

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

PARKTOWN, JOHANNESBURG

10

07 JUNE 2019

DAY 108

20

PROCEEDINGS ON 7 JUNE 2019

CHAIRPERSON: Good morning Ms Molefe, good morning everybody.

ADV REFILOE MOLEFE: Good morning Chair.

CHAIRPERSON: Are you ready?

ADV REFILOE MOLEFE: Yes.

CHAIRPERSON: Okay.

ADV REFILOE MOLEFE: Thank you Chair.

CHAIRPERSON: Let us proceed.

ADV REFILOE MOLEFE: Thank you. Ms Makgatho before yesterday's
10 adjournment you were taking the Chair through the notes and
memorandums that you had prepared relative to the funding of the 1064
locomotives and you had indicated that some of the memorandums had
not reached Mr Singh to whom they were addressed and you say that is
because they had mysteriously disappeared, is that correct?

MS MATHANE EVELINE MAKGATHO: Correct Chair.

ADV REFILOE MOLEFE: And the importance of those memorandums
as you have stated was that they showed treasury's plans relative to
the planning of the funding of the 1064 locomotives, is that correct?

MS MATHANE EVELINE MAKGATHO: Correct Chair.

20 **ADV REFILOE MOLEFE**: Can we then turn to Exhibit BB10[b] which is
your supplementary bundle. There you have attached two further
documents relative to the funding plans by treasury in respect of the
1064 locomotives. If you turn to page 13 under Annexure MMC there
appears an additional document relative to the funding plans prepared
by treasury. Can you take the Chair through this document?

MS MATHANE EVELINE MAKGATHO: Thank you Advocate. Chair the memorandum was developed around the beginning of 2014. You will remember yesterday as I was giving testimony that I had indicated that as early as April 2013 to be exact the 7 April 2013 we had started to highlight what the possibilities should be for financing of the 1054 locomotives. We even went further to highlight the materials risks that need to be considered and Chair you will also remember that at that point in time the procurement was not yet finalised. In actual fact we were still around the tendering stage. So it was just high lever

10 thoughts and therefore we followed with a number of high level memorandums. So it is only in 2014 when we knew for sure who the four preferred bidders are and what their countries of origin were. And therefore at that point in time and importantly we knew the quantum of the funds that are required for that chunky procurement event. And it was therefore important for us to thrash out exactly what the funding mechanism will be used one and two what the risk management plan is given the market circumstances at that point in time. I would therefore like to refer to you as the Advocate has highlighted to page 13. The purpose of the memorandum Chair says the purpose of the submission

20 is to recommend to the Group Chief Executive and the Group Chief Financial Officer the proposed funding strategy for the 1224 locomotives comprising of 1064 loco, 599 electric locomotives and 465 diesel locomotives, 100 China South Railway locomotives and 1060 General Electric [indistinct] collectively referred herein as the locomotives. Chair I would like to jump the background and move to

the discussion. Paragraph 6 details the cash flow. It is a table around the cash flows and the timing of the cash flows for each of the tranches. And I would like to read paragraph 6 – paragraph 7, 8 and 9 and 10.

CHAIRPERSON: Yes go ahead.

MS MATHANE EVELINE MAKGATHO: Thank you Chair.

10 “As the locomotive and the respective components will be procured from Bombardier CSR CNR and GE they will have a foreign content and such Transnet can make use of both tied and untied ECA backed funding. Group Treasury has applied to the US Exim for a preliminary commitment for a long term loan and guarantee for financing of the GE portion of the project as GE has...”

CHAIRPERSON: I hear you say oh or say end.

MS MATHANE EVELINE MAKGATHO: End.

CHAIRPERSON: It says oh do you – should it have been end?

MS MATHANE EVELINE MAKGATHO: Okay. Okay maybe let me repeat.

20 “Group Treasury Has applied to US Exim for a preliminary commitment for a long term loan or guarantee for financing of the GE portion of the project that has US content and is waiting for an indicative risk premium. In the supplier proposals for the locomotives US Exim had proposed as 722

million dollar cover. Since the cover – the final cover will depend on the foreign content and US Exim's credit appetite Group Treasury conservatively only factored 5 billion as the potential cover from US Exim. In terms of the new 2012 sector understanding on exports credit..."

ADV REFILOE MOLEFE: Sorry Ms Makgatho I have it as 2014. From in terms of the new 2014...

MS MATHANE EVELINE MAKGATHO: Yes did I not say 2014?

10 **ADV REFILOE MOLEFE:** You said 2012 Ma'am.

MS MATHANE EVELINE MAKGATHO: Apologies Chair.

CHAIRPERSON: Maybe there are other people who need specs like us.

MS MATHANE EVELINE MAKGATHO: Apologies Chair.

CHAIRPERSON: Yes.

MS MATHANE EVELINE MAKGATHO:

20 "In terms of the new 2014 sector understanding on exports credits for rail infrastructure prescribed by the OECD guidelines US Exim may provide a guarantee of up to 14 years with – which tenure is favourable for Transnet's asset and liability matching strategy. As part of the Bombardier and GE proposals Export Development Canada offered up to 75 million dollars towards the funding of the locomotives. Treasury has requested for an increase in this amount and EDC subsequently agreed to 100

dollars – to 100 million dollars. EDC has already presented Transnet's request to its pre committee and will provide a timesheet by 13 June 2014."

Chair as part of these engagements later on EDC jointly presented a proposal with Investec which was an increased amount of 600 million dollars. I believe it is covered in other submissions that we are referred to yesterday. So the amount increased from 100 million dollars to 600 million dollars equivalent of rents.

CHAIRPERSON: Okay.

10 **MS MATHANE EVELINE MAKGATHO**: And in paragraph 9

"The African Development Bank has presented Transnet with a 100 – with 1000 million loan facility."

Chair which is a billion rands.

CHAIRPERSON: Ja I was thinking that should be a billion rand.

ADV REFILOE MOLEFE: It is in dollars I believe.

MS MATHANE EVELINE MAKGATHO: It is in dollars. No, no it is a billion dollars.

CHAIRPERSON: Ja a billion dollars.

MS MATHANE EVELINE MAKGATHO: It is a billion dollars.

20 **CHAIRPERSON**: But it reminds me what you and I talked about yesterday at some stage when you were talking about – do you remember that document which was written million at the top?

MS MATHANE EVELINE MAKGATHO: Yes Chair the cash flows.

CHAIRPERSON: And I was saying should it not say billion and at some stage I said well is it 3000 and whatever whatever million to make it a

billion so it looks like that kind of thing here. Okay alright.

MS MATHANE EVELINE MAKGATHO: So 1000 million it is a billion rands.

CHAIRPERSON: Yes.

ADV REFILOE MOLEFE: Dollars Ms Makgatho.

MS MATHANE EVELINE MAKGATHO: So that is a billion dollars.

CHAIRPERSON: Yes.

MS MATHANE EVELINE MAKGATHO:

10 “500 million dollars on AFDB’s balance sheet and
500 million dollars to be a syndicated/co-finance with
commercial banks and or other DFI’s. Group
Treasury hosted AFDB for a 3 day preliminary due
diligence mission on the back of a proposed 20 year
500 million term loan facility at a price of 3 months
JIBA plus 250 to 300 basis points. That is 2.5 to 3%.
Subsequent to the initial review mission AFDB
revised the indicative pricing down to 3 months JIBA
plus 220 to 250 basis points and the front end fee
from 200 basis points to 120 basis points and in
20 brackets I say [R60 million]. Group Treasury ask
AFDB to revise the commitment fee of 75 basis
points to 75 basis points and the front end fee
downwards. Once the commercial terms are agreed
AFDB extended team of officials will conduct a more
in-depth scrutiny of Transnet’s operation.”

Chair as part of our normal – or our normal treasury procedures when we received a proposal we will take what the lender is proposing and we will compare that to what we believe should be given the current market circumstances. And we will therefore do our best to revise pricing which is the interest rate and pricing is made up of interest rate, is also made up of commitment fees and it is also made up of front end fees. So we will use our experience and we will do our best to revise – to negotiate them downwards. And in this instance Chair I believe that we came to a point where we had successfully revised the

10 pricing and the related fees to a point where we felt comfortable to recommend to our principles. I therefore like to go to point 10.

“China Development Bank CDB has indicated their willingness to fund the CSR and CNR portion of up to 3 billion dollars at a rate of 3 month LIBOR plus 240 to 290 basis points. Transnet has reverted with its expected pricing and is waiting for CDB’s response in this regard.”

Chair when a lender provides us pricing in dollar terms what we will do using our internal pricing we will then translate that dollar pricing into Rands. And Chair I have indicated on a number of times that the indicated pricing depending on the rates on that particular day it

20 translated into JIBA plus 400 in certain instances 450, 470 basis points which was way out of our normal pricing and in addition to the interest rate they had also proposed commitment fees and front end fees that were also not aligned toward your typical DFI will offer. Because remember that when a country specific offers financing they are supporting their own home country organisations and therefore they do

that through cost effective financing and we expecting that to be the case with the Chinese Chair. But at – initially we were not too worried because we knew that with negotiations and convincing we normally get to a point where the – both parties agree and Chair we are also not worried again because we knew that if we get to a point where we do not agree the terms it is easy I mean we can always terminate the discussions. And as I had indicated before at any particular point in time Group Treasury had about six or seven financing proposals that we can use that were comparable to other similar products that were

10 aligned to our expectations. And remember yesterday I highlighted the fact that we monitored what we call the weighted average cost of debt and at that particular point in time what was around between 9.3 to 9.4% and when we translated this in fixed term it was around 13% or so which was extremely high Chair for a facility. So Chair another point – so on point 14 – on paragraph 14 Chair I am just highlighting that there are many sources that we can tap. We have the DMTN programme. We have the other DFI's like the German DFI, KFW. We have the devious A. We have the European Investment Bank who have all indicated support to finance our locomotives procurement. So Chair I also go on

20 to indicate that although the basel 3 impact on the cost of swops may be slightly negative we do not expect it to be too much. So overall we were expecting that even though we are – we are financing much more but we did not expect that we will have a negative impact on [indistinct]. And Chair I would also like to highlight that this is not the only memorandum. From the beginning of 2014 Chair we kept on

writing memorandums for the financing of the locomotives. And Chair for reasons not known to me they kept on being – on being missing in action Chair. Initially I would just be frustrated and think that probably our administration is not up to scratch and I would redo and re-update – I mean re-update if necessary and then they will get lost again Chair but the other memorandums that were relating to other areas of treasury Chair were not missing. We would get signatures, they will be handled accordingly but these ones for reasons not known to me they kept on being missing.

- 10 **CHAIRPERSON**: Yes but within the context of what you said yesterday when you say they kept on getting lost you are not stating as a fact that they got lost. You mean that you were told that they got lost?

MS MATHANE EVELINE MAKGATHO: Correct Chair.

CHAIRPERSON: And somehow you have reservations about whether they truly got lost?

MS MATHANE EVELINE MAKGATHO: Correct Chair.

CHAIRPERSON: Okay.

MS MATHANE EVELINE MAKGATHO: And Chair paragraph...

CHAIRPERSON: And – I am sorry.

- 20 **MS MATHANE EVELINE MAKGATHO**: Okay.

CHAIRPERSON: By the way this memorandum you said was – would have been issued around April 2013?

MS MATHANE EVELINE MAKGATHO: Yes the date...

CHAIRPERSON: I see it does not give the date.

MS MATHANE EVELINE MAKGATHO: Yes the date of the memorandum

– it is just that I do not have – I think – let us check if I have the date?

I think it was around June I cannot remember.

CHAIRPERSON: Around June 2014?

MS MATHANE EVELINE MAKGATHO: June 2014.

CHAIRPERSON: Oh 2014 not 13?

MS MATHANE EVELINE MAKGATHO: No, no the ones that we dealt with yesterday were 2014.

CHAIRPERSON: Okay.

MS MATHANE EVELINE MAKGATHO: So these are the memorandums
10 just after – maybe around April 2014 between April 2014 and July 2014.

CHAIRPERSON: Okay.

MS MATHANE EVELINE MAKGATHO: After the contracts were signed.
Chair the important part to note is paragraph 14. In this paragraph...

CHAIRPERSON: One second.

MS MATHANE EVELINE MAKGATHO: Page 16 Chair.

CHAIRPERSON: Ja – yes. Paragraph 14.

MS MATHANE EVELINE MAKGATHO: On this paragraph Chair we
outline and highlight all of the financing activities that we were – that
we were busy with it is 1,2,3,4,5,6,7,8. We were busy with 8 potential
20 financial solutions and the total of this was 48.75 billion and in addition
to that Chair we had available facilities totally 10.9 billion. In total
Chair we could pick and choose from a total of 59.65 billion. This is
excluding what is available in the debt capital markets under the DMTN
programme.

CHAIRPERSON: Okay.

ADV REFILOE MOLEFE: Yes thank you. And in your recommendation you sought approval of this memorandum?

MS MATHANE EVELINE MAKGATHO: Correct Chair.

ADV REFILOE MOLEFE: Now yesterday you were taking the Chair through the FRM which enlists several prescripts to the Treasury Department and one of those would be financial risk management, is that correct?

MS MATHANE EVELINE MAKGATHO: Correct Chair,

10 **ADV REFILOE MOLEFE:** And in your exercise of all these memorandums and all the estimations that you had put forth in advice to the GCE and the GCFO you would have had to prepare somewhat of a financial risk management plan, is that correct?

MS MATHANE EVELINE MAKGATHO: Correct Chair.

ADV REFILOE MOLEFE: Can you then...

CHAIRPERSON: I am sorry Mr Molefe. This memorandum that you read a few minutes ago did you say it was one of those that were not responded to or receipt of which was not acknowledged?

MS MATHANE EVELINE MAKGATHO: It is one of the many that went missing.

20 **CHAIRPERSON:** That you were told got lost.

MS MATHANE EVELINE MAKGATHO: Correct Chair.

CHAIRPERSON: Okay thank you.

ADV REFILOE MOLEFE: Thank you Chair. Can you please still staying on Exhibit BB10[b] can you then turn to page 19 of that bundle. What document appears on that page?

MS MATHANE EVELINE MAKGATHO: This is a presentation it is titled 1064 locomotives financial risk and Chair if I am not wrong the date of this memorandum is the 24 January 2014.

ADV REFILOE MOLEFE: Yes. And what does that presentation seek to communicate?

MS MATHANE EVELINE MAKGATHO: The presentation Chair speaks – highlights the risks that Transnet is faced with around the procurement of the locomotives and the financing thereof. And it – it kind of highlights or identifies where these risks will emanate from and it also
10 on page 3 Chair it also goes on to say ...

ADV REFILOE MOLEFE: When you say page 3 are you referring to the paginated page 21?

MS MATHANE EVELINE MAKGATHO: Correct Chair.

ADV REFILOE MOLEFE: Thank you.

MS MATHANE EVELINE MAKGATHO: Sorry about that Chairman. And it also refers to the key risks that needs to be considered in financing. On page 22 Chair as a continuation of the key risks to be continuation – to be considered. It even includes what we call scenario analysis of where the spot rate is and what the impact would be should the
20 exchange rate move by 25 cents or 50 cents. And we even highlight what the impact is. And Chair it even goes further to provide the projections. On that day Chair on the 24 January 2014 the pro – the spot rate for the dollar was R10.92 and for the Euro was R14.18 and it – and it tables over a seven year period where the dollar exchange rate is expected to be and where the Euro rand rates are expected to be.

Important to note Chair is on page 23 – and Chair as we can see we were already aware and we have already factored that the rand will not stay on one zone all the time and therefore as we plan we have to include what the forecasted rates are for the future. And Chair as I indicated previously yesterday that even in our planning purposes Chair for the corporate plan we will not just use spot we will use spot for now and say over the medium term the market predicts the rand or whatever rates to be XYZ. So this is just that exercise. Chair on page 23 we even say that as part of the risk management strategy we even say

10 bullet 2:

“Due to the current week rate environment it is not ideal to utilise for what exchange rate as a hedging instrument as Transnet will log in weak levels which can be seen from the previous table on page 23. We further say that we need to consider the use of option hedging structures you know so that we can allow us to capture the benefit in future.”

So already we were cognisant of the levels at that point in time and we already had a strategy in place Chair. And Chair as you heard – you
20 might have seen in the email dated 7 April 2013 even at that point Chair we had highlighted the risks that we need to monitor. And Chair on page 24 we are also highlighting the other risks that come with the supplier obligations and we are talking about the non – the delivery and the payment schedule, the delay penalties, the liquidated damages, the termination clause, the invoicing and payment mechanisms. So we

were already planning and thinking about all of the key risks that will emanate from the actual supplier contract and the key risks that would emanate from the financing contract and the key risks that will emanating from all sorts of market risks that relates to the financing and the supplier contracts. So we had a holistic plan from A to Z regarding the entire procurement plan.

CHAIRPERSON: That first line on page 23 negotiate South African Rands contract with fixed price. Is that fixed price – is that a reference to interest rates by any chance?

10 **MS MATHANE EVELINE MAKGATHO**: No Chair.

CHAIRPERSON: Or not really?

MS MATHANE EVELINE MAKGATHO: Because your – this is referring to the supplier contract, the underlying contract. So Chair because the suppliers are based overseas they would normally cost in dollars but they are able – because they are big institutions. They are able to use their own balance sheet and provide us with a fixed rate. In so doing we eliminate the foreign currency risk without having to use own lines.

CHAIRPERSON: Okay. Okay.

ADV REFILOE MOLEFE: Thank you. Did you ever present this
20 presentation to anyone?

MS MATHANE EVELINE MAKGATHO: We discussed it Chair and we even submitted it to the GCFO.

ADV REFILOE MOLEFE: And was there any response to this presentation?

MS MATHANE EVELINE MAKGATHO: I do not remember any specific

response Chair.

ADV REFILOE MOLEFE: Thank you. Can we return then to Exhibit BB10[a] which is your main bundle.

CHAIRPERSON: Well Ms Molefe you doing well today by making sure we – you announce if we change.

ADV REFILOE MOLEFE: Thank you Chair. And we on – in that bundle turn to page 26?

CHAIRPERSON: What page are we on?

ADV REFILOE MOLEFE: We are turning to page.

10 **CHAIRPERSON**: Page 22.

ADV REFILOE MOLEFE: 26 Chair.

CHAIRPERSON: 26?

ADV REFILOE MOLEFE: Yes.

CHAIRPERSON: Okay.

ADV REFILOE MOLEFE: Now from paragraph 103 of your statement there continue to illustrate the work that treasury had put in relating to the funding of the locomotives and you also set out that some of these suppliers had support from their respective countries. Starting with the GE tranche can you take the Chair through this aspect?

20 **MS MATHANE EVELINE MAKGATHO**: Thank you. Chair on paragraph 105 Chair. Here I am just illustrating that prior work had already been done by Group Treasury. We had already financed the 100 GE locomotives and Chair through that we had already – there is a structure that we developed together with US Exim it involved a special purpose vehicle. We had already sought tax opinions on that structure

– legal opinions Chair. We had already sought accounting opinions and we already knew how we are going to deal with it and Chair this structure though the US Exim it is a dollar based organisation this structure allowed US Exim to become fordable to provide a rand guarantee and therefore Chair for the new locomotives that are procured from GE which is based in the US for the new financing we were not going to do much work because the work was already done. I mean the suite of documents were already there. The terms and conditions were already agreed. The only thing that was outstanding for
 10 this new tranche was the commercial terms. In simple Chair for the new procurement it was just a plug and play and we proceed. So that is on the US Exim tranche.

