADV PAUL JOSEPH PRETORIUS SC:** Then of course they – I'm sorry Chair.

**CHAIRPERSON:** Okay you were going to consequence, I interrupted him when he was going to consequence, I don't want him to forget whatever point he wanted to make.

**DR JONATHAN ZORAH BLOOM:** No Chair I think ...(intervention)

**ADV PAUL JOSEPH PRETORIUS SC:** Sorry, may I just ask a related  
20 question to your question Chair.

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

**ADV PAUL JOSEPH PRETORIUS SC:** Of course when all that is done you are ready to begin the negotiations with the counterparty.

**DR JONATHAN ZORAH BLOOM:** That's correct Chair, once you have done all your homework then you would enter into those discussions

and it would depend on the appetite of the counterparty. It might be that the counterparty doesn't – is not interested, in other words it doesn't work, they don't – they are not amenable to the ...(intervention)

**CHAIRPERSON:** They need persuasion?

**DR JONATHAN ZORAH BLOOM:** They might need persuasion but then that means that you have to go and find another counterparty.

**CHAIRPERSON:** Yes.

**DR JONATHAN ZORAH BLOOM:** And somebody that's actually prepared to enter into these negotiations so it's not that you go to the  
10 first one for instance and you obtain success, it depends on who you want to deal with and as I indicated in the evidence Chair that's there also Transnet have a list of counterparties, so they might go to a few of them and say this is the type of transaction we want to do so let's start the discussion.

**ADV PAUL JOSEPH PRETORIUS SC:** But even if you succeed with the first counterparty it's still, as I understand your evidence, a very complex detailed negotiation that must take place.

**DR JONATHAN ZORAH BLOOM:** Yes Chair there's definitely negotiation.

20 **ADV PAUL JOSEPH PRETORIUS SC:** In order to reach an agreement with the party with counter-veiling interests.

**DR JONATHAN ZORAH BLOOM:** That's correct.

**ADV PAUL JOSEPH PRETORIUS SC:** Sorry I interrupted you, you were about to deal with consequences.

**DR JONATHAN ZORAH BLOOM:** Yes, I mean in terms of the – how the

transactions were executed, in terms of the nature of these transactions, the scope, in terms of size, the amounts we've been discussing, excessive fees, excessive costs, and because as I indicated previously Chair we're talking about three specific transactions, 4.5, 7.5 and 11.3. It appeared to indicate a trend that's as much as I can say because if there were hurdles at the first transaction, in other words the first 4.5 or the 4.5 it would have been difficult to proceed to the 7.5 swap and because as I indicated it appeared to go through smoothly, there was an opportunity to then use  
10 the TSDBF it appears as a counterparty to further another 11.3 of floating the fixed debt.

**CHAIRPERSON:** Thank you.

**ADV PAUL JOSEPH PRETORIUS SC:** Thank you Dr Bloom. As the Chair requested and directed we would be grateful if you would prepare a detailed report in relation to your evidence with supporting documents in the form of an expert affidavit, I trust you are willing to do so?

**DR JONATHAN ZORAH BLOOM:** I am Chair.

**ADV PAUL JOSEPH PRETORIUS SC:** Thank you Chair.

20 **DR JONATHAN ZORAH BLOOM:** Thank you very much Dr Bloom, we appreciate your having come to share your expertise with us. I have tried to learn.

**DR JONATHAN ZORAH BLOOM:** You have Chair.

**CHAIRPERSON:** Thank you very much and I trust that when the remaining parts of the work that still needs to be done has been done

arrangements will be made for that to be shared with the Commission as well.

**DR JONATHAN ZORAH BLOOM**: Correct Chair, thank you.

**CHAIRPERSON**: But thank you very much and you are excused.

**DR JONATHAN ZORAH BLOOM**: It is my pleasure thank you Chair.

**CHAIRPERSON**: Tomorrow how many witnesses have we got, do you know?

**ADV PAUL JOSEPH PRETORIUS SC**: I understand one witness Chair.

**CHAIRPERSON**: Who would take the whole day? You don't know?

10 **ADV PAUL JOSEPH PRETORIUS SC**: I'm reluctant to forecast without doing my homework Chair.

**CHAIRPERSON**: You need to do your homework first.

**ADV PAUL JOSEPH PRETORIUS SC**: But I understand for the bulk of the day.

**CHAIRPERSON**: Yes, yes. Okay no then probably we should just start at ten o'clock.

**ADV PAUL JOSEPH PRETORIUS SC**: As you please Chair.

**CHAIRPERSON**: We will adjourn the proceedings for the day and tomorrow we will start at ten o'clock. We adjourn.

20 **INQUIRY ADJOURNS TO 6 JUNE 2019**