ADV REFILOE MOLEFE: Yes and you have provided an illustration that seeks to show how the financing structure would – would come into play. Can you briefly take the Chair through that illustration?

MS MATHANE EVELINE MAKGATHO: Chair as I have indicated this structure allowed the US Exim to provide a Rand guarantee. If they were to provide a guarantee directly to Transnet they would have to do it in Dollars and our preference – as I have indicated before – is always
 20 a Rand contract and therefore the creation of – of an SPC allowed US Exim to have certain rights in the unlikely event of a default and therefore the guaranteed lenders who will lend to the SPC which will in turn lend to Transnet. This is a straight through financing structure and all the locomotives as security will be placed to the SPC and I mean as you can see the security agent arrangement was already done and

dusted. So Chair we liked this because in addition to providing Rand cover this is one of the structures that was extremely cheap. We ended up been able to source long funding for about JIBAR plus 155 points which is extremely cost effective.

ADV REFILOE MOLEFE: Yes and if one understands this correctly would the introduction of the CP – the SPC rather – be somewhat of a filter in relation to the foreign component or foreign currency that would come into play?

MS MATHANE EVELINE MAKGATHO: It is a filter for the guarantee
10 because US Exim is not able to provide local currency to a foreign institution ...

ADV REFILOE MOLEFE: Yes.

MS MATHANE EVELINE MAKGATHO: But if there is an SPC they are able to build certain rights for themselves. Such that they can adequately cover themselves and be able to provide a Rand guarantee.

ADV REFILOE MOLEFE: Yes.

MS MATHANE EVELINE MAKGATHO: So the financing was not in Dollars. It was still in – in Rands.

ADV REFILOE MOLEFE: In Rands, yes. Now the second aspect that
20 you refer to insofar as funding is the Bombadier tranche. Please take the Chair through that.

MS MATHANE EVELINE MAKGATHO: Yes Chair and as I indicated before EDC clubbed with Investec to provide us with the ZAR equivalent of US\$600 million to finance the Bombadier tranche and again this Chair was also well priced. I believe it was around JIBAR

plus 200 or just a little bit south of 200 but it was also within range.

ADV REFILOE MOLEFE: And what – what were the value terms of the – the offers?

MS MATHANE EVELINE MAKGATHO: The value terms – there is a presentation – if you can just ...

ADV REFILOE MOLEFE: You set it out at your paragraph 105.

MS MATHANE EVELINE MAKGATHO: Oh.

ADV REFILOE MOLEFE: If you can briefly take the Chair through that as you have in your previous evidence heard yesterday spoken to most
10 of these issues.

MS MATHANE EVELINE MAKGATHO: It was a 14 year transaction Chair. ZAR equivalent and it was well priced even the commitment fees we were comfortable with and the front end Chair they were all aligned.

ADV REFILOE MOLEFE: The following aspects you cover is in relation to the CSR and CNR tranche. Please take the Chair through this.

MS MATHANE EVELINE MAKGATHO: Chair the only tranche that we needed to figure out how we are going to finance was the China and Chair because their home country development finance institution had indicated supported. So we needed to – to start with them and assess
20 if they are able to provide competitive rates.

ADV REFILOE MOLEFE: And when did you start engaging CDB relevant to ...?

MS MATHANE EVELINE MAKGATHO: We started engaging CDB in March around the contract because the – the supplier contracts were signed on 17 March and Chair as we were negotiating with them and

taking into account my experience with other international DFIs and in particular the Japanese JBIC and the French the AFD and my experience is that with the French we were able to conclude quickly because immediately after we had agreed to proceed we had a number of – of face to face engagements and that helped to – to speed up the negotiations. On the other hand Chair with the Japanese we spent a long time discussing via conference calls – you know – video calls and emails and I only realised later in hindsight that in actual fact we spent a long time but we were basically talking past one another and I could

10 only think that it is because were discussing over email and over the phone and you know over a phone you are not able to get the message across especially because of differences in culture and differences in language. So I thought it is better to have face – face to face discussions as soon as possible. So Chair as I have indicated before we started engaging with the Chinese around March and in April Chair we had a few more engagements with their – with their Johannesburg branch Chair and every time we had engagements with them Chair we – I mean – we were very clear that our preference is for ZAR. The Canadians were happy to provide ZAR. The Americans were happy to

20 provide ZAR but we were battling with the Chinese and the officials that are based in – in Johannesburg kept on saying that they need to refer back to Beijing for our request but Chair I – I thought at least at that point that we were making strides because I was under the impression that at least we had come to a point where we are agreeing on currency but as far as pricing is concerned Chair they were very rigid. They

were still quoting us LIBOR plus 260 to 290 basis points which translated into around JIBAR plus 450 basis points which is extremely expensive and over and above Chair their commitment fees were very high. There (indistinct) fees were very high and – but I was very patient at that particular point in time Chair. I thought that we had just paid the bid deposit and I thought that – you know – we still have time and if for any reason or the other we are behind with the negotiations we could always tap into the other facilities just to get - once we are still negotiating - we are still finalising.

- 10 **ADV REFILOE MOLEFE:** Yes and you – you mentioned LIBOR and JIBAR and you have – you have shown how LIBOR translated to JIBAR. Can you briefly explain the two concepts please?

MS MATHANE EVELINE MAKGATHO: Chair the LIBOR is the money market rate used by American banks or in America and JIBAR is the equivalent in the South African market. It is a – it is a short term rate.

ADV REFILOE MOLEFE: Yes and you ...

CHAIRPERSON: Towards the end of your sentence your voice ...

MS MATHANE EVELINE MAKGATHO: Oh.

CHAIRPERSON: Went down.

- 20 **MS MATHANE EVELINE MAKGATHO:** JIBAR Chair is a money market rate that is used by banks in the local market and LIBOR is the equivalent in the US.

ADV REFILOE MOLEFE: Yes and you say that CBD was insisting on certain rates. Did you receive any written proposal from CBD in this – in this respect?

MS MATHANE EVELINE MAKGATHO: Yes we had a timesheet Chair – we had a timesheet that we were working on and Chair they – their timesheet Chair - I am now on paragraph 107. Their timesheet Chair over and above the expensive interest rate that they were quoting their timesheet Chair included onerous terms and conditions that I felt that we should not agree to such terms because Chair when we negotiate with the lenders we try our best to agree similar terms and conditions. They may not be exactly the same but we take the concept of *pari passu* very serious. We do not want to have any particular lender being
 10 given indirectly preferential rights. So Chair - but again as I have indicated that you know when someone presents you with a timesheet it is also negotiable. So I was not too worried at that point – initially.

CHAIRPERSON: I would imagine however that while on the one hand you would try and achieve more or less standardised terms – you know – how far you deviate from the standardised terms might depend on what a particular lender offers you and how strong they are on their product and how much you want their product and so on. So - because it is negotiations. If – if one party does not know how to negotiate they might give you – you know – the cheapest price for something that you
 20 need very much and another one knows how to negotiate and they stand firm on certain things and then you – you agree.

MS MATHANE EVELINE MAKGATHO: Yes Chair but things like your financial covenants we had made an informal policy that we will not give out financial covenants and we did not give out to any of our domestic funders and there was no reason why we should give them to

the Chinese and again Chair things like the credit rating they should be standardised Chair. Things like your – your default clauses (Intervenes).

CHAIRPERSON: So there are certain basics?

MS MATHANE EVELINE MAKGATHO: There are certain basics ...

CHAIRPERSON: *Ja.*

MS MATHANE EVELINE MAKGATHO: That even though there will be differences from ...

CHAIRPERSON: Yes.

10 **MS MATHANE EVELINE MAKGATHO:** One facility to ...

CHAIRPERSON: Yes.

MS MATHANE EVELINE MAKGATHO: There are certain basics Chair that you know ...

CHAIRPERSON: You say there is no reason to deviate?

MS MATHANE EVELINE MAKGATHO: There is no reason to deviate.

CHAIRPERSON: *Ja.*

MS MATHANE EVELINE MAKGATHO: *Ja.*

CHAIRPERSON: Okay.

20 **MS MATHANE EVELINE MAKGATHO:** And Chair the sticking point in this instance was the financial covenants. Okay there were other clauses that I felt were – were too onerous but the financial covenants Chair I just felt that we have refused to give our other funders these clauses – you know – these covenants and why should we allow – because remember that when you negotiate you are negotiating in good faith ...

CHAIRPERSON: Yes.

MS MATHANE EVELINE MAKGATHO: And you give other lenders just your word because they can never tell what you are going to negotiate in future ...

CHAIRPERSON: Yes, yes.

MS MATHANE EVELINE MAKGATHO: And when you negotiate you negotiate knowing what has been negotiated in the past and you negotiate knowing what is coming in the future ...

CHAIRPERSON: Hm.

10 **MS MATHANE EVELINE MAKGATHO:** And you want today, yesterday and tomorrow to be aligned.

CHAIRPERSON: Because otherwise you – whatever you agree on today might be a precedent for the future. Some people say but you did agree with so and so on this.

MS MATHANE EVELINE MAKGATHO: Correct Chair.

CHAIRPERSON: So why do you not agree with us?

MS MATHANE EVELINE MAKGATHO: Correct Chair.

CHAIRPERSON: Hm, so you have got to keep your eye on those things?

20 **MS MAHANE EVELINE MAKGATHO:** Correct Chair.

CHAIRPERSON: Okay.

ADV REFILOE MOLEFE: Yes and Transnet would have had a pricing basis upon which they enter into negotiations. Is that correct?

MS MATHANE EVELINE MAKGATHO: Correct Chair.

ADV REFILOE MOLEFE: Can you please turn to page 156 of the same

exhibit – BB10A.

MS MATHANE EVELINE MAKGATHO: Chair as I indicated previously we (intervenes).

ADV REFILOE MOLEFE: Before you proceed ma'am.

MS MATHANE EVELINE MAKGATHO: We had a team of ...

ADV REFILOE MOLEFE: Ms Makgatho are you at 156?

MS MATHANE EVELINE MAKGATHO: Yes.

ADV REFILOE MOLEFE: Okay, thank you.

MS MATHANE EVELINE MAKGATHO: Okay. Yes counsel. As I
10 indicated before we had a very strong team of finance professionals
and we had our own dealing team and Chair when we received this
pricing our – our reference point always was to go to our dealers and
request an equivalent ZAR pricing and Chair on 22 April 2014 as per
page 156 I requested pricing from our dealers and I am going to refer
you to only the 15 year - the one. So LIBOR priced at 265 was
equivalent to six months JIBAR plus 417 basis points. Chair as I have
indicated this was way out of line to our normal pricing and I used this
pricing to show – and the signature here Chair is Mr Singh's signature
and this is his handwriting and he is saying update soon please, *ja*. I
20 think that is what he is saying – because I had given him this – you
know – to show that this is expensive. Chair our internal pricing – we
have used our internal pricing over and over and over and it – it has
proved to be correct and at around the same time Chair what we would
normally do is that over and above doing our own internal pricing we
will also check with the banks and in this instance Chair we checked

with Standard Bank and our pricing was aligned to Standard Bank and – and we used that as a motivation – you know – to say that here is our pricing it shows that the CDB pricing is out of line and by the way we have checked with the banks Standard Bank is also aligned and we think that we need to negotiate very hard failing which – you know – we can use other options. As I indicated we had about eight options that were available to us.

ADV REFILOE MOLEFE: Yes and this document at page 156 which reflects the – Transnet's internal pricing is dated 22 April 2014?

10 **MS MATHANE EVELINE MAKGATHO:** Correct.

ADV REFILOE MOLEFE: And you say that Mr Singh signed on the printout of that email?

MS MATHANE EVELINE MAKGATHO: Requesting Chair.

ADV REFILOE MOLEFE: Requesting you to update as soon as possible.

MS MATHANE EVELINE MAKGATHO: Yes Chair.

ADV REFILOE MOLEFE: And where – did you update what is reflected on page 156?

MS MATHANE EVELINE MAKGATHO: Yes Chair. We updated it Chair
20 and he kept on saying that Regiments says they can get this pricing cheaper. In actual fact they provided a proposal and they said that they had discussions with Nedbank and Nedbank is able to price this at around 120 basis points cheaper. Chair when you ask for pricing at any particular point in time what we normally do is to try to get the best possible pricing given current market circumstances and if anyone

comes and says that they can provide you pricing that is like 120 basis points or 100. At some point it will be 135 basis points off market. You already know that there is no truth in that – you know. Someone can be cheaper and say maybe five points or 10 points but 135 points you already know that this is not true and – and he - we kept on now – this became a thorn because I would argue that it is expensive and he will come back and say but Nedbank can provide this at a much cheaper Rand – at much cheaper rate and they are working with – with Regiments on providing a cheaper rate. Chair a cheaper rate can only

10 be provided if you are structuring a cross currency swap and you are overlaying some complex credit enhancers. We call them credit enhancers. Then you can provide it cheaper but then it has its own accounting implications, insisting implications of – so – so it will need a different exercise of assessment to make sure that it will not bring in unnecessary volatility into our income statement. So if it is a plain vanilla and someone comes and says no I can provide this at 120, 100 you already know that now we are entering very different territory.

CHAIRPERSON: But they say Nedbank can provide it cheaper. You do not believe what they are saying. You do not believe what they are

20 saying because of the difference in (intervenes)

MS MATHANE EVELINE MAKGATHO: Ja, I do not believe Chair because ...

CHAIRPERSON: Yes.

MS MATHANE EVELINE MAKGATHO: Huh-uh.

CHAIRPERSON: Now – but what I am wondering is whether – whether

in that situation the right to approach is not to say well let Nedbank give you that in writing whether you – it is not the way to challenge them and see whether they can come back with something from Nedbank that says yes we will provide this and this is how we will provide it and then you can assess this to see – assess it to see whether it will be viable in terms of the whole negotiations and projects that you are working on.

MS MATHANE EVELINE MAKGATHO: Chair later on I did exactly that ...

10 **CHAIRPERSON:** Hm.

MS MATHANE EVELINE MAKGATHO: Because Chair when someone comes with flawed pricing I thought that he would understand what I am talking about because the market is the market Chair. If the Rand is trading at R15 today to the Dollar and someone says that today they can do the same trade at R12.50 you already know that there is no truth in that. So initially we just – I will just put my motivation and my position and say it cannot be possible because of A, B, C, D ...

CHAIRPERSON: Ja.

20 **MS MATHANE EVELINE MAKGATHO:** But then it kept on going on and at some point I know that there was a presentation. I do not know if I have it here. I am not sure if it is part of the pack. Wherein Regiments said LIBOR plus 257 can be priced at JIBAR plus 337. Chair at this point in time I think it was around June and I think at that point in time we were pricing at around 450. So it transcended around 120 ...

ADV REFILOE MOLEFE: Yes.

MS MATHANE EVELINE MAKGATHO: Differential ...

ADV REFILOE MOLEFE: Ms Makgatho do speak to issues relating to the Nedbank pricing in later aspects of your paragraph.

MS MATHANE EVELINE MAKGATHO: Hm.

ADV REFILOE MOLEFE: However what you deal with first is your interaction with CDB in relation to Transnet requesting them to review their pricing and as you have stated this did not succeed.

MS MATHANE EVELINE MAKGATHO: This did not succeed Chair and what the Johannesburg branch had asked us ...

10 **CHAIRPERSON:** Yes, hang on, hang on. I think she is trying to deal with my question on why she did not say provide me with something in writing from Nedbank.

MS MATHANE EVELINE MAKGATHO: Yes Chair.

CHAIRPERSON: Yes.

MS MATHANE EVELINE MAKGATHO: That is exactly what we did but that is later on. I think we did that around August. Here Chair we are still around April/May/June.

CHAIRPERSON: Oh ultimately you did it?

MS MATHANE EVELINE MAKGATHO: Ultimately Chair I did that ...

20 **CHAIRPERSON:** Yes.

MS MATHANE EVELINE MAKGATHO: Later on.

CHAIRPERSON: And I know you will deal with it later on ...

MS MATHANE EVELINE MAKGATHO: Hm.

CHAIRPERSON: But I want to know nothing was produced?

MS MATHANE EVELINE MAKGATHO: Chair what I did is I called our

Relationship Manager. At that point it was Mr Mngadi ...

CHAIRPERSON: Hm.

MS MATHANE EVELINE MAKGATHO: And I told him that I was not happy of what at that point in time I thought it was an improper relationship between Regiments and Nedbank because Chair over time Regiments will come with certain proposals as I have indicated yesterday and at the back of those proposals there was always one common bank and that was Nedbank and Chair again I am having many, many disagreements with my boss and again the cost of this agreement
10 again it is a pricing that is coming from Nedbank via Regiments ...

CHAIRPERSON: Hm.

MS MATHANE EVELINE MAKGATHO: And so Chair I called again I was like I am not happy with this relationship because it is not a good relationship.

CHAIRPERSON: It is not what you expected it to be?

MS MATHANE EVELINE MAKGATHO: Yes. So – and in actual fact I wanted to talk to the CEO of Nedbank directly because I was just not happy because ...

CHAIRPERSON: Hm.

20 **MS MATHANE EVELINE MAKGATHO:** We were fighting internally because of Nedbank Chair.

CHAIRPERSON: Hm.

MS MATHANE EVELINE MAKGATHO: So I called my colleague – Mr Mngadi – and he said that he will speak with the CEO on my behalf.

CHAIRPERSON: Hm.

MS MATHANE EVELINE MAKGATHO: I relayed the – the message and that – because in our previous discussions Chair with Regiments it became clear that the person who was engaging with Regiments from Nedbank's side is Moss Brickman who at ...

CHAIRPERSON: Is?

MS MATHANE EVELINE MAKGATHO: Moss Brickman.

CHAIRPERSON: Hm.

MS MATHANE EVELINE MAKGATHO: Mr Brickman.

CHAIRPERSON: Yes.

10 **MS MATHANE EVELINE MAKGATHO:** Who at that time worked for Nedbank Treasury.

CHAIRPERSON: Hm.

MS MATHANE EVELINE MAKGATHO: So I relayed the message to the relationship person and I – I am told that when I relayed that message I believe the Nedbank Executive Team were having a strategy session at Sun City and I believe that a meeting was held between the CEO of Nedbank Capital Mr Brian Kennedy, the Head of Compliance and Mr (indistinct) – I think – and I believe that at that meeting Mr Moss Brickman was chastised because I was like it cannot be right
20 that we know where the market is but I am told over and over that Nedbank is able to provide a plain vanilla, same type of transaction, same tenure, same Dollar ...

CHAIRPERSON: Hm.

MS MATHANE EVELINE MAKGATHO: Pricing at like 120 to 135.

CHAIRPERSON: Hm.

MS MATHANE EVELINE MAKGATHO: I know that it is a lie. It will not happen.

CHAIRPERSON: Okay. Okay no that is fine. I thought it might be a quick answer, yes.

MS MATHANE EVELINE MAKGATHO: Okay.

CHAIRPERSON: They did not produce or not.

MS MATHANE EVELINE MAKGATHO: Hm.

CHAIRPERSON: You will elaborate further when you reach that – that item. Okay, thank you.

10 **ADV REFILOE MOLEFE:** Thank you Chair. The next topic that you deal with relative to CDB and your negotiations through Transnet is what you have titled a trip to China. What gave rise to this trip to China?

CHAIRPERSON: Are we back to the statement?

ADV REFILOE MOLEFE: Yes Chair. We are back to the statement at page 29.

CHAIRPERSON: Did you say page 29?

ADV REFILOE MOLEFE: Yes Chair.

CHAIRPERSON: Okay. Thank you.

20 **MS MATHANE EVELINE MAKGATHO:** Thank you Chair. I thought it would be easier to go to Beijing and have face to face discussions so that we can fast track the negotiations. I therefore wrote a memorandum for approval to go to – to go to China and I had suggested that the delegation be made up of myself, the GCFO and the GCE and the memorandum was approved towards the end of April.

Chair initially we had planned to visit Beijing around 16 April and Chair at that particular point in time we were also planning to have a roadshow in the Middle East and the Far East. For the Middle East we did go around April and for the Far East we could not go. Chair what would normally happen is that when you go you take that long trip. You normally want to optimise the trip and generally you – you will include other meetings. So we wanted – I had recommended that we go to Beijing but combine that with - with stakeholder meetings in Hong Kong and Singapore. So HSBC had agreed to assist us to set up meetings
10 for free. I mean – it is part of their value add. So Chair we – we prepared for the week of 16 April and a few days before the meeting I was told that the GCE had cancelled the meeting. So ...

CHAIRPERSON: The GCE?

MS MATHANE EVELINE MAKGATHO: Yes the GCE Chair.

CHAIRPERSON: By the way was he going to be part of – of the meeting?

MS MATHANE EVELINE MAKGATHO: Correct Chair. Norm ...

CHAIRPERSON: Yes, okay. That was still Mr Molefe?

MS MATHANE EVELINE MAKGATHO: Yes Chair.

20 **CHAIRPERSON:** Hm.

MS MATHANE EVELINE MAKGATHO: It would have been the three of us.

CHAIRPERSON: Oh including Mr Singh?

MS MATHANE EVELINE MAKGATHO: Yes Chair.

CHAIRPERSON: Okay.

MS MATHANE EVELINE MAKGATHO: We then rescheduled for the week of 12 May. Again we wanted to – to visit Hong Kong as well and Singapore. We planned accordingly and a few days before the meeting I was told again that the GCE has cancelled.

ADV REFILOE MOLEFE: Were you told why the trips were cancelled?

MS MATHANE EVELINE MAKGATHO: By the GCFO.

ADV REFILOE MOLEFE: Pardon?

MS MATHANE EVELINE MAKGATHO: By the GCFO.

ADV REFILOE MOLEFE: Why were you told why the trips were
10 cancelled?

MS MATHANE EVELINE MAKGATHO: I cannot remember the reason.

ADV REFILOE MOLEFE: And did you eventually undertake the trip to China?

MS MATHANE EVELINE MAKGATHO: Eventually ...

CHAIRPERSON: I am sorry. On both occasions you were not told the reason?

MS MATHANE EVELINE MAKGATHO: Chair I cannot remember the exact reason.

CHAIRPERSON: You cannot remember whether you were told or not?

20 **MS MATHANE EVELINE MAKGATHO:** I cannot – maybe it was like – you know – something urgent came up ...

CHAIRPERSON: Ja, okay.

MS MATHANE EVELINE MAKGATHO: But it was just a vague reason.

CHAIRPERSON: Okay.

MS MATHANE EVELINE MAKGATHO: Chair we then rescheduled for

the third time and this time around I decided that I am not going to include anyone. I am not going to ask anyone to help me – you know - set up meetings because I am being embarrassed over and over and it is very difficult to – to arrange and cancel, arrange and cancel. I mean it does not – you know – bode well. So I thought okay we will just focus on CDB and again Chair a few days before the meeting I was told that the GCE was cancelled. Chair I could not – I was not happy about – with that information because I just felt that they were making my job very difficult.

10 **CHAIRPERSON:** This time did you still plan to take them with you or did you (intervenes)?

MS MATHANE EVELINE MAKGATHO: Yes Chair. It was still supposed ...

CHAIRPERSON: Okay, but you ...

MS MATHANE EVELINE MAKGATHO: To be ...

CHAIRPERSON: You were going to be more hands-on in terms of the arrangement.

MS MATHANE EVELINE MAKGATHO: Yes Chair, I didn't involve HSBC this time around. So Chair I was told again that the trip is
20 cancelled, it's for the third time.

CHAIRPERSON: And the main purpose of your – of the trip was for you to have a face-to-face meeting...(intervention).

MS MATHANE EVELINE MAKGATHO: Negotiations.

CHAIRPERSON: Negotiations and your most important issue was pricing.

MS MATHANE EVELINE MAKGATHO: It was pricing, terms, currency, it was the whole thing.

CHAIRPERSON: Ja, okay alright yes.

MS MATHANE EVELINE MAKGATHO: So I was told again that the trip is cancelled, Chair I was just – I was not happy so I went through to Mr Molefe and bitterly complained that they are making my job difficult and I don't know how they expect me to execute my responsibilities if they are the ones who are frustrating me. So he said, okay, you and Anoj can go, so we proceeded as planned.

10 **CHAIRPERSON:** But now this would be fourth...(intervention).

MS MATHANE EVELINE MAKGATHO: This would be the third time Chair, they wanted to cancel the third time and I intervened.

CHAIRPERSON: When you went to speak to her the cancellation for the third one had not taken place...(intervention).

MS MATHANE EVELINE MAKGATHO: They were cancelling and I complained and they stopped the cancellation.

CHAIRPERSON: Okay and he said you and the GCFO could go?

MS MATHANE EVELINE MAKGATHO: Yes Chair.

CHAIRPERSON: Okay alright.

20 **MS MATHANE EVELINE MAKGATHO:** So Chair we went and I believe the meeting happened on the 1st of July 2014 and Chair you will remember that I had said that we started around March, we worked with our internal legal team and when the CDB wanted us to give them our terms and conditions, we thought, let's draft a facility – a draft facility agreement because their terms were onerous. So our legal team

appointed an external law firm and we had drafted – so we had our internal team on board, our external legal team on board, our treasury team members were on board, we were all working on this. So I assumed that the same thing was happening in Beijing because we were engaging with the Johannesburg team and we had provided them the draft facility, we had provided them with what we thought were acceptable commercial terms.

CHAIRPERSON: Before you proceed just to try and get where we are now compared to the evidence you were giving yesterday, you told me
10 yesterday how you thought at some stage Mr Singh wasn't receptive towards your presence in the negotiation team and you reached a point where you withdrew. As at the time of this trip to China what was your relationship with him?

MS MATHANE EVELINE MAKGATHO: It was still volatile but the reference that I was making to Chair yesterday it was on the supplier agreement, now we are negotiating the financing agreement.

CHAIRPERSON: Yes.

MS MATHANE EVELINE MAKGATHO: So this is a treasury mandate.

CHAIRPERSON: Yes so there was no particular problem in regard to
20 this?

MS MATHANE EVELINE MAKGATHO: As far as I knew we were in charge – the treasury team were working, the legal team and everything was going fine as far as I thought.

CHAIRPERSON: Okay.

MS MATHANE EVELINE MAKGATHO: So Chair we go to China, we –

it was just me and the GCFO and the meeting started at around half past eight Chair, and as we were doing the introduction, a young Chinese official went around with a page that had a list of names...(intervention).

CHAIRPERSON: A list of?

MS MATHANE EVELINE MAKGATHO: A list of names.

CHAIRPERSON: Names, ja.

MS MATHANE EVELINE MAKGATHO: And titles.

CHAIRPERSON: Yes.

10 **MS MATHANE EVELINE MAKGATHO:** I believe it's the names for CBD exhibitives.

ADV REFILOE MOLEFE: Can we go to page 160 of that bundle which appears under Annexure 23, page 160.

CHAIRPERSON: That's 160 of BB10A?

ADV REFILOE MOLEFE: Yes Chair and it appears under Annexure MM23, are you there ma'am?

MS MATHANE EVELINE MAKGATHO: Yes I am.

ADV REFILOE MOLEFE: What document appears on that page?

MS MATHANE EVELINE MAKGATHO: It's a name list.

20 **ADV REFILOE MOLEFE:** Is this the list you have referred the Chair to?

MS MATHANE EVELINE MAKGATHO: Correct counsel.

ADV REFILOE MOLEFE: Yes, now on this list there are several names that appear and you say that these – according to your knowledge were all officials of CDB?

MS MATHANE EVELINE MAKGATHO: I assume so Chair because at the end of the title it's written CDB and I believe the head of (indistinct) is Mr Legang as written here Chair.

ADV REFILOE MOLEFE: Yes and what is the date they're carrying on that list?

MS MATHANE EVELINE MAKGATHO: The date is the 29th of October 2013.

ADV REFILOE MOLEFE: And you are in China on the 1st of July 2014.

10 **MS MATHANE EVELINE MAKGATHO:** Yes.

ADV REFILOE MOLEFE: Are there any Transnet employees or representatives that appear on that list?

MS MATHANE EVELINE MAKGATHO: No Chair.

ADV REFILOE MOLEFE: When the list was handed out was there any indication given as to what the list relates to?

MS MATHANE EVELINE MAKGATHO: No Chair I actually thought it was a mistake, I thought that he will retrieve the list. So Chair, just by looking at the demeanour of everyone, they seemed all comfortable, when given this list and I couldn't quite relate this list because I
20 thought, you know, the 29th of October and the date is the 1st of July, what's the relationship between this list and the meeting that we are having and I could only assume that maybe they are being reminded of discussions that happened on this day.

ADV REFILOE MOLEFE: And the persons appearing on this list were they present at the meeting of the 1st of July 2014, which meeting you

attended?

MS MATHANE EVELINE MAKGATHO: I – the treasury official who was there, Chair – I can't remember each one of them but I think most of them were there but the head of Henning Branch was definitely there.

ADV REFILOE MOLEFE: Yes, and if, indeed a meeting had taken place on the 29th of October 2013, would treasury have had to be in attendance?

MS MATHANE EVELINE MAKGATHO: Not necessarily depending on what was discussed.

10 **ADV REFILOE MOLEFE:** Okay.

CHAIRPERSON: Did you understand this paper that this official – Chinese official was circulating, did you understand it to contain – to be intended as a document that told you who the people were with whom you were meeting?

MS MATHANE EVELINE MAKGATHO: No Chair.

CHAIRPERSON: What was your understanding of what it was meant to represent?

MS MATHANE EVELINE MAKGATHO: My understanding was that – because remember that – when we started we did the introductions and
20 when we were doing the introductions there was no reference to whoever was introducing himself or herself to this list.

CHAIRPERSON: Yes.

MS MATHANE EVELINE MAKGATHO: So this was a list that was provided to each one of us during that time, I think immediately thereafter, around that time Chair. So there was no – and the people

that were in attendance at that meeting, there were many Chair, I don't know, maybe 15 and this one I think is under 10.

CHAIRPERSON: So what I'm trying to establish is you did gain an understanding as to why you were being given this document and for what purpose or is the position that you didn't understand why?

MS MATHANE EVELINE MAKGATHO: I didn't understand why and I didn't ask I just checked the mood.

CHAIRPERSON: Okay and you said something about the reaction of...(intervention).

10 **MS MATHANE EVELINE MAKGATHO:** They were all chilled Chair, it was normal, it was, you know...(intervention).

CHAIRPERSON: Even with Mr Singh?

MS MATHANE EVELINE MAKGATHO: Everybody was happy so I noted it with interest because I checked the date, I knew we were on the 1st of July and everybody else was chilled, so I could only wonder what was discussed, what does this represent and what was discussed and if someone from Transnet was present, who was that person and probably there are certain agreements, you know, that happened but I could only note it and speculate and I didn't even ask my colleague Mr
20 Anoj.

CHAIRPERSON: Okay.

ADV REFILOE MOLEFE: And at the meeting was this list ever referred to?

MS MATHANE EVELINE MAKGATHO: No Chair.

ADV REFILOE MOLEFE: Okay what then happened?

MS MATHANE EVELINE MAKGATHO: Chair 30 minutes into the meeting then the Clifford Chance lawyers came in late, I get – I got to know during tea time that in the (indistinct) they were called that same morning. Remember that our legal team was now on board for two months.

CHAIRPERSON: Yes they'd been working with you on this whole transaction.

MS MATHANE EVELINE MAKGATHO: On this whole transaction for about two months, we get to Beijing they only called the legal team that
10 same morning and in actual fact the lawyers were briefed in the lift on their way to the meeting. I was like, okay this is interesting...(intervention).

CHAIRPERSON: How long had it taken to arrange this meeting, I mean the Chinese had known was coming up.

MS MATHANE EVELINE MAKGATHO: From April.

CHAIRPERSON: Yes and now this was July?

MS MATHANE EVELINE MAKGATHO: This was July now. So Chair, we then proceed with the business of the day and Chair by then – because we have had a number of engagements with the Johannesburg team, I
20 thought that at least we had made progress on one item, I thought that the Chinese had agreed at least to do – to offer ZAR instead of Dollar facility and then I thought that because this pack Chair, it's dated the 11th of June 2014 which was sent to the Johannesburg, I thought – oh to the Beijing branch via the Johannesburg branch and I had it with me in Beijing. I thought that certain things at least were, at least in

agreement and we get there, I realise that in actual fact we are discussing from zero there had not been any – at least in my humble opinion Chair that, the officials that were there seemed blank to what I was talking of.

CHAIRPERSON: What the issues were.

MS MATHANE EVELINE MAKGATHO: What the issues were and my colleague here Mr Singh kept on managing me, kept on managing me saying...(intervention).

CHAIRPERSON: Saying calm down or something.

10 **MS MATHANE EVELINE MAKGATHO:** Yes, calm down, don't worry we'll handle the later, but I said, no but we've agreed man, we can't fly all the way from Johannesburg only to realise that – Chair we had met with them so many times, we have had email engagements, letters even the draft facility Chair...(intervention).

ADV REFILOE MOLEFE: When you say, them, Ms Makgatho who are you referring to?

MS MATHANE EVELINE MAKGATHO: Johannesburg officials.

ADV REFILOE MOLEFE: The CDB Johannesburg officials?

MS MATHANE EVELINE MAKGATHO: Ja and the list of the officials
20 Chair is on page 158, these are the officials that...(intervention).

CHAIRPERSON: That's 158 of Exhibit BB10A.

MS MATHANE EVELINE MAKGATHO: 10A Chair.

CHAIRPERSON: That's the same document that you said was circulated.

MS MATHANE EVELINE MAKGATHO: No the one that was circulated

is page 160.

CHAIRPERSON: Oh I'm sorry, then I was looking at the wrong thing earlier on, I was looking at 158 I thought that was the – okay so the list that – the document that was circulated at the meeting of July 1, 2014 in Beijing by Chinese official is the one at page 160?

MS MATHANE EVELINE MAKGATHO: Correct Chair.

ADV REFILOE MOLEFE: And the list that you now refer to at page 158 is the list of the CDB Johannesburg branch officials with whom you interacted?

10 **MS MATHANE EVELINE MAKGATHO:** Yes Chair and this other officials that I thought that we'll have a discussion and they will discuss with Beijing that when they respond they would have responded after having ...(intervention).

CHAIRPERSON: They would have updated Beijing, yes, now earlier on you referred to a batch of documents which you held by your hand, I don't know whether it's a batch we'll be referred to I just don't want somebody or when I read the transcript later on to either go to a wrong document or a wrong batch, Ms Molefe, you know which one I'm talking about?

20 **ADV REFILOE MOLEFE:** You're referring to...(intervention).

CHAIRPERSON: The batch that she referred to...(intervention).

ADV REFILOE MOLEFE: In relation to Nedbank?

MS MATHANE EVELINE MAKGATHO: No Chair

CHAIRPERSON: No a minute ago- so I just want to make sure if it's something that will come up we can say where it is or if it something

that's not going to come up then at least I understand.

ADV REFILOE MOLEFE: No Chair it's not going to come up we do not have the batch of documents that were used at the meeting in Beijing.

CHAIRPERSON: Okay I don't know, do you want to say – do you know the one I'm talking about, the one in front of you?

MS MATHANE EVELINE MAKGATHO: Chair my apology Chair for this one, this is a batch of document that I had with me that we had sent to Beijing via the Johannesburg branch and therefore when we had this
10 meeting, I had it with me as reference. I did not include it in the pack.

CHAIRPERSON: Yes and there's no need – there's nothing important?

MS MATHANE EVELINE MAKGATHO: No Chair.

CHAIRPERSON: No that's fine okay, thank you.

ADV REFILOE MOLEFE: Thank you Chair, what was there anything agreed to at this meeting in Beijing?

MS MATHANE EVELINE MAKGATHO: In Beijing Chair, we came back – there was nothing that was agreed Chair, the meeting lasted the whole day, I thought we had agreed to do – that they'd do ZAR, we
20 came back, they made it very clear that they were not able to do ZAR and they – so, one, we knew that they can't do anything but Dollars, two, they said that they could consider pricing and later on it was reduced to about two hundred and sixty – in actual fact two hundred and fifty seven points, pricing, the other pricing Chair – and the other terms and conditions Chair, they could not commit to anything and I

assume it's because they didn't have the time to consider the matters before our visit. So we discussed the whole day, so it was – we were basically starting from scratch. We were introducing the transaction, the rationale, our risk management framework, how we have engaged with other lenders before, how we price and we actually said what the pricing they offer us is what they offer, in actual fact they've just priced Angola in the same fashion and I was like, how can anyone compare Angola to South Africa the credit profiles are too different and – so Chair it was a very disappointing meeting but I was glad that at least

10 we go to go there so that we can present our case and hopefully that they will come back and revert with something different. Chair the meeting ended at around half past four, I'm now back to the statement...(intervention).

CHAIRPERSON: Before you go back to the statement what was the significance for Transnet in whether they agreed or didn't agree to do ZAR as opposed to Dollars?

MS MATHANE EVELINE MAKGATHO: Chair if we do – if the facility is agreed in Dollars we had done it before where we take up the hard currency facility it would then mean that we must swap into rands and

20 Chair before we can even agree to swap, then we have to use our credit lines with the banks and Chair – but importantly it has, the translated rand pricing has to be something that we are comfortable with. We understand that when we borrow in the local market, we always get money cheap – much cheaper but then the premium that we pay for international money it shouldn't be that much Chair, we don't

expect it to be that much and importantly it should not have a negative impact on the weighted average cost of debt. So if we felt that the pricing was too excessive the normal procedure was to terminate discussions and focus on other cost effective facilities.

ADV REFILOE MOLEFE: Yes and would you say that there is a risk associated with conducting a currency swap?

MS MATHANE EVELINE MAKGATHO: There is a risk up to a point where we have fixed it, so once we have done a cross-currency swap we would have agreed on rates upfront and therefore we'll know that for
10 the life of the loan we will pay an X amount on such and such a date but then we'll swap cash-flows with a counter party.

ADV REFILOE MOLEFE: And how did this meeting conclude?

MS MATHANE EVELINE MAKGATHO: The meeting Chair concluded I think half past four or 5 o'clock and as we were doing our goodbyes, the GCFO requested to have a meeting with the head of Henning branch who was leading the delegation of CDB. In the meeting Chair it was him the head of Henning branch and the interpreter because our Chinese counterparts always speaks via an interpreter, that meeting Chair, lasted for about thirty minutes.

20 **ADV REFILOE MOLEFE:** Is there any reason why you were not in that meeting?

CHAIRPERSON: Were you not part of it?

MS MATHANE EVELINE MAKGATHO: I was not part of it Chair and Chair when I asked him what the discussion was about he said he was just managing him, he said he just wanted to tell him that Transnet is

very interested we want to push forward but we can only do that if they provide us, you know, with acceptable terms and conditions, so I was not too worried...(intervention).

CHAIRPERSON: And why would you be excluded if that is what the meeting was about...(intervention).

MS MATHANE EVELINE MAKGATHO: I don't know Chair, honestly I thought, in my humble opinion, I thought that was the real meeting.

CHAIRPERSON: Ja thank you.

ADV REFILOE MOLEFE: And did...(intervention).

10 **CHAIRPERSON:** And you have been the one who had initiated this meeting?

MS MATHANE EVELINE MAKGATHO: Correct Chair.

ADV REFILOE MOLEFE: And did Mr Singh tell you how that meeting concluded?

MS MATHANE EVELINE MAKGATHO: No he just said, no, I was just telling them that we're happy and we are not – they can just do certain thing but otherwise we can proceed but subject to certain things being agreed upon and Chair...(intervention).

20 **CHAIRPERSON:** That sounds to me like, you know, when you are negotiating when a meeting, if there is no agreement sometimes you want the other party to appreciate how opposed you are to certain things that they don't want to move on and you want them to go away appreciating that this is serious and maybe the whole negotiations are at risk but now if, after, that somebody is going to talk and say, no don't worry we'll – proceed then it could undermine the seriousness

with which they view your position.

MS MATHANE EVELINE MAKGATHO: Possibly Chair, I just noted that he was a happy chappy after that meeting.

ADV REFILOE MOLEFE: What then happened after the conclusion of that 30-minute meeting?

MS MATHANE EVELINE MAKGATHO: Chair I thought that we were going back to the hotel, I thought that we will go back home together and Chair he told me that his travel plans has changed and he told me that he's no longer going home with me the following day but he's
10 rather going home via London and in actual fact he said that he needs to go to the airport immediately because he will miss his flight. So Chair...(intervention).

CHAIRPERSON: He would meet?

MS MATHANE EVELINE MAKGATHO: He would miss his flight to London.

CHAIRPERSON: Oh he would miss his flight.

MS MATHANE EVELINE MAKGATHO: So he had his man-bag, just his normal bag with a few things, I think I had my laptop and my handbag and then he said, and by the way because I didn't plan to go
20 to London but things have changed, please come take this key of mine and bring my suitcase back home. Chair I have travelled so many times, I have never done such a mistake, I think it was a moment of weakness for me. So I took the key and we drove him to the airport and the following day as I was checking out I went to his room to take his – oh so when he gave me his key, I asked him, what's in the

suitcase, he said, it's your Transnet memos and probably some of the treasury stuff and maybe one or two things that you are not supposed to see but I didn't read too much into it. I took the key and we drove him to the airport and then I went back to the hotel and the following day around lunch-time Chair I checked out and I went to his room to take his luggage. Chair I had expected that, because he said he didn't plan to go to London, to go to Johannesburg...(intervention).

ADV REFILOE MOLEFE: Did he tell you why he was going to London?

MS MATHANE EVELINDE MAKGATHO: He said there was some
10 emergency back home.

CHAIRPERSON: And why wasn't he taking his suitcase with him?

MS MATHANE EVELINE MAKGATHO: Because we were at CDB
offices so...(intervention).

CHAIRPERSON: He could still – he couldn't even go to the
hotel...(intervention).

MS MATHANE EVELINE MAKGATHO: He said he was going to miss
his flight, hence I'm saying that was one moment of weakness for me
because it happened so quickly I didn't think maybe – I just took the
key I asked a few questions he gave me vague answers but I didn't
20 probe further. And so I went to his room – you know when someone
has checked into a hotel, at least that is what I would expect, that when
you know that you are coming back you'll have a lotion there, a
toothbrush there because you are coming back and then I get there the
hotel room chair is orderly there is nothing that shows that this man
was coming back ever to this hotel room except his red suitcase. I then

take this red suitcase Chair I travel it...(intervention).

CHAIRPERSON: I'm sorry, you mean that there was nothing that showed that he was ever coming back, are you saying that because it looked like it was as if he had not slept there or what is it that you think he was not coming back because I would imagine if you had slept there and you leave to go to a meeting and you are still going to come back, when you leave your things might not be put together when you go because the staff will still come and clean and tidy up, that's fine or if the bed was done and everything seemed to be fine it might indicate
10 that he was going to come and take things and go, I'm trying to understand why you – what it is that made you think, this man didn't contemplate coming back into the hotel.

MS MATHANE EVELINE MAKGATHO: Because Chair I found everything to be orderly, I thought probably he left a toothbrush somewhere, I checked, there was just one item, the red suitcase, I didn't open it I just took it and left.

CHAIRPERSON: Maybe by the time he left the room in the morning, before going to the negotiation meeting, his plans had already changed and he had therefore put things nicely, ja.

20 **MS MATHANE EVELINE MAKGATHO:** Maybe ja I didn't know about that, so...(intervention).

CHAIRPERSON: You took the suitcase then...(intervention).

MS MATHANE EVELINE MAKGATHO: I took the suitcase with, I didn't think properly and Chair when I landed at OR Tambo, I thought that I would go home freshen up and I will take the suitcase with me when I

go home. So when I landed I turned on my phone and the first message that was on my phone was from him, he was just like, Hi M, I trust that you've travelled safely back from Beijing, my driver is waiting for you to take the suitcase from you.

CHAIRPERSON: You've lowered your voice too much.

MS MATHANE EVELINE MAKGATHO: Sorry Chair it was like, my driver is waiting for you and please give my suitcase to him and Chair, indeed as I was walking out of customs his driver was waiting for me and it's only – and my husband was also waiting for me, it's only when
10 my husband asked me, what is in that suitcase that I realised that I have just made ...(intervention).

CHAIRPERSON: You took a certain risk.

MS MATHANE EVELINE MAKGATHO: Ja. I just made a big mistake of taking his suitcase Chair and we never spoke about that suitcase Chair. I do not know what was in that suitcase. I do know that there were certain things that were happening you know that were not proper.

CHAIRPERSON: Hm.

MS MATHANE EVELINE MAKGATHO: Probably I was a convenient messenger for the day.

20 **CHAIRPERSON:** Hm.

ADV REFILOE MOLEFE: When you took the suitcase did Mr Singh indicate where you should take it to once you have landed?

MS MATHANE EVELINE MAKGATHO: We did not even speak about that. I just assumed that I will give it back you know to him. Because normally what we will do is that when we come back we will just freshen

up especially if you land in the morning around twelve o'clock we will be at the office.

ADV REFILOE MOLEFE: Yes and when you say that you just knew that there were certain things happening what are you referring to?

MS MATHANE EVELINE MAKGATHO: Chair at that point in time it was an open secret that there was a whole lot of cash that was moving around the building.

ADV REFILOE MOLEFE: Which building?

MS MATHANE EVELINE MAKGATHO: The Carlton building.

10 **CHAIRPERSON:** The Transnet building?

MS MATHANE EVELINE MAKGATHO: Oh ja Chair or maybe the key officials of Transnet Chair it was an open secret that certain boots were full of cash.

CHAIRPERSON: Certain boots.

MS MATHANE EVELINE MAKGATHO: Car boots.

CHAIRPERSON: Car boots were full of cash.

MS MATHANE EVELINE MAKGATHO: Yes.

CHAIRPERSON: Hm.

20 **ADV REFILOE MOLEFE:** Is there anything further you would like to say about this red suitcase.

MS MATHANE EVELINE MAKGATHO: No Chair.

CHAIRPERSON: Hm.

ADV REFILOE MOLEFE: Okay.

CHAIRPERSON: But nothing happened to you arising from your taking the suitcase with you?

MS MATHANE EVELINE MAKGATHO: No Chair I just came with the suitcase as innocent as I could be.

CHAIRPERSON: Hm.

MS MATHANE EVELINE MAKGATHO: So I did not suspect anything.

CHAIRPERSON: Hm. Okay.

ADV REFILOE MOLEFE: Thank you. The next topic that you deal with is now Regiments. You have entitled it Regiments taking over the CDB negotiations. When you returned from China what was the first thing you did in relation to your trip to China?

10 **MS MATHANE EVELINE MAKGATHO:** Chair when I came back from China I briefed my team...

CHAIRPERSON: What page are we now Ms Molefe?

ADV REFILOE MOLEFE: Chair we are in the statement at page 31 paragraph 124.

CHAIRPERSON: Yes thank you.

MS MATHANE EVELINE MAKGATHO: Chair when I returned from China as per normal I had a meeting with my team. I briefed them of – about the outcome of the China trip and what we needed to do from our side. Because Chair a few days after that I was meant to travel to
20 Europe for about ten days. So it was important that I give the head of structured finance an update and to brief her on the activities to be done in my absence. I then came back from Europe I think towards maybe the middle to end of July – it was the middle to end of July I cannot remember the exact date and at the time Chair I believe – the team had done some work with – with – with the GCFO and Chair I

would like to refer you to page 214 of the main pack.

ADV REFILOE MOLEFE: That is Exhibit BB10[a] and the document appears under Annexure 25.

CHAIRPERSON: Thank you.

ADV REFILOE MOLEFE: Yes what is the document on page 214?

MS MATHANE EVELINE MAKGATHO: Chair the page – the document on page 214 it is a document that was – it is a letter by the GCFO to the Executive President of CDB drafted by Treasury and in this memorandum – in this letter Chair we are highlighting our disquiet
10 around what CDB has provided and we also say – okay – can – may I please read on page 215?

ADV REFILOE MOLEFE: Yes.

MS MATHANE EVELINE MAKGATHO: Not on this page.

CHAIRPERSON: Yes.

MS MATHANE EVELINE MAKGATHO:

20 “Your colleagues will recall at our meeting in Beijing that we requested that the cross currency swaps be carried by either CDB or ICDC providing Transnet with the ZAR loan. Again the international – an international bank as CDB with a substantial balance sheet and a risk appetite should be more than willing to accept currency exposure as is our experience with other international – international debt investors as we successfully concluded such transactions on a similar basis. I would also like to highlight the

following data released directly to the draft term sheet which has been tracked with proposed amendments that we believe are appropriate and in line with other funding agreements successfully concluded by Transnet in the recent past.”

Chair as an attachment to this letter there was a tracked term sheet that was being sent to CDB.

ADV REFILOE MOLEFE: And can you confirm the date of the letter that you have just referred to?

10 **MS MATHANE EVELINE MAKGATHO:** The letter is dated 25 July 2014.

ADV REFILOE MOLEFE: Yes and the annexure to this letter would that be what appears at page 217 of the bundle?

CHAIRPERSON: Maybe we must just confirm that the letter is signed by Mr Singh.

MS MATHANE EVELINE MAKGATHO: It is signed by him Chair.

CHAIRPERSON: Yes. But was it drafted by you by any chance?

MS MATHANE EVELINE MAKGATHO: Yes Chair.

CHAIRPERSON: Yes okay.

ADV REFILOE MOLEFE: Thank you. Can you turn to page 217
20 please? Is that the document that was attached to the letter?

MS MATHANE EVELINE MAKGATHO: It is the document that was attached to the letter. I believe so Chair I believe so.

ADV REFILOE MOLEFE: And what was the purpose of this document?

MS MATHANE EVELINE MAKGATHO: The purpose of the documents was to track the amendments that we are requesting in line with the

second page of the letter 215 where we are talking about the – the financial covenant. We are talking about our credit rating status. We are talking about the fees and the credit rating covenant and other condition precedent that we thought were not aligned to our other facilities.

ADV REFILOE MOLEFE: And on page 217 of that document there – in fact throughout the document there appears what looks like tracked changes?

MS MATHANE EVELINE MAKGATHO: Correct Chair.

10 **ADV REFILOE MOLEFE:** And who made these changes?

MS MATHANE EVELINE MAKGATHO: Some of them it will be us. I think it was our legal team. Some it will be the legal team. What – the normal practice was that we will have a – a round table with the – with the legal team and we will go through the document line by line and someone will – will track the changes Chair.

ADV REFILOE MOLEFE: And in terms of this document what was the facility amount?

MS MATHANE EVELINE MAKGATHO: Two and half billion dollars.

ADV REFILOE MOLEFE: And is this per Transnet's tracked changes?

20 **MS MATHANE EVELINE MAKGATHO:** Yes Chair that is what they had provided us with. And in actual fact it was sufficient to cover the – the Chinese tranche.

ADV REFILOE MOLEFE: Yes. So you state that these documents reflect the status of Transnet's negotiations with CDB?

MS MATHANE EVELINE MAKGATHO: At that point in time yes Chair.

ADV REFILOE MOLEFE: Did anything come to your attention during the negotiation by Transnet?

MS MATHANE EVELINE MAKGATHO: At that point in time I thought we were still aligned to discussions and if it is okay I would like to go to page 128 not paragraph 128 and page 227.

ADV REFILOE MOLEFE: Yes.

MS MATHANE EVELINE MAKGATHO: Of the main file.

CHAIRPERSON: I am sorry what is the page number?

MS MATHANE EVELINE MAKGATHO: Page 227 of the main file.

10 **CHAIRPERSON:** Okay.

ADV REFILOE MOLEFE: And paragraph 128.

CHAIRPERSON: 227 is – is light on mine. Are you on the same exhibit that has got your statement?

MS MATHANE EVELINE MAKGATHO: Chair on my statement it is page 32 paragraph 128 and the attachment is attachment 27 page 227.

CHAIRPERSON: Attachment 27?

MS MATHANE EVELINE MAKGATHO: Attachment – page 227.
Attachment 27 correct Chair.

CHAIRPERSON: Okay.

20 **MS MATHANE EVELINE MAKGATHO:** Annexure 227.

ADV REFILOE MOLEFE: Annexure MM27 appears from page 22 of Exhibit BB10[a].

CHAIRPERSON: Oh.

ADV REFILOE MOLEFE: And the document you are referring the Chair to...

CHAIRPERSON: Yes well I – it was the right page that I was on but...

ADV REFILOE MOLEFE: Yes Chair. We are at page 227.

CHAIRPERSON: Ja I thought she said there is a paragraph – a certain paragraph.

ADV REFILOE MOLEFE: The paragraph is with reference to her statement.

CHAIRPERSON: On the statement. Ja okay.

ADV REFILOE MOLEFE: Chair apologies for that confusion.

CHAIRPERSON: Okay I have found it I am at 227 now.

10 **ADV REFILOE MOLEFE**: Thank you. What is that document that is appearing at page 227?

MS MATHANE EVELINE MAKGATHO: Chair on the 30 July we again had had discussions with CDB and I would like to refer you to page 229.

CHAIRPERSON: Yes.

MS MATHANE EVELINE MAKGATHO: On this page Chair we are showing them where our average cost of debt was as at the end of June 2014 and it was sitting at 9.4 and at the top left we also show them where the Transnet bonds were trading at that point. And Chair at the
20 end of June they were trading at around between 9.2, 9.4% or 9.5.

CHAIRPERSON: Yes.

ADV REFILOE MOLEFE: This would be at the end of June 2014?

MS MATHANE EVELINE MAKGATHO: Correct.

ADV REFILOE MOLEFE: Yes.

CHAIRPERSON: Hm.

ADV REFILOE MOLEFE: And towards the right side of the document there appears a heading above those grafts weighted average cost of debt, is that correct?

MS MATHANE EVELINE MAKGATHO: Correct.

ADV REFILOE MOLEFE: Can you please speak to that aspect:

MS MATHANE EVELINE MAKGATHO: Which aspect?

ADV REFILOE MOLEFE: The weighted average cost of the debt?

MS MATHANE EVELINE MAKGATHO: The [indistinct] at that time was 9.4% and Chair as I indicated CDB's pricing in fixed rate terms came at
10 around between 12.90 to 13.3% which was quite high.

ADV REFILOE MOLEFE: And again when you say at that point you referring to June 2014?

MS MATHANE EVELINE MAKGATHO: Correct Chair. And Chair please refer to page 230 wherein again we referred them to the draft term sheet we say that the pricing is too expensive. Other fees are not in line with similar facilities. And importantly Chair the clauses are not of investment grade. There is what you call the loan market association Chair there are different covenants per accredited quality and if you are an investment graded institution you expect certain covenants. And it
20 was clear Chair that what they have provided us were of sub quality and in actual fact they – they confirmed that they compared us to Angola. And the important...

CHAIRPERSON: So they were substandard?

MS MATHANE EVELINE MAKGATHO: Very Chair.

CHAIRPERSON: Hm.

MS MATHANE EVELINE MAKGATHO: Very Chair.

CHAIRPERSON: Hm.

MS MATHANE EVELINE MAKGATHO: And the important page Chair here is 231 where we say that we give them for examples of long term funding Chair. In this instance Chair we have the [indistinct] facility which is 18 years under 200 points. We have the African Development Bank at 20 years at JIBA plus 230 points. But CDB here is clearly out of line at JIBA plus 430 points. Chair I have never in my life discussed one point for so long and I can fill it again I mean as I am going over
10 through this pricing over and over and again Chair that the important point is the last line in red. We highlighted it in red and we say:

“If CDB is not willing to reconsider the current draft terms and conditions Transnet will use other cost effective facilities.”

CHAIRPERSON: Yes.

ADV REFILOE MOLEFE: Now...

CHAIRPERSON: You were – you were getting to the end of your patience?

MS MATHANE EVELINE MAKGATHO: Yes Chair.

20 **ADV REFILOE MOLEFE:** Where you make reference to JIBA plus 430 being excessive that was relevant to CDB over a period of five years?

MS MATHANE EVELINE MAKGATHO: Fifteen years.

ADV REFILOE MOLEFE: Fifteen years.

MS MATHANE EVELINE MAKGATHO: Ja.

ADV REFILOE MOLEFE: Pardon me. And what would have been the

acceptable JIBA rate according to Transnet?

MS MATHANE EVELINE MAKGATHO: Around 200 points maybe 210 – around there – around 200. Between 170 to 210 you know we could entertain that.

ADV REFILOE MOLEFE: Yes. Can I then also refer you to your Annexure MM6 which appears on page 75 of the bundle? That is an email and if could just advise the Chair what that email relates to and who it was sent to?

MS MATHANE EVELINE MAKGATHO: Chair on this day I received an
10 email from...

ADV REFILOE MOLEFE: On which day?

MS MATHANE EVELINE MAKGATHO: On the 4 August 2014.

ADV REFILOE MOLEFE: Yes.

MS MATHANE EVELINE MAKGATHO: I was copied on an email by the China Development Bank that was sent to Mr Eric Wood and the CDB official copied me and the GCFO and the email reads as follows:

“Dear Eric. According to your feedback...”

CHAIRPERSON: I am sorry

MS MATHANE EVELINE MAKGATHO: I am now on page 6.

20 **CHAIRPERSON:** Hm.

MS MATHANE EVELINE MAKGATHO: Page 76 Chair.

CHAIRPERSON: Oh I was still at 75 okay.

MS MATHANE EVELINE MAKGATHO: Okay.

ADV REFILOE MOLEFE: Apologies the email trail when [indistinct] and sequence starts at 76.

MS MATHANE EVELINE MAKGATHO: Okay.

CHAIRPERSON: Ja. Okay.

ADV REFILOE MOLEFE: So it says:

“Dear Eric. So it is the CDB to Regiments. According to your feedback and our internal research and discussion we made further adjustment to the term sheet about the proposed CDB loan facility to Transnet and the second addition of draft term sheet is attached. Your positive response would be highly appreciated. Thank you very much.”

10

And Chair now the email came at around 11:37 am so at – on the same day at 2:33 I sent an email to the GCE and the GCFO on page 75.

ADV REFILOE MOLEFE: Yes.

MS MATHANE EVELINE MAKGATHO: It reads as follows:

“Dear Brian and Anoj. I refer to the email below from China Development Bank to Regiments Capital about the proposed facility to finance the CNR and CSR locomotives. Transnet Group Treasury has been negotiating with CDB since April 2014 regarding the terms and conditions of the facility. This was followed by meetings in Johannesburg and Beijing under the leadership of the GCFO. As part of the normal assessment of new funding facility the Treasury team has and is comparing the current terms and conditions with similar facilities. I would

20

like to seek clarity about the role of Regiments in this matter at this point of the negotiations and what Transnet Treasury's role should be giving direct communication of Regiments with CDB. Your guidance will be appreciated."

ADV REFILOE MOLEFE: And was there any response to this letter to this email rather?

MS MATHANE EVELINE MAKGATHO: Chair I believe afterwards Mr Molefe called us that is me and the GCFO to his office to discuss this
10 disagreements that we have had Chair. And I think he was trying to mediate and to kind of find a common ground between the two of us. But Chair at that point in time I think I was convinced that they are on the same side of the game. And he...

CHAIRPERSON: That is Mr Molefe and Mr Singh?

MS MATHANE EVELINE MAKGATHO: And Mr Singh.

CHAIRPERSON: Yes.

MS MATHANE EVELINE MAKGATHO: I think at that time Chair I was now convinced that they are on the same side.

CHAIRPERSON: Hm.

20 **MS MATHANE EVELINE MAKGATHO:** And he proposed that we should maybe have a meeting with Regiments and see if we cannot resolve this impulse.

CHAIRPERSON: Hm.

ADV REFILOE MOLEFE: Yes and earlier you had referred...

CHAIRPERSON: But your – I am sorry but your query to them by way

of your email at page 75 was what is Regiments doing here and what should be our role as Treasury, is it not?

MS MATHANE EVELINE MAKGATHO: Correct Chair.

CHAIRPERSON: So one would have thought that they should respond to you and tell you what – give an answer to that not to say you must go and meet with Regiments.

MS MATHANE EVELINE MAKGATHO: Chair we had many engagements between me the GCE and GCFO around pricing of the CDB and around the assertion that the pricing can be better through
10 Nedbank.

CHAIRPERSON: Hm.

MS MATHANE EVELINE MAKGATHO: And so Chair I cannot exactly remember if we had another meeting around this but I know that we were meeting ...

CHAIRPERSON: You were not making progress?

MS MATHANE EVELINE MAKGATHO: I was not making progress.

CHAIRPERSON: Yes.

MS MATHANE EVELINE MAKGATHO: And we were – ja.

CHAIRPERSON: Yes. Okay. Thank you.

20 **ADV REFILOE MOLEFE:** Yes you earlier referred the Chair to the Nedbank pricing and that is the next topic that you introduce at page – paragraph 128 of your statement where you say that you were told that the Nedbank is in...

CHAIRPERSON: I see we at twenty past.

ADV REFILOE MOLEFE: Yes Chair.

CHAIRPERSON: Maybe we should then go up to half past and then take the tea break.

ADV REFILOE MOLEFE: Thank you Chair.

CHAIRPERSON: Okay.

ADV REFILOE MOLEFE: Yes at paragraph 128 which you have already spoken to in relation to Nedbank supposedly being able to provide SARBS at a much cheaper price. At paragraph 129 you then speak to your engagement with Nedbank. Can you please take the Chair through this?

10 **MS MATHANE EVELINE MAKGATHO**: Chair as I indicated before I raised my concern with the relationship colleague at Nedbank regarding what I thought was an improper relationship between Nedbank and Regiments and the fact that my bosses were using the Regiments Nedbank pricing to refute our internal pricing. And I was told that you know the matter has now been resolved. The official of Nedbank involved was disciplined somehow I do not know how and I therefore requested an official Nedbank pricing. On page 239 Chair it is the official Nedbank pricing. Chair I would like us to focus on option 1.

ADV REFILOE MOLEFE: An option 1 appears right at the top of that
20 document where there are three – there appear to be columns – three small columns at the top of the document.

MS MATHANE EVELINE MAKGATHO: Correct.

ADV REFILOE MOLEFE: Yes.

MS MATHANE EVELINE MAKGATHO: And Chair I would like us to focus...

CHAIRPERSON: And 1 is option 1. The next is option 2.

MS MATHANE EVELINE MAKGATHO: Option 1, option 2, option 3.

CHAIRPERSON: And option 3. You say let us focus on option 1?

MS MATHANE EVELINE MAKGATHO: On option 1 because here it is an indication of three months liable plus 255. The DE facility pricing was three month liable plus 257 so now this pricing is not too far off from what was actually agreed on later on Chair. So you can see under the three scenarios be it at 250 million dollar trade or a 500 million dollar trade or a 1 billion trade all of the three pricings Chair they all
10 indicate that in rand terms the pricing will translate into anything between 3 month JIBA plus 423 basis points to three month JIBA plus 458 basis points. Confirming our internal pricing.

CHAIRPERSON: So that was completely inconsistent was it with what you had been told earlier that Nedbank could provide a cheaper price?

MS MATHANE EVELINE MAKGATHO: Correct Chair.

CHAIRPERSON: And you got this pricing different pricing or pricing that was consistent with your thinking, with your pricing after as an official you were told had been disciplined.

MS MATHANE EVELINE MAKGATHO: Correct Chair.

20 **CHAIRPERSON:** Okay.

ADV REFILOE MOLEFE: Yes and did you engage Mr Molefe and or Mr Singh relative to Nedbank's pricing?

MS MATHANE EVELINE MAKGATHO: Yes Chair as per page 237 the attachment on page 2237 I then forwarded the Nedbank official pricing to Mr Singh and in the email I say to him:

“Please see below a response from Nedbank which indicates that they did not discuss any pricing with them. By they I mean Regiments.”

ADV REFILOE MOLEFE: And was there any response to that email?

MS MATHANE EVELINE MAKGATHO: Let us see. No Chair. Because the email is dated the 13 – the 14 August. There is no formal response. But however Chair counsel?

ADV REFILOE MOLEFE: Can I refer you to page 241 of the bundle? Are you at page 241? Ms Makgatho?

10 **MS MATHANE EVELINE MAKGATHO:** Yes I am.

ADV REFILOE MOLEFE: Yes. What – what document appears there at page 241?

MS MATHANE EVELINE MAKGATHO: It is an email that I sent to Mr Molefe and Mr Singh.

ADV REFILOE MOLEFE: And what is the date of that email?

MS MATHANE EVELINE MAKGATHO: It is the 21 August 2014.

ADV REFILOE MOLEFE: In that email what are you communicating to Mr Molefe and Mr Singh?

20 **MS MATHANE EVELINE MAKGATHO:** I am communicating my discomfort and my disagreement around the involvement of Regiments and the pricing.

CHAIRPERSON: Okay please do not lower your voice?

MS MATHANE EVELINE MAKGATHO: I am communicating my discomfort and my disagreement around the involvement of Regiments in the CDB negotiations.

CHAIRPERSON: Yes.

ADV REFILOE MOLEFE: Yes in that email there are several headings that you set out in your email and in your opening as you have stated you raise your discomfort and disagreement on how the China Development Bank [indistinct] negotiations are being handled as well as Regiments pricing methodology and in your first item 1 of that email you speak about overall governance, what were you communicating to Mr Singh and Mr Molefe in that respect?

MS MATHANE EVELINE MAKGATHO: I was communicating the fact
10 that I do not understand how Regiments was appointed as far as I was concerned there was no need for Regiments to be involved given the capacity of the treasury at that particular time. And I also said that I do not support that such a huge transaction be negotiated by outsiders. Because when we negotiate a transaction Chair we negotiate understanding what we have agreed with the previous lenders and we to to make sure that are aligned. You know with what we have agreeing. And when we negotiate we make sure that we assemble a multi-disciplinary team. We make sure that we identify measure and mitigate all potential you know financial, legal and so forth and I was
20 not comfortable that Transnet's biggest ever transaction it is negotiated and to be decided by outsiders. I thought it is a huge risk. And so I thought that it is important that I put it in writing because Chair I think a day or so before the 21 August Mr Molefe had organised a meeting that was attended by me, him and the GGCFO and from Regiments side it was Mr Wood and Mr Pillay they were both directors of Regiments at

that point in time. And basically the agenda of the meeting was for him to say to me that everyone else around the table agrees that pricing is around 300 points. I am the only one who is saying it is over 400 points and I think Chair he wanted to use that opportunity to sway and change my opinion or my recommendation.

CHAIRPERSON: This is Mr Molefe?

MS MATHANE EVELINE MAKGATHO: This is now Mr Molefe.

CHAIRPERSON: Yes.

MS MATHANE EVELINE MAKGATHO: He is saying that you know
10 everybody else is saying A you said Z.

CHAIRPERSON: You are the only one.

MS MATHANE EVELINE MAKGATHO: And you are the only one you know.

CHAIRPERSON: And what – what – how did you respond to this?

MS MATHANE EVELINE MAKGATHO: Chair I made it very clear that my recommendation is not changing, is not about to change because I know that what I am giving him it is an honest opinion.

CHAIRPERSON: Hm.

MS MATHANE EVELINE MAKGATHO: And it is the right
20 recommendation.

CHAIRPERSON: Hm.

MS MATHANE EVELINE MAKGATHO: And in any event they are executives.

CHAIRPERSON: Hm.

MS MATHANE EVELINE MAKGATHO: They can choose to use their

executive power.

CHAIRPERSON: Hm.

MS MATHANE EVELINE MAKGATHO: And – and do otherwise but as far as I am concerned as a current – as the then Treasurer of Transnet I was not about to change my recommendation to be aligned with Regiments because I knew that I was giving them proper recommendation.

CHAIRPERSON: Hm.

MS MATHANE EVELINE MAKGATHO: And it was therefore important
10 that I record it.

CHAIRPERSON: Hm. Now you were not just saying I think it should be 400 or whatever you were motivating why?

MS MATHANE EVELINE MAKGATHO: Correct Chair.

CHAIRPERSON: Did they at any stage that is now Mr Molefe and Mr Anoj Singh engage with your reasons and your reasoning with you to say but you give this reason but this is what goes against it? Did they engage with you in terms of your reasons and give your – their reasons as against your reasons in trying to persuade you or did they just try to persuade you by numbers by saying you are the only one who thinks
20 that way? Everyone else thinks differently.

MS MATHANE EVELINE MAKGATHO: Chair it is Mr Singh who did that but as I had indicated before he kept on using the flawed Regiments analysis Chair. So we were not going to get a point where we agree.

CHAIRPERSON: But the flawed Regiments analysis you dealt with them with him – you did say what was wrong with Regiments and did he

have an answer to your reasons or he just kept on saying he did not agree, he agreed with them.

MS MATHANE EVELINE MAKGATHO: Chair that is why I am saying in the opening statement of this email because what was clear was that there was a differences around the pricing methodology.

CHAIRPERSON: Yes.

MS MATHANE EVELINE MAKGATHO: The pricing – the pricing that Regiments used was very different from what we used.

CHAIRPERSON: Ja.

10 **MS MATHANE EVELINE MAKGATHO:** In the rest of the market.

CHAIRPERSON: Yes.

MS MATHANE EVELINE MAKGATHO: You know because everyone else in the market was aligned to our pricing.

CHAIRPERSON: Was using the methodology that you were using?

MS MATHANE EVELINE MAKGATHO: And the output was similar.

CHAIRPERSON: Yes. So you might have been – you might have been the only one thinking the way you were thinking at that meeting but your methodology was in line with the markets?

MS MATHANE EVELINE MAKGATHO: Correct Chair.

20 **CHAIRPERSON:** And theirs was not in line with the markets?

MS MATHANE EVELINE MAKGATHO: Correct Chair.

CHAIRPERSON: Okay thank you. I realise we have gone past even half past. We are going to take the tea break. We will resume at ten to.

ADV REFILOE MOLEFE: Thank you Chair.

CHAIRPERSON: We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: You may proceed.

ADV REFILOE MOLEFE: Thank you Chair. Ms Makgatho please turn to page 2-8-5 of EXHIBIT BB10A.

CHAIRPERSON: 2-8-5?

ADV REFILOE MOLEFE: 2-8-6.

10 **CHAIRPERSON:** 2-8-6?

ADV REFILOE MOLEFE: 2-8-5 - I am sorry Chair – 2-8-5.

CHAIRPERSON: Okay.

ADV REFILOE MOLEFE: Are you there?

MS MATHANE EVELINE MAKGATHO: Yes Chair.

ADV REFILOE MOLEFE: The – the document on that page is – is a memorandum is that correct?

MS MATHANE EVELINE MAKGATHO: Yes Chair.

ADV REFILOE MOLEFE: And do you know who drafted that memorandum?

20 **MS MATHANE EVELINE MAKGATHO:** Chair the memorandum was drafted by Mr Anoj Singh to the GCE Mr Brian Molefe.

ADV REFILOE MOLEFE: And what is the purpose of that memorandum?

MS MATHANE EVELINE MAKGATHO: Chair the purpose of this memorandum as it is written here – the purpose of the submission is to

request the Group Chief Executive to approve the response to the Group – to the Group Treasurer for issues raised on the US\$2.5 billion non-facility from China Development Bank.

ADV REFILOE MOLEFE: And those issues would be the email we have – your email we have earlier referred to wherein you raised your discomfort on Regiments and the pricing that was concerned and recommended in the CDB loan facility?

MS MATHANE EVELINE MAKGATHO: Yes Chair.

ADV REFILOE MOLEFE: And in that memorandum Mr Singh discusses
10 all the points that you had raised. The first being Regiments appointment and management which we need not go through. The second is the interest expense. Can you please go through that aspect?

MS MATHANE EVELINE MAKGATHO: Okay Chair. I will go through Mr Singh's response on the interest expense. You will remember Chair that in my email dated 21 August 2014 wherein I raised my concern to the GCFO and the GCE. On the interest expense Chair I calculated what I thought would be capital leakage and my calculation Chair came to roughly 3.5 billion of interest expenses that would be paid
20 unnecessarily – in my opinion - and I termed that capital leakage and Chair in his response he is refuting the fact that there will be capital leakage. He is again responding using the Regiments pricing methodology. On the second page Chair he - he compares the CDB loan to GMTN. A GMTN loan Chair it is actually a bond. It is listed. The pricing thereof is transparent. It is a bullet loan. It does not have

any other fees and it is an untied loan Chair. So he compares a tied loan which is an amortising loan to – so it is tied and it is secured. It is tied in the sense that the – the China Development Bank is providing a loan at the back of a Chinese procurement and two ...

CHAIRPERSON: Is that what tied means?

MS MATHANE EVELINE MAKGATHO: Yes Chair.

CHAIRPERSON: Okay.

MS MATHANE EVELINE MAKGATHO: It is tied, *ja* and then it is secured in the sense that we are providing the locomotives as security.

10 So the two points tied and collateral ...

CHAIRPERSON: And security?

MS MATHANE EVELINE MAKGATHO: *Ja* and security should provide pricing benefit and ...

CHAIRPERSON: To Transnet?

MS MATHANE EVELINE MAKGATHO: To Transnet ...

CHAIRPERSON: Hm.

MS MATHANE EVELINE MAKGATHO: And he - he is using something else that I mean is like comparing an onion to a banana

CHAIRPERSON: Hm.

20 **MS MATHANE EVELIE MAKGATHO:** It is not done.

CHAIRPERSON: Hm.

MS MATHANE EVELINE MAKGATHO: So that is his first point ...

CHAIRPERSON: Hm.

MS MATHANE EVELINE MAKGATHO: And number two he says that there – so he uses the flawed Regiments methodology and he says that

the CDB pricing in Roman figure nine (IX) page 2 of his – of his memorandum he says that:

“The rate of 9.45 compares favourably to the current rate of 9.32.”

And Chair this is a misrepresentation of facts because as I – I have indicated before the rate that in fixed term it was around 1230 to 1330 depending on the day – and in floating rate terms it was over 1010 – you know - 1020 – 1050 – I cannot remember. So this is a misrepresentation of facts and he goes on to say in Roman figure 11

10 (XI) that:

“Transnet will consider fixing interest rate exposure in 12 to 18 months realising potential savings.”

I do not know what that means in plain English. Chair again I indicated before that we are a Corporate Treasurer and on top of that we are a publically – we are a State Owned Entity. So we are not in the business of speculating where the rates will be in 18 months times. We take a decision at that particular point in time having considered all the factors that will have an impact on pricing. So again here Chair he is introducing speculation which is contrary to our – our Risk Management

20 Framework and then he says that:

“If the rate is to be fixed. It is around 12 percent.”

Again it is a misrepresentation and now he - he introduces a very interesting point Chair. He says that he is already aware that what they are doing or what he is proposing is not in line with the Board approved Financial Risk Management. So he is introducing an element

of saying that hey and by the way we might breach – you know – certain benchmarks and therefore we may need to get a special dispensation from the Board.

CHAIRPERSON: So is that point number 8 – Roman figure 8 (VIII)?

MS MATHANE EVELINE MAKGATHO: Yes Chair. It is 13 odd.

CHAIRPERSON: Oh is it ...?

MS MATHANE EVELINE MAKGATHO: Yes. It is Roman figure 13 (XIII).

CHAIRPERSON: Okay, I am sorry.

10 **MS MATHANE EVELINE MAKGATHO:** *Ja*, the last point, *ja*.

CHAIRPERSON: Yes. No, 13 *ja*.

MS MATHANE EVELINE MAKGATHO: So – so now ...

CHAIRPERSON: I must get my roman figures properly, yes.

MS MATHANE EVELINE MAKGATHO: So now Chair his first response again it is based on misrepresentation but again he knows that it includes speculation and he already knows that with the current financial risk management regime certain key benchmarks will be breached. So that is the first point.

CHAIRPERSON: I guess – I guess that to the extent that he accepted
20 that his proposal might include – might necessitate asking the Board for certain approvals. There – there will be a risk that what if the Board did not provide that approval what would happen then?

MS MATHANE EVELINE MAKGATHO: Correct Chair.

CHAIRPERSON: Hm, but he did not deal with that?

MS MATHANE EVELINE MAKGATHO: He did not – he did not – he did

not deal with that. He is just highlighting to the GCE ...

CHAIRPERSON: Hm.

MS MATHANE EVELINE MAKGATHO: Of the possibility of a breach.

CHAIRPERSON: Hm.

MS MATHANE EVELINE MAKGATHO: So he is using this flawed analysis to refute my analysis that the current commercial terms would translate into a capital leakage of R3.5 billion.

ADV REFILOE MOLEFE: Yes and the next concern that you – you raised related to the once off arrangement fee relative to the base
10 points – the basis points rather.

MS MATHANE EVELINE MAKGATHO: Chair in my email again I say that the 118 basis points that CDB is proposing in Rand terms is 313 million that will be paid. You know – normally it is within seven days of – of contract signature and I am saying that normally we would pay 50 – you know – points or 60 basis points and I am saying that if we were to revise that downwards the proposed fee will be reduced from R313.3 million to R159 million saving the organisation 154.

CHAIRPERSON: Yes.

MS MATHANE EVELINE MAKGATHO: R154 million.

20 **CHAIRPERSON:** Yes.

MS MATHANE EVELINE MAKGATHO: So between the two you can easily see that the potential capital leakage is sitting at roughly R3.7 billion.

CHAIRPERSON: Hm

MS MATHANE EVELINE MAKGATHO: And again Chair he says the 118

points is fair and Chair - he compares that to the arrangement fees of US Exim and again Chair he includes some – some misrepresentation here. He says here that the US Exim fees were 100 points. In actual fact the front end fees I think they were around 12.5 points – 12 basis points.

CHAIRPERSON: Hm.

MS MATHANE EVELINE MAKGATHO: So again Chair he introduces misrepresentation of facts here and ...

CHAIRPERSON: That is – that is a big difference between 100 and
10 what - 12?

MS MATHANE EVELINE MAKGATHO: And 12.

CHAIRPERSON: Ja.

MS MATHANE EVELINE MAKGATHO: Ja, 12.5 ja.

CHAIRPERSON: Is – I will ask you at the end when you have dealt with this whole memorandum but I just want to ask you now putting 100 there when there is such a big gap between what you say was the position 12 and this 100. Could it have been a *bona fide* error?

MS MATHANE EVELINE MAKGATHO: I do not think it is an error Chair. I think everything that he – he did he did so deliberately and ...

20 **CHAIRPERSON:** Hm.

MS MATHANE EVELINE MAKGATHO: I think one of my last evidence will be showing that this error ...

CHAIRPERSON: Hm.

MS MATHANE EVELINE MAKGATHO: Or this deliberate ...

CHAIRPERSON: Yes.

MS MATHANE EVELINE MAKGATHO: Misrepresentation ...

CHAIRPERSON: Yes.

MS MATHANE EVELINE MAKGATHO: Even gets to the Board pack.

CHAIRPERSON: Okay. No thank you. Just one second Ms Molefe.
Thank you.

ADV REFILOE MOLEFE: Thank you. Ms Makgatho the last concern that you had raised was that the CDB facility in its current form was not in the best interest of – of the company and you refer to a leakage of about 3.7 billion and that is the last point that Mr Singh addresses in his – in his memorandum.

MS MATHANE EVELINE MAKGATHO: Yes Chair and he goes on further to include another misrepresentation. The last point on the page he says:

“CDB agreed to transect a cross currency swap
such that Transnet will have ZAR.”

We do know Chair – I mean – even at the meeting that we had in Beijing even afterwards I know for a fact that CDB had said that it is not able to provide ZAR. So this is another misrepresentation that he introduces in this – in the memorandum.

20 **ADV REFILOE MOLEFE:** Yes and on the following page – page 2-8-7 – Mr Sing addresses himself to the financial implications that would arise. Page 2-8-7 - that is the last page of the memorandum.

MS MATHANE EVELINE MAKGATHO: Yes Chair and again he is using – and now he – he even includes what they had proposed for the gearing – I mean – the financial covenant Chair. It says:

“The gearing ratio not to exceed 80 percent and the
Cash Interest Cover not to be below 1.5 times.”

And again Chair *ja* this is one of the things that we kept on arguing about and I am not sure what kind of a lender will agree to lend someone who has a benchmark of 80 percent and 1.5 times CIC Cover because it - it says that your balance sheet is very weak.

ADV REFILOE MOLEFE: Yes and in the budget implications Mr Singh states that:

10 “The proposed external funding has been budgeted
for in the 2014/2015 year.”

And he further goes onto say that:

“It will be further budgeted for the 2015/2016 and
2018/2019 financial year”.

MS MATHANE EVELINE MAKGATHO: Chair it was budgeted for – it is true – but the rates that we used for budgeting is the rates that we thought are reasonable rates. We – we did not budget for excessive rates. So he is partly right but not entire correct.

ADV REFILOE MOLEFE: Yes and as you have earlier indicated Mr Singh’s recommendation was that the Group Chief Executive being
20 Mr Brian Molefe approve the response to the Group Treasurer for issues raised on the US\$2.5 billion loan facilities from China Development Bank. Did Mr Brian Molefe approve that memorandum?

MS MATHANE EVELINE MAKGATHO: Chair the GCE did not – did not approve this. The GCFO wrote this flawed memorandum, put his signature on it recommending that the GCE approves it and the GCE

Chair as I have said that he is a very streetwise guy. He does not approve it.

CHAIRPERSON: Did not approve?

MS MATHANE EVELINE MAKGATHO: He just notes.

CHAIRPERSON: He just noted?

MS MATHANE EVELINE MAKGATHO: He just notes it. So for me it was that I am not even going to bother engaging them. It says it all.

ADV REFILOE MOLEFE: Hm.

CHAIRPERSON: Now was a copy of this memorandum sent to you
10 before it was sent to Mr Molefe or at the same time or thereabout ...

MS MATHANE EVELINE MAKGATHO: It was ...

CHAIRPERSON: So that you knew what response he – he had to your points – Mr Anoj Singh?

MS MATHANE EVELINE MAKGATHO: No Chair. I was only given it after it was signed by both the GCE and the GCFO.

CHAIRPERSON: So it was not meant as a response to you. It was simply a – it was simply a memorandum to this GCE about your memorandum?

MS MATHANE EVELINE MAKGATHO: And the GCE to approve this
20 flawed analysis.

CHAIRPERSON: Without you having had an input on this – on the points that were being made about your points?

MS MATHANE EVELINE MAKGATHO: Correct Chair.

CHAIRPERSON: Yes but did the GCE – now that we know he did not approve he just noted – did he ever subsequently talk to you about the

points raised in this memorandum by Mr Singh in relation to your concerns?

MS MATHANE EVELINE MAKGATHO: Not in relation to the memorandum Chair.

CHAIRPERSON: Hm.

MS MATHANE EVELINE MAKGATHO: He just raised it in general when we had the meeting with ...

CHAIRPERSON: Hm.

MS MATHANE EVELINE MAKGATHO: With Regiments wherein he
10 indicated that I was the only person who does not agree with the methodology and everybody else is happy.

CHAIRPERSON: Oh so this memorandum by Mr Singh to Mr Molefe preceded that meeting that you told me about earlier?

MS MATHANE EVELINE MAKGATHO: I think it was before but I cannot remember Chair.

CHAIRPERSON: Oh you cannot remember?

MS MATHANE EVELINE MAKGATHO: But I think after that meeting that we held I decided to put my recommendation in black and white.

CHAIRPERSON: Which is – which was the memorandum that we dealt
20 with earlier?

MS MATHANE EVELINE MAKGATHO: Which is the email of 21 August.

CHAIRPERSON: Yes, okay. So you are not sure whether after Mr Molefe had received this memorandum had been aware – had become aware of Mr Anoj Singh's reasoning or position in relation to your concerns? You are not sure whether he ever discussed this with

you – Mr Molefe?

MS MATHANE EVELINE MAKGATHO: He did – he definitely did not discuss

CHAIRPERSON: The memorandum?

MS MATHANE EVELINE MAKGATHO: Ja.

CHAIRPERSON: Yes.

MS MATHANE EVELINE MAKGATHO: He did not discuss the memorandum with me and ...

CHAIRPERSON: And he did not engage with you on your concerns that
10 you had raised in your memorandum - Mr Molefe?

MS MATHANE EVELINE MAKGATHO: Chair, we - we engaged a number of times but he kept on saying but the GCFO says it is cost effective.

CHAIRPERSON: Yes, yes.

MS MATHANE EVELINE MAKGATHO: So ...

CHAIRPERSON: So you – your impression was that he – he preferred what the GCFO was saying?

MS MATHANE EVELINE MAKGATHO: My – my impression is that he knew that I was correct in my analysis ...

20 **CHAIRPERSON:** Yes.

MS MATHANE EVELINE MAKGATHO: And he knew that my recommendation was appropriate ...

CHAIRPERSON: Yes.

MS MATHANE EVELINE MAKGATHO: And he knew that the GCFO and – and Regiments methodology was flawed ...

CHAIRPERSON: Yes.

MS MATHANE EVELINE MAKGATHO: And he knew that there was no truth in – in whatever that they were ...

CHAIRPERSON: Yes.

MS MATHANE EVELINE MAKGATHO: That they were putting on paper ...

CHAIRPERSON: Yes.

MS MATHANE EVELINE MAKGATHO: But he was not bold enough ...

CHAIRPERSON: Yes.

10 **MS MATHANE EVELINE MAKGATHO:** To say it straight ...

CHAIRPERSON: But ...

MS MATHANE EVELINE MAKGATHO: Or maybe it was a strategy on his part. I do not know.

CHAIRPERSON: Yes. Do you think he was just not bold enough to say to them you are wrong and Ms Makgatho is correct or do you think that it was some other reason why he did not do that?

MS MATHANE EVELINE MAKGATHO: Chair as I have indicated before I had worked with Mr Brian Molefe before and Chair I believe that he knows my technical ability and Chair I believe that he knows whether I
20 am a person to be trusted or not to be trusted and Chair so I think he was in between and he could not – so he was trying to breach the gap between me and the GCFO and he could not get me to move from where I was and he – he knew that he could not tell me directly and he knew that on the other side this other team is also not moving. So he tried on a number of times – I mean – we had engagements with him so

many times in his office where we would be carrying – you know – between me and Mr Singh and he would try to mediate and I think – at least in my opinion Chair – I think that this transaction was going to happen but he just needed me to crossover.

CHAIRPERSON: Yes, yes. So that he could have the comfort that both the GCFO and the Group Treasurer were agreed?

MS MATHANE EVELINE MAKGATHO: Correct Chair.

CHAIRPERSON: But you were quite steadfast in your position?

MS MATHANE EVELINE MAKGATHO: I was not moving Chair. I was
10 not about ...

CHAIRPERSON: Yes.

MS MATHANE EVELINE MAKGATHO: I was not moving for anything.

CHAIRPERSON: Yes, thank you.

ADV REFILOE MOLEFE: Thank you. Please turn to page 2-8-9 of BB10A. On that page appears a memorandum. Who drafted this memorandum?

CHAIRPERSON: I am sorry. Before we get the – we go – we deal with this. Just to go back to the difference of opinion between yourself and Mr Anoj Singh and where Mr Brian Molefe stood one of the – one of the
20 things that you were saying in your memorandum was that if Transnet went along with what Mr Anoj Singh was recommending Transnet would incur an unnecessary expense of about R3-something billion. Is that right?

MS MATHANE EVELINE MAKGATHO: 3.7.

CHAIRPERSON: 3.7.

MS MATHANE EVELINE MAKGATHO: That is – yes Chair. That was on a conservative basis.

CHAIRPERSON: Yes.

MS MATHANE EVELINE MAKGATHO: It was between 3.7 and 4.2.

CHAIRPERSON: Yes.

MS MATHANE EVELINE MAKGATHO: That I used for the purposes of the email I just used 3.7.

CHAIRPERSON: Yes, okay thank you.

ADV REFILOE MOLEFE: And just to clarify that will be 3.7 billion- 3.7
10 billion?

MS MATHANE EVELINE MAKGATHO: In the memorandum, yes.

ADV REFILOE MOLEFE: Yes.

MS MATHANE EVELINE MAKGATHO: *Ja*.

ADV REFILOE MOLEFE: Can you please turn to page 2-8-9? Are you at page 2-8-9?

MS MATHANE EVELINE MAKGATHO: Correct.

ADV REFILOE MOLEFE: That is a memorandum. Do you know who drafted this memorandum?

MS MATHANE EVELINE MAKGATHO: I believe I – I - *ja* it is the
20 Treasury Team be it the Head of Structured Finance or me but *ja* ...

ADV REFILOE MOLEFE: And (intervenes).

MS MATHANE EVELINE MAKGATHO: I would have an input into this as well Chair. So it was me – maybe let me say it was me.

ADV REFILOE MOLEFE: And to who was this directed?

MS MATHANE EVELINE MAKGATHO: To the Transnet Board.

ADV REFILOE MOLEFE: Yes and what was the purpose of this memorandum?

MS MATHANE EVELINE MAKGATHO: The Chair of this memorandum was to request the Board to approve certain financing initiatives. Chair because the Board meets once a quarter. So – and sometimes our initiatives – the conclusion of our initiatives were not properly aligned with the Board. So what we would do is that once we – we know that we have progressed up to so far we would then present to the Board a package of a different financing possibilities and then where there is a
10 facility that needed to be further thrashed out we will then say to the Board we also request approval but subject to A, B, C, D, E, F, G. So in this instance we are seeking approval for this ZAR6 billion funding to be supported by US Exim Bank. The second one is US\$600 million from EDC and Investec. The third one is the \$1 billion AB loan facility from the African Development Bank. The fourth one is the \$2.5 billion
15 year facility with China Development Bank and point – the fifth one is the 6 billion 15 year from the Industrial and Commercial Bank of China and we further go on to say that all of the above facilities are subject to further negotiations between Transnet and the lenders.

20 **ADV REFILOE MOLEFE:** Yes and you then set out the background to this memorandum which we need not go into. Can you then turn to page 2-9-0 of the paginated bundle which is page 2 of the memorandum wherein you discuss the – the objectives of your memorandum and particularly at paragraph 10 of that memorandum? You speak to the CDB 15 year loan.

MS MATHANE EVELINE MAKGATHO: Correct Chair.

ADV REFILOE MOLEFE: Can you please take the Chair through that?

MS MATHANE EVELINE MAKGATHO: Chair paragraph 10 reads as follows:

10 “China Development Bank have indicated there
willingness to fund the CSR and CNR locomotives
and have proposed a 15 year loan of up to \$2.5
billion at a rate of three month liable plus 257 which
is equivalent to three months JIBAR plus 400 basis
points. This pricing is above Transnet’s weighted
cost of debt and Transnet will continue to engage
with CDB to further revise their pricing downward.
In addition to the proposed uneconomical pricing
CDB is also requesting locomotives to be used as
security as well as the inclusion of financial
covenants. The current proposal is too expensive
and includes covenants that Transnet is not offering
to other lenders/investors. Should negotiations fail
Treasury will recommend termination of the
20 negotiation and use other cost effective funding
sources to finance locomotives procured from
China.”

ADV REFILOE MOLEFE: Please read paragraph 11 as well.

MS MATHANE EVELINE MAKGATHO: “In edition Transnet
has received a proposal from Industrial and

Commercial Bank of China of 6 billion for up to 15 years at a rate of three months JIBAR plus 280 for the finance ...”

CHAIRPERSON: That is R6 billion?

MS MATHANE EVELINE MAKGATHO: This is R6 billion Chair.

CHAIRPERSON: Yes.

MS MATHANE EVELINE MAKGATHO: Okay.

10 “...for the financing of the locomotives procured from CSR and CNR. ICBCs pricing is also above Transnet’s weighted cost of debt but more attractive than the CDB offer. Group Treasury will request ICBC to consider reducing the price.”

ADV REFILOE MOLEFE: And do you know whether this memorandum was approved by the Transnet Board.

MS MATHANE EVELINE MAKGATHO: Chair ordinarily the memorandum would have served at Board and when I sent Mr Singh this memo I even attached an email to the memo with the permission of counsel I’d like to go to page 294.

ADV REFILOE MOLEFE: Yes.

20 **CHAIRPERSON:** With my permission.

MS MATHANE EVELINE MAKGATHO: Oh with the permission of the Chair.

ADV REFILOE MOLEFE: With the Chair’s permission.

MS MATHANE EVELINE MAKGATHO: With your permission Chair, I’m sorry.

ADV REFILOE MOLEFE: Thank you Chair.

CHAIRPERSON: Yes what page do you want to go to?

MS MATHANE EVELINE MAKGATHO: Page 294 so Chair, the last paragraph, I wrote,

10 “In addition I’ve opted to leave our internal pricing of Jiba plus 420 as it is a fair price given current market circumstances and the fact that our internal cross-currency pricing methodology for (indistinct) for cross-currency swaps has been tried and tested and proved to be correct. For the purposes of Board submission, it is prudent that we use our internal price that has been tried and tested and proved correct even when we compare with external counter parties otherwise we run the risk of misleading the Board”,

So I sent, as an attachment this memo Chair.

ADV REFILOE MOLEFE: And the date of that email is the 20th of August 2014.

MS MATHANE EVELINE MAKGATHO: Correct Chair.

ADV REFILOE MOLEFE: And was there any response to your email and the attached memorandum...(intervention).

20 **CHAIRPERSON:** Before that Ms Molefe, I see that you – in your second sentence you emphasise that, what is required is Board approval not noting.

MS MATHANE EVELINE MAKGATHO: Oh yes Chair there was a part where they were talking about noting was like, the Board can note and then I referred to clause 5.2.12 of the DOE, that you know –

just...(intervention).

CHAIRPERSON: Yes okay well I thought maybe it was connected with Mr Molefe not approving a note but noting, so you were just saying to them, no this is something that requires Board approval not noting.

MS MATHANE EVELINE MAKGATHO: Correct Chair.

ADV REFILOE MOLEFE: Yes thank you Chair, do you know what happened in respect of this memorandum and your email?

MS MATHANE EVELINE MAKGATHO: Chair, I am not sure of what happened with the memorandum that I drafted but I understand that
10 instead of that memorandum the Board was – the Board pack included this presentation that starts on page 296.

CHAIRPERSON: Yes 296.

MS MATHANE EVELINE MAKGATHO: Chair for CDB, because now Chair this presentation to the Board has a number of financing proposal and I would like to refer you to page 315- 314 of the main pack, page 314 Chair.

CHAIRPERSON: 314?

MS MATHANE EVELINE MAKGATHO: Yes.

CHAIRPERSON: Yes I've got it.

20 **MS MATHANE EVELINE MAKGATHO:** Chair this is a cut and paste from one Regiments presentations. We recommended a – we said it's not cost effective...(intervention).

CHAIRPERSON: That is Group Treasury?

MS MATHANE EVELINE MAKGATHO: Group Treasury and we recommended a termination. In one of the Regiments presentation they

had recommended that we proceed and...(intervention).

CHAIRPERSON: They being who?

MS MATHANE EVELINE MAKGATHO: Regiments.

CHAIRPERSON: Ja.

MS MATHANE EVELINE MAKGATHO: So this page Chair, it is a cut and paste from Regiments it says,

“It is recommended that Transnet take up the proposed loan with the above negotiated terms due to following reason”,

The first one Chair,

10 “The loan is fairly priced and number two, an approved capital repayment approved”,

So here Chair they have negotiated a step-up repayment profile so you start paying a little bit of capital and you step it up as it goes on. So the first bullet point is a misrepresentation, the bullet number five it's another misrepresentation, number six is another misrepresentation. So they table or the GCFO and the GCE table this proposal for Board approval...(intervention).

ADV REFILOE MOLEFE: And was this presentation tabled in the place of your memorandum.

20 **MS MATHANE EVELINE MAKGATHO:** Correct Chair.

CHAIRPERSON: You just said number six, number what is a misrepresentation, I think I would like you to say what – what the point is that you say is a misrepresentation so that whoever reads the transcript knows exactly what misrepresentation you say was made.

MS MATHANE EVELINE MAKGATHO: The first misrepresentation is

that it's fairly priced, we've said it over and over Chair through a number of analysis that it was not fairly priced and the second, still on the same bullet Chair, the second misrepresentation is the comparison of the CDB loan to a bond, it's very wrong Chair it has to be compared to something similar. So...(intervention).

CHAIRPERSON: So is it like onion and banana?

MS MATHANE EVELINE MAKGATHO: So that's number two, the loan grace period, it's fine, the starting point is fine...(intervention).

CHAIRPERSON: The second bullet point is fine you say?

10 **MS MATHANE EVELINE MAKGATHO:** Yes it's okay Chair.

CHAIRPERSON: Ja.

MS MATHANE EVELINE MAKGATHO: And number three it's fine as well.

CHAIRPERSON: Ja.

MS MATHANE EVELINE MAKGATHO: Number four we normally negotiated an equal amortiser because we said that we don't want a re-financing risk because if you bunch your maturities to be re-financed in one particular point in time, you run the risk of not being able to get sufficient back. So they, instead opt to do exactly what we did not
20 prefer but I can give it to them Chair and say, ag it's fine.

CHAIRPERSON: Yes okay.

MS MATHANE EVELINE MAKGATHO: The second last bullet Chair is another big misrepresentation.

CHAIRPERSON: That is now bullet point five.

MS MATHANE EVELINE MAKGATHO: Yes now they are talking about

the pricing estimate is between 30 to 40 bases points, I don't know what that means Chair because if you are presenting to Board you must say Board, this will cost us an X amount or so much percentage points, so again they are leaving that out and let's say in the previous page Chair again it is not explicit in terms of where this will be based – will be priced in terms of the CDB structure and again the last point Chair, the memo says CDB agreed to transact the cross-currency swap and we know that it is not true Chair. So they, in their wisdom Chair, they replaced the good treasury memo – it's not a problem Chair if your
 10 superiors replace memos and amend and enhance that, it's normal procedure, there's nothing wrong with that, so I wouldn't have a problem with that, even if they converted and went to a PowerPoint it's not a problem. My major problem is that they replaced that but instead they include this document which is littered with misrepresentations.

CHAIRPERSON: So you say this document was attached to the memo that you drafted?

MS MATHANE EVELINE MAKGATHO: I don't think the memo served, I think instead of that memo, this is what served at Board.

CHAIRPERSON: Yes because the memo that you had prepared
 20 reflected your motivation and your position which was not what Mr Anoj Singh would go along with and also you think Mr Molefe would not go along with.

MS MATHANE EVELINE MAKGATHO: Correct Chair.

CHAIRPERSON: Okay.

ADV REFILOE MOLEFE: Yes and you have summarised your criticism

of what is set out in the presentation at paragraph 138 and 139 of your statement which you have dealt with in detail, do you know what then happened pursuant to Mr Singh representing this presentation along with other documents to the Board?

MS MATHANE EVELINE MAKGATHO: Chair I believe that the transaction was finalised and executed because we have – the signed agreement Chair, as the last attachment MM40, I won't go into that, it was signed after I had resigned, so Chair this agreement it was executed based on a number of misrepresentations to the Board.

10 **CHAIRPERSON:** Was it in accordance with the positions that Mr Anoj Singh took on certain issues with which you did not agree?

MS MATHANE EVELINE MAKGATHO: Chair, the pricing was still (indistinct) plus 257, the action fee was still 118, the financial governance are included in this, I didn't go into detail in the other clauses that were not normal as far as I was concerned, but I'm not going to analyse this.

CHAIRPERSON: But did you ever see what was placed before the Board and whether – or did you ever see that the Board had approved or is that something you never saw.

20 **MS MATHANE EVELINE MAKGATHO:** The Board did approve Chair.

CHAIRPERSON: Oh but did you ever get to know what was placed before them in regard to this as a matter of fact as opposed to just thinking maybe they didn't put this or they didn't put that?

MS MATHANE EVELINE MAKGATHO: Chair I believe the legal team was going or is going to confirm that this presentation that I've just

gone through, is indeed what was tabled at Board.

CHAIRPERSON: And maybe they might also be able to establish that your memo was never put before the Board.

MS MATHANE EVELINE MAKGATHO: Correct Chair.

CHAIRPERSON: Okay thank you.

ADV REFILOE MOLEFE: Yes and you say that the CDB term facility agreement was then signed.

MS MATHANE EVELINE MAKGATHO: Correct.

ADV REFILOE MOLEFE: And the date there is the 4th of June 2015.

10 **MS MATHANE EVELINE MAKGATHO:** Correct Chair

ADV REFILOE MOLEFE: You say that this took place after you resigned.

MS MATHANE EVELINE MAKGATHO: Correct Chair.

ADV REFILOE MOLEFE: Why did you resign from Transnet?

MS MATHANE EVELINE MAKGATHO: Chair the environment was too toxic for me, I felt that I was no longer safe around that environment, I...(intervention).

CHAIRPERSON: Physically safe that is.

20 **MS MATHANE EVELINE MAKGATHO:** Physically safe Chair, I felt that I would be harmed, I felt that my – I worked on the assumption, and I think Chair I was right, that all my phones were bugged, I felt – I sensed as if I was being monitored, I truly and honestly believed that possibly I was being monitored, all my movements were monitored, even after I'd resigned Chair, I could sense that I'm still being monitored and Chair my blood pressure was just deteriorating Chair

and it was just not – and Chair I came to understand, though when I resigned I came to understand this was finalised after I resigned but I came to understand that this is going to be signed whether I like it or not and I also came to understand that one particular point in time there was a meeting, I don't know who was there but I believe Salim Essa was part of that meeting wherein I was being discussed as a stumbling block. I don't know what the resolution of that meeting was, chair I also – I'm not sure whether this is true or not but I was also made to believe that there might be an involvement of the Taiwanese mafia in this transaction and Chair that information totally paralysed me because in my engagement there were these two characters, one was a Taiwanese lady and another one, her name is Erica Lei and the second one is a Chinese guy, his name is Semalie. These two characters were always around even when we were in Beijing and even – we even – I think it was in 2013 when we doing tours for the project of the proposed new Durban Dig Out Port, these two characters were there and now Chair, when they said – when someone said the possibility of Taiwanese mafia, and knowing there's a Taiwanese lady who's always in the picture, I kind of thought it's a possibility, and Chair it was so bad in Transnet that if I opened a bottle of water and for a reason or so I turned my head I wouldn't drink this water again because I was afraid that I would be poisoned. I was afraid that my car might be tampered with, there was a time when I had problems with my car and my car was failing at that point in time, I thought it was tampered with and Chair – and we were fighting so much that swear words, you know, became the

order of the day, they would give it to me, I would in turn give it back to them times seven, and it's not a good environment to be in and therefore Chair, in as much as I enjoyed my job, I loved my job there was so many things that we could have done better, the team was great, Chair, the team that I worked with is a group of fantastic men and women but Chair there was just this environment that the GCFO and caused for us in treasury and the GCE was happy to pretend as if it's not happening and I don't know if it was the culture then, Chair there were few people that, I mean, I was – I think I was one of those

10 troublesome officials and Chair once you get to that point it's better to just call it quits and just ja.

CHAIRPERSON: You took the view that this GCFO took you as a troublesome person.

MS MATHANE EVELINE MAKGATHO: Yes Chair, I just didn't care about that to be honest I didn't care what he thought about me.

CHAIRPERSON: Yes.

MS MATHANE EVELINE MAKGATHO: What I cared about was that it was - how it was impacting on my health because my blood pressure, Chair was very high it was around 190/110-115 and then when I took

20 blood pressure medication it would drop and I would be fainting so there was something not right within that and I just felt that it was not worth it to be honest and it's at that point that I felt that they can do whatever that they want but I have made my point and Chair at some point I had a meeting with my deputies because I felt that it was also important that I tell them what is happening and Chair up until that

particular point in time we were fortunate because I was fighting so much that though you know certain things were happening in other departments, on our floor there were no shenanigans happening and I told my deputies because I didn't want any of them to, in future, claim not to have known. So I was very explicit – there are too many things that are happening in the Carlton Centre but I want you to know that I will not allow certain things to happen on the 43rd floor, that's where the Group Treasury was and Chair once you get to a point where you are no longer sure who to trust and if someone smiles a lot with a nod

10 you start to suspect them, which is also not right, it's not healthy. So I thought in the best interest of my family and in the best interest of my health it's better for me to resign and maybe Chair, you may ask why did I not scream enough and because I felt that I was being monitored, I felt that my life was at risk – and Chair I have four young kids, I was not going to play super woman. I had made relevant calls to those that were outside in terms of trying to brief them what was happening and at some point someone suggested that I must meet one of the top six of the ANC, I felt it was not necessary and the company secretary tried to arrange a meeting with the Chairperson of the Board, Chair at that

20 point I just felt, you know, what I – I'm just a junior in the organisation and I felt that the Chairperson of the Board knows much more than me and I just felt that there was nothing new that I was going to tell him in any event so I declined that meeting. So, ja it was rough Chair, those were the times but I took a decision that it's okay I will resign, ja so that was it and I resigned.

ADV REFILOE MOLEFE: And do you know whether there were any other employees whether it be in the Treasury Department or Transnet as a whole who also resigned due to the same or similar reasons as yours?

MS MATHANE EVELINE MAKGATHO: Chair after I left I believe a new Treasurer was appointed and I believed he was perfect for the mandate and I believe because of the mandate execution certain officials had to hit the highway.

CHAIRPERSON: So he or she left as well?

10 **MS MATHANE EVELINE MAKGATHO:** No the new Group Treasurer Chair was a compliant official, compliant in quotes. So I know that later on the head of Structured Finance resigned and some of the funding senior officials resigned and I also know that the head of cash management resigned, the head of debt management resigned or was offered a VSP, I don't know, I also know that some of the dealers resigned, I also know that one of the Treasury accountant who's a CA resigned. So I'm not sure Chair but I know that there are a number of officials within the treasury who resigned whether they are ten or more or less I don't know Chair.

20 **CHAIRPERSON:** Was your – is your understanding that their resignation was – their reasons for resignations were largely connected to what you had found unacceptable that made you leave or could it be individual circumstances or both?

MS MATHANE EVELINE MAKGATHO: I believe so Chair.

CHAIRPERSON: You believe that it's connected...(intervention).

MS MATHANE EVELINE MAKGATHO: There is connection between their resignation and what was happening at that point in time.

CHAIRPERSON: Yes okay.

ADV REFILOE MOLEFE: And just yesterday you said you resigned on the 30th of November 2014.

MS MATHANE EVELINE MAKGATHO: Correct Chair.

ADV REFILOE MOLEFE: Thank you Chair, I have no further questions for Ms Makgatho.

CHAIRPERSON: Yesterday at some stage you had asked her to talk
10 about Sunday meeting from which she was excluded and I intervened – I interrupted you and asked a certain question, I don't know whether you did go back to that question, I don't seem to remember, do you remember...(intervention).

ADV REFILOE MOLEFE: About the meeting that took place on Sunday with Regiments being in attendance?

CHAIRPERSON: Do you remember or maybe we should...(intervention).

ADV REFILOE MOLEFE: The question was whether she was invited or in attendance. Is that what you recall?

20 **CHAIRPERSON:** That meeting – you know which meeting I'm talking about?

MS MATHANE EVELINE MAKGATHO: Yes Chair, I remember I think it's when I was sharing that in some instances meetings would happen and the Regiments team and the GCFO and some of my team members would be discussing issues around financing, risk management,

structuring, hedging, all of those which fall within the ambit of Group Treasury and I would not be invited so we were dealing around the issues around that I felt that I was not wanted to negotiate the supplier contract.

CHAIRPERSON: Okay so that Sunday meeting was just an example of those meeting, okay, no that's alright. Thank you very much for having come to assist the Commission with your evidence, we appreciate it very much.

MS MATHANE EVELINE MAKGATHO: It is my pleasure Chair.

10 **CHAIRPERSON:** We – you may be asked to come back and I've note of that if you're asked, you will come back thank you very much we appreciate that you took the trouble to come.

MS MATHANE EVELINE MAKGATHO: I thank you Chair.

CHAIRPERSON: Thank you very much and you are excused. We are ready for the next witness, are you going to need a five-minute adjournment to put anything in order or what do you prefer.

ADV PHILLIP MOKOENA SC: Yes Chair for the change of guard, yes.

CHAIRPERSON: Yes okay alright, we'll – and five minutes is fine?

ADVOCATE PHILLIP MOKOENA SC: More than sufficient Chair.

20 **CHAIRPERSON:** Oh alright, we'll adjourn for five minutes, we'll resume at five to twelve, we adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Mr Mokoena.

ADV PHILLIP MOKOENA SC: Mr Chair we are ready.

CHAIRPERSON: You are ready?

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: We know that we have delayed your starting but it was necessary.

ADV PHILLIP MOKOENA SC: It is Chair. What is important it is what the witness must convey?

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: Yes before the commission.

CHAIRPERSON: Oh I hope the witness also understands?

10 **ADV PHILLIP MOKOENA SC**: Yes Chair we do.

CHAIRPERSON: Thank you. Alright you may proceed.

ADV REFILOE MOLEFE: Mr Chair the next witness is Mr Shiwa Elijah Mazibuko. We have complied Mr Chair with the Rule 3.3 notices as the relevant notices were dispatched to implicated parties. He is an official of the Reserve Bank and he is represented by a legal team. Maybe it will be opportune for now Chair to allow them an opportunity to place themselves on record?

CHAIRPERSON: Ja let us do that.

ADV ROSS HUTTON: Chair I am Ross ...

20 **CHAIRPERSON**: Please come through here.

ADV ROSS HUTTON: Sorry Chair. Ross Hutton from the Johannesburg Bar I am assisted by Michelle Le Roux also from the bar on instructions of Mr Bernard Hotz of the firm Werksmans.

CHAIRPERSON: Thank you.

ADV PHILLIP MOKOENA SC: And Mr Chair for the purpose of leading

the evidence of Mr Mazibuko we will be referring to a file which is already placed before you Chair. We have taken the liberty of marking it as Exhibit BB12 subject of course to the Chair's directions.

CHAIRPERSON: Yes the lever arch file containing Mr Mazibuko's statement will be marked Exhibit BB12.

ADV PHILLIP MOKOENA SC: Thank you Chair. Mr Mazibuko Chair has submitted two witness statements. The one statement is a redacted statement and the other one it is un-redacted. We did so Chair because we wanted to respect and preserve some confidential
10 information you know arising from his own statement. We are however Chair in possession of the un-redacted version should it be required Chair we will definitely place it before the Chair. We also deem it necessary and prudent Chair before Mr Mazibuko takes any oath to place his evidence into proper context and also to locate it within this stream of evidence which is being led you know on behalf of Transnet. Chair Mr Mazibuko is from the Reserve Bank. His evidence Chair must be considered in the light of the evidence already given by three previous witnesses. And those witnesses Chair is Mr Sinton you will recall from Standard Bank and Mr Van Der Westhuizen and Mr
20 Sedumedi from the MNS. You would recall Chair that those witnesses also testified on issues relevant to Regiments, Homix and how the monies were actually paid to those institutions. Mr Mazibuko will provide answers to the questions that maybe are in our minds which are three in nature Chair. The first one will be what happened to the funds that Neotel and Regiments paid to Homix? You know Chair pursuant to

the contracts that were awarded to these two companies by Transnet and the second one Chair would be you know who ultimately benefitted from the so called facilitation or success fees that were paid into Homix's account? You know and other companies which a number of witnesses were saying that were merely fronts in order for this money to find its way elsewhere. And thirdly Chair it might be the question as to whether was Homix merely used as a vehicle to conceal monies which were received from suspicious transactions. And as and when we traverse that evidence Mr Chair maybe some of the questions might
10 be answered by Mr Mazibuko through whatever they came across through their investigation as SARB. Chair I am doing this also minding the time I am not sure whether it is already one o'clock or should I proceed Chair?

CHAIRPERSON: Alright ja well when I said we would resume at five to I think I did not appreciate that it was five to one.

ADV PHILLIP MOKOENA SC: Yes Chair I was told afterwards that the Chair said it was five to twelve and I thought that maybe as...

CHAIRPERSON: I believe that.

ADV PHILLIP MOKOENA SC: I thought that maybe as you walk in I
20 must say to you that maybe it is the time to adjourn for lunch.

CHAIRPERSON: Yes, yes. No I am sorry I think I got my time wrong.

ADV PHILLIP MOKOENA SC: Yes Chair.

CHAIRPERSON: From what I had been told yesterday it would seem that we will not finish this witness evidence today. Is that correct?

ADV PHILLIP MOKOENA SC: Chair we might ...

CHAIRPERSON: Or is there a chance?

ADV PHILLIP MOKOENA SC: If we stretch it up until five I think we might.

CHAIRPERSON: Hm.

ADV PHILLIP MOKOENA SC: I have restricted the evidence in such a way that we should accommodate today.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: But I think we should be able to comfortably finalise it Chair.

10 **CHAIRPERSON**: Well the – normally you know I would go to five but my plans have changed. I have got to be in Durban. I was not meant to be in Durban and I catch a six o'clock flight.

ADV PHILLIP MOKOENA SC: Chair let us see how we progress up until four o'clock.

CHAIRPERSON: Let us see how we progress.

ADV PHILLIP MOKOENA SC: Yes and then we can you know at that – at that appropriate stage maybe assess where we are then we can...

CHAIRPERSON: Yes, yes,

ADV PHILLIP MOKOENA SC: You know deal with the way forward as
20 to how we deal with the evidence of Mr Mazibuko.

CHAIRPERSON: I do not know – it might not help to try and shorten the lunch hour. I do not know what do you think? If we ...

ADV PHILLIP MOKOENA SC: I am told that it might help Chair but I am quite comfortable that...

CHAIRPERSON: Ja.

ADV PHILLIP MOKOENA SC: Having restructured what I think is the crucial aspects of his evidence.

CHAIRPERSON: Yes, yes.

ADV PHILLIP MOKOENA SC: I might seem to be able ...

CHAIRPERSON: You might be able to...

ADV PHILLIP MOKOENA SC: To do it within that time but if...

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: There is a way to shorten the lunch remember that other people might have to go out for lunch.

10 **CHAIRPERSON:** Yes.

ADV REFILOE MOLEFE: And it might also impact on them so I am quite wary?

CHAIRPERSON: Okay.

ADV PHILLIP MOKOENA SC: To say whether or not it would be.

CHAIRPERSON: Okay maybe let us leave it. I was thinking whether if we say we come back at quarter to but it may be that in the end it – maybe let us leave it as it normally is and let us see how we go.

20 **ADV PHILLIP MOKOENA SC:** I have seen teams losing and winning games within fifteen minutes Chair. Maybe that fifteen minutes might be critical.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: And we might just be able to squeeze the evidence.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: So you think maybe let us try that?

ADV PHILLIP MOKOENA SC: At quarter to two.

CHAIRPERSON: Okay. That is fine then we will adjourn for lunch and resume at quarter to two. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: You may proceed Mr Mokoena.

ADV PHILLIP MOKOENA SC: Thank you Mr Chair.

10 **CHAIRPERSON**: Thank you.

ADV PHILLIP MOKOENA SC: Mr Chair simply to recap some of the crucial evidence that was adduced before you which becomes relevant to the testimony of Mr Mazibuko. You will recall Chair that Mr Sinton previously gave evidence that the advisory firms - McKinsey and Regiments – they did strike a deal with one Mr Salim Essa and Mr Kuben Moodley in terms of which Mr Essa and Mr Moodley would be paid the so called introductory or the facilitation fees in order – where – where it was – wherein they were facilitating the awards of – you know - contracts by Transnet to McKinsey and Regiments and Mr Essa
20 and Mr Moodley would then receive those introductory fees through their own vehicles in this regard it was Homix and Chivita. You would recall that that is what Mr Sinton told you. This appeared to be a *modus operandi* Chair as you have heard from Mr Van Der Westhuizen who also testified before the Chair that – and dealt with the spurious contracts between Neotel and Homix in terms of which – you know -

funds were also paid to Homix for facilitating those dubious contracts. Also relevant Chair was the evidence of Mr Sedumedi who testified about the agreement between Mr Salim Essa and China South Rail wherein also he used his company Tequesta in order to – to obtain a substantial fee of what was termed a success fee Chair and we want to locate the evidence Mr Mazibuko independent from him being an employee of Transnet and simply to talk about the experiences and investigations that were conducted by SARB in relation to Homix Mr Chair. Mr Chair we are ready to lead the evidence of Mr Mazibuko.

10 May the witness be sworn in?

CHAIRPERSON: Thank you.

REGISTRAR: Please state your full names for the record.

MR SHIWA ELIJAH MAZIBUKO: Shiwa Elijah Mazibuko.

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

MR SHIWA ELIJAH MAZIBUKO: No, I do not have.

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

MR SHIWA ELIJAH MAZIBUKO: Yes, it does.

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

MR SHIWA ELIJAH MAZIBUKO: So help me God.

MR SHIWA ELIJAH MAZIBUKO (duly sworn, states)

REGISTRAR: Thank you.

CHAIRPERSON: Thank you.

ADV PHILLIP MOKOENA SC: Thank you Chair. Mr Mazibuko in leading your testimony we will be referring to a file that has been placed before you. You will see that it has been marked EXHIBIT B12. Are you having the right file before you?

CHAIRPERSON: It will be marked on the spine as B12.

ADV PHILLIP MOKOENA SC: On the spine you will see that it has been marked BB12.

CHAIRPERSON: On the outside on the spine – is it not marked BB12?

10 **CHAIRPERSON:** It looks like it is not marked.

ADV PHILLIP MOKOENA SC: If you turn – if you turn to the file itself there must be a cover page and the first page ...

CHAIRPERSON: But I am sure that he has got the right file.

ADV PHILLIP MOKOENA SC: I hope so Chair.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: Yes if my assistant (intervenes).

CHAIRPERSON: Did you want to check that?

ADV PHILLIP MOKOENA SC: Just to check that Chair that is the right file ...

20 **CHAIRPERSON:** And then it must be marked ...

ADV PHILLIP MOKOENA SC: Becue there have been different – two witnesses (intervenes).

CHAIRPERSON: And it must be marked, *ja*.

ADV PHILLIP MOKOENA SC: That is fine. If you turn to – is that one marked Mr Mazibuko?

MR SHIWA ELIJAH MAZIBUKO: It is marked BB12.

ADV PHILLIP MOKOENA SC: BB12 yes and maybe while you are still in that file I just want to make sure that we are – we will be singing from the same hymn book me and you. Let us go to ...

CHAIRPERSON: Will he need the other one or should he put it away?

ADV PHILLIP MOKOENA SC: He would need another one Chair.

CHAIRPERSON: Oh, he will need it okay.

ADV PHILLIP MOKOENA SC: It is the one that is prepared there.

CHAIRPERSON: Alright.

10 **ADV PHILLIP MOKOENA SC:** We for introductory purposes Chair we will simply ...

CHAIRPERSON: Yes Mr Mazibuko you want to say something?

MR SHIWA ELIJAH MAZIBUKO: Yes Chair. That the ones that I have got I have made some notes somewhere. So I might be lost sometimes but I believe that

CHAIRPERSON: Oh.

MR SHIWA ELIJAH MAZIBUKO: It is similar.

CHAIRPERSON: Oh, okay.

MR SHIWA ELIJAH MAZIBUKO: Yes.

20 **CHAIRPERSON:** Well if there is something that will help you - you can look at that one and still – but still use this one for all the page ...

MR SHIWA ELIJAH MAZIBUKO: Okay.

CHAIRPERSON: Numbers because we do not want to talk about different pages.

ADV PHILLIP MOKOENA SC: Noted Chair.

MR SHIWA ELIJAH MAZIBUKO: Yes.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: Mr Mazibuko go to page 1 of that document. You will see that the pages are marked on the top right hand side.

MR SHIWA ELIJAH MAZIBUKO: Yes.

ADV PHILLIP MOKOENA SC: Are you able to identify that document for us?

MR SHIWA ELIJAH MAZIBUKO: Yes. Yes, Chairperson.

10 **ADV PHILLIP MOKOENA SC:** What is that document?

MR SHIWA ELIJAH MAZIBUKO: So the document is my statement. It is the first page of my statement.

ADV PHILLIP MOKOENA SC: Yes. Maybe let us – because I am told that the numbering are the same. Let us now resort to your file. Let us use your file so that you are not lost and then go to page 1.

MR SHIWA ELIJAH MAZIBUKO: Page 1 will be – just apologise – will be here because I separated my statement from ...

ADV PHILLIP MOKOENA SC: From the annexures.

MR SHIWA ELIJAH MAZIBUKO: From the annexures, yes.

20 **CHAIRPERSON:** Do not get lost.

ADV PHILLIP MOKOENA SC: Make sure that we are talking – we are referring to the same documents. Now if you go to page 30 – 3-0 ...

MR SHIWA ELIJAH MAZIBUKO: The conclusion.

ADV PHILLIP MOKOENA SC: Yes but are you able to identify the signature that appears in that document?

MR SHIWA ELIJAH MAZIBUKO: Yes Chairperson.

ADV PHILLIP MOKOENA SC: Whose signature is that?

MR SHIWA ELIJAH MAZIBUKO: It is mine.

ADV PHILLIP MOKOENA SC: Yes. Now are there any corrections which you wish to effect from your statement?

MR SHIWA ELIJAH MAZIBUKO: There was a typo with regard to some figures in terms of (intervenes).

CHAIRPERSON: Well you can look – you can look at your other file if that will make you find it easier ...

10 **MR SHIWA ELIJAH MAZIBUKO:** Okay.

CHAIRPERSON: And then come to this one (intervenes).

ADV PHILLIP MOKOENA SC: Let me refer you to page 25.

MR SHIWA ELIJAH MAZIBUKO: Yes page 25 the crediting to the Standard Bank's Homix account.

ADV PHILLIP MOKOENA SC: Yes and – and that is the only page that you wish to effect some corrections. Am I correct?

MR SHIWA ELIJAH MAZIBUKO: Yes Chairperson. The ...

CHAIRPERSON: Is it page 5?

ADV PHILLIP MOKOENA SC: 2-5.

20 **MR SHIWA ELIJAH MAZIBUKO:** 2-5.

CHAIRPERSON: 25.

ADV PHILLIP MOKOENA SC: 2-5 – you will see Chair it is – begins with paragraph or with a number 7.2 and it says credits.

CHAIRPERSON: Ja, okay.

ADV PHILLIP MOKOENA SC: And there is an amount that Mr Mazibuko

already effected the change on Mr Chair and in due course I will beg leave to hand in a new page. It is just one number.

CHAIRPERSON: Yes, okay.

ADV PHILLIP MOKOENA SC: That has been corrected.

CHAIRPERSON: Hm.

ADV PHILLIP MOKOENA SC: Other than – other than that correction Mr Mazibuko do you confirm the contents of your statement to be both true and correct?

MR SHIWA ELIJAH MAZIBUKO: I do Chairperson. I do confirm.

10 **ADV PHILLIP MOKOENA SC:** Yes.

CHAIRPERSON: Thank you.

ADV PHILLIP MOKOENA SC: Now will you please share with the Chair as to where are you currently employed?

MR SHIWA ELIJAH MAZIBUKO: I am employed at the South African Reserve Bank. I am the Head of the Financial Surveillance Department.

ADV PHILLIP MOKOENA SC: And in that capacity what are your responsibilities and functions?

20 **MR SHIWA ELIJAH MAZIBUKO:** So I am responsible for heading the department that is responsible for implementing and administering exchange controls on – on behalf of the Minister of Finance.

ADV PHILLIP MOKOENA SC: Yes and then what are your qualifications?

MR SHIWA ELIJAH MAZIBUKO: I have a BCom Accounting, MBA and Advanced Diploma in Treasury and International Trade Finance.

ADV PHILLIP MOKOENA SC: Alright. Now am I correct that your statement was prepared in response to a summons which was received by SARB from the Commission. Am I correct?

MR SHIWA ELIJAH MAZIBUKO: You are correct Chairperson.

ADV PHILLIP MOKOENA SC: Now may I refer you to page 2 and paragraph 3 of your statement and please take us through the information which was sought by the Commission in respect of that summons. Are you on page 3?

MR SHIWA ELIJAH MAZIBUKO: Yes I am on (intervenes).

10 **ADV PHILLIP MOKOENA SC:** On page 2 paragraph 3?

MR SHIWA ELIJAH MAZIBUKO: Yes.

ADV PHILLIP MOKOENA SC: Please take the Chair through that information in 3.1 and 3.1.

CHAIRPERSON: I am sorry. I am sorry. Mr Mokoena you talked about replacing one of the pages in this statement. It may be that page 2 should also be replaced if possible. You see at the top there you have got conclusion and then introduction then you have got those numbers which I believe belong to the index.

ADV PHILLIP MOKOENA SC: Yes Chair.

20 **CHAIRPERSON:** So ...

ADV PHILLIP MOKOENA SC: I see there ...

CHAIRPERSON: It might be necessary to make the index to have its own pages that are separate from these if possible. So that one does not get confused.

ADV PHILLIP MOKOENA SC: I understand Chair.

CHAIRPERSON: *Ja.*

ADV PHILLIP MOKOENA SC: Even though they flow from page 1 if you see from page 1 you have the contents and I see that from the contents it goes then ...

CHAIRPERSON: Hm.

ADV PHILLIP MOKOENA SC: Up until page 2 but I think there might be a midway ...

CHAIRPERSON: *Ja.* If it is easy ...

ADV PHILLIP MOKOENA SC: To separate.

10 **CHAIRPERSON:** If it is easy to sort it out.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: That should be done. If – if there is a problem then we can live with it.

ADV PHILLIP MOKOENA SC: We have made a note on that Chair.

CHAIRPERSON: *Ja.*

ADV PHILLIP MOKOENA SC: Definitely.

MR SHIWA ELIJAH MAZIBUKO: So Chairperson the – under page 2 section 3 is where the summons from the Commission required the Reserve Bank to present certain information to it.

20 **CHAIRPERSON:** That is paragraph 3?

MR SHIWA ELIJAH MAZIBUKO: Yes.

CHAIRPERSON: Okay.

MR SHIWA ELIJAH MAZIBUKO: And under 3.1 it – and open quotes:

“Report and all supporting documentation of the
inspections and/or investigations conducted by the

South African Reserve Bank in terms of the Currency and Exchanges Act 9 of 1933 read with the Exchange Control Regulation in respect of the company Homix (Pty) Ltd. Company registration number 201217695107 (Homix). Its Directors namely Mr Taufiq Jakoet Haswell, Mr Yakub Ahmed Suleiman Bhikhu and Mr Mogamat Shaik Adams.”

And then on 3.2 open quotes:

10 “The South African Reserve Bank analysis of the flow of funds on bank accounts held by Homix and/or its Directors and/or related parties both domestically and internationally including any suspicious and irregular domestic cross border transactions.”

ADV PHILLIP MOKOENA SC: And that is the purpose of your evidence today. Am I correct?

MR SHIWA ELIJAH MAZIBUKO: Yes.

ADV PHILLIP MOKOENA SC: Now you were also requested by the
20 Commission to testify on the following exchange transactions involving Homix.

MR SHIWA ELIJAH MAZIBUKO: Yes.

ADV PHILLIP MOKOENA SC: May I refer you to page 4 of your statement?

CHAIRPERSON: Mr Mazibuko just make sure that you are not speaking

from too far from the microphone and do not lower your voice too much so that everybody hear your evidence. Thank you.

ADV PHILLIP MOKOENA SC: Chair I have just referred the witness – Mr Mazibuko – to page 4. You will see Mr Mazibuko that from page 4 at paragraph 6 onwards you tell us about the South African Reserve Bank Exchange Control and you also deal about a department referred to as FinServe. Am I correct?

MR SHIWA ELIJAH MAZIBUKO: Yes Chairperson.

ADV PHILLIP MOKOENA SC: Could you please – I mean in your own
10 words – simply tell the court – the Chair where does one locate this department within SARB and what are the functions of this department?

MR SHIWA ELIJAH MAZIBUKO: I would like to maybe give a brief background of Exchange Control before I put the structure of the department from ...

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: That is fine, yes.

MR SHIWA ELIJAH MAZIBUKO: If the Chairperson allows to indulge me. Just to give a – because for us to understand where Exchange Control emanated from it came historically as we alluded to – you know
20 – the summons where it refers to Currency and Exchanges Act of 1933. It is an old Act and that is when – it is a foundation of Exchange Control where it gives powers to the President in terms of issues that he can be able to take decisions with regard to currency matters, banking matters and exchanges. So that was a foundation and it was prior to Exchange Control being introduced. I might say even around

the world because as I proceed you will see that the next year when Exchange Control was introduced was in 1939 under the Sterling Bloc. South Africa was still part and parcel of the Sterling Bloc or what is called now a Sterling Area and it was at the start of the Second World War. I think we need to note this that there was a crisis and you will see as I proceed how actually Exchange Control has evolved especially during crisis periods to help. So South Africa was part of the Sterling Bloc during the start of the Second World War and they formed the Sterling Bloc to protect and conserve the limited currency – because

10 that is what happens during the War that – you know – countries will not be able trade and be able to accumulate currency. So South Africa, Australia a number of countries Bahamas and all that were part of that – of that bloc and then the War continued and when the – the War ended most of the even Australia 1967 left the bloc. I think even the British Empire in the early 70s – you know – left the bloc but South Africa continued to actually apply on a limited scale of course – these exchange controls with the rest of the world into the 1950s and then come 21 March 1960 another crisis in the country. The Sharpeville Massacre that led to the huge outflows of money out of the country and

20 the regime of the time had to do something to try and stem the flows and one of the things they could do was to actually have the regulations put in place to be able to prohibit South African residence to be able to actually take money out of the country and hence it was then when you took about Exchange Control Regulations of 1961 it was just after the upheaval of Sharpeville in 1960 and then from they – they

evolved because these are the regulations – regulations by nature they do have the force of the law. They are not the law but they are actually created under statutes and therefore they are enforceable. They even contain penalties for violations. Now – and then South Africa proceeded with them – you know. The – the issue of that past but the economy after that was – was weakened because it was starting to have sanctions and problems in terms of the payment. Up to the point of 1985 where we had another crisis again. Where we had what is called a debt standstill where the balance of payment come – came

10 under immense pressure. So South Africans external position was very much precarious that we could not be able to pay our external debt and the president of the time - if you remember it was from FW to PW. I mean from PW to FW - where actually a debt standstill was declared in 1985. It was uplifted in 2002. So during that period South Africa could not be able to pay the external debt to non-residence and then – you know – we continued again with the Exchange Control but I must highlight that – you know – there was a Commission in 1979 which I left but – De Kock Commission on Exchange Control – where it was highlighted and recommended that there must be liberalised overtime in

20 a gradual approach. So it should not be a big bang. So they were still there but liberalisation process because South Africa's economy and the structure recon was still very weak trying to build an economy and trying to protect and build South African Reserves at that particular time. So – so they were maintained and then as I have alluded to 1985 and then came 1994 the new democratic Government took power but

the structure of the economy was still not very strong but a decision was taken now to actually adopt the regular relaxation over the years that it cannot be a big bank. Look at the structure of the economy macro, financial stability of the country and be able to take it along as the country's position improves and then from there in 1995 it is when actually non-residence never had exchange controls. I do not want to go into details because there was quite some development like the financial rand can take me ...

CHAIRPERSON: *Ja.*

10 **MR SHIWA ELIJAH MAZIBUKO:** The whole day.

CHAIRPERSON: No, do not.

MR SHIWA ELIJAH MAZIBUKO: The whole day to – to explain this.

CHAIRPERSON: Yes.

MR SHIWA ELIJAH MAZIBUKO: And then - and then came the 2008 crisis – financial crisis. You know – we not – the Exchange Control was not directly involved but its impact - I think – was felt in a sense that our banks at that particular time could not hold foreign assets except with an approval of course. We had allowed some banks to go off shore to set up foreign branches and all that and during the financial
20 crisis they were the most affected and obviously there was a term that was called toxic assets that actually – that was not only peculiar to South African assets. It was all over the world that you had to actually out of this crisis how are you going to deal with that and we approached Exchange Control to say can we bring some of this onto the SA Balance Sheet which you could not allow that and we allowed you to

go off shore to expand your operations and all that but it cannot have a recourse to South Africa that could impact – you know – the South African position at that particular time. So – so I am just going through the crisis and the benefit of this and then but during the 2008 the gradual process of liberalisation had taken place. If I make just one example that before 1997 a South African individual could not transfer money out of South Africa. In 1997 the first amount was R200 000 – you know – per life time you could take it out. This amount was increased over the years. Now you can take about R10 million per

10 year. So it just shows the evolution of the system. How it has to be liberalised, get rid of red tape and all that. Now coming to the Reserve Bank. This function is delegated to the South African Reserve Bank. This department that I am heading sits within the Reserve Bank. The Minister of Finance is a custodian of the Exchange Control Policy. We act in the advisory capacity because we deal with the market and all that but all policy issues are taken by the Minister of Finance and then by delegation of powers in terms of Exchange Control Regulations 22E. This has been delegated. These powers that have been given to Treasury has now been delegated through the provisions of Exchange

20 Control Regulations to the Governor of the Reserve Bank to the Deputy Governors, Head of Financial Surveillance and Divisional Heads and Officials designated to deal in these issues. So it is situated there as a delegated function. Within this department there are six divisions. I am not going to focus on – on all the divisions but the main division especially for my submission today is the Compliance and Enforcement

Division. So that is a division that will actually be able to deal with any contraventions of Exchange Control that are brought to its attention. Now what happens in that process is that Exchange Control Contraventions we get by actually going through – you know – a number of processes sometimes within the department because we have got what you call a cross border system that captures information because before you can be able to be called an authorised dealer – maybe I must also just touch on that to say that we actually give authorities to commercial banks. A commercial bank when it is

10 established in the past it used to go to the – what was called a bank supervision and then once it has got a licence it will come to us to request to trade in forex. You cannot in South Africa just come and trade in forex. The regulated asset that – asset class that we need to deal with.

ADV PHILLIP MOKOENA SC: Maybe before you go there maybe educate us as to what are the instruments that would ordinarily govern – you know – exchange control. So that when you now – you know – testify about the other issues they can neatly tie ...

MR SHIWA ELIJAH MAZIBUKO: So ...

20 **ADV PHILLIP MOKOENA SC:** With that evidence, yes.

MR SHIWA ELIJAH MAZIBUKO: The whole instrument is – is the Exchange Control itself – if I may put it that way Chairperson because as I spoke about the precarious external position the South African Government used the instrument which was called Exchange Control to deal with the non-payment of debt and all that. Now – so the Exchange

Control Regulations which then what we actually did to the banks after they have been authorised we gave them authority. We gave them permission. We gave them limits for which to be able to deal with their clients without coming to the central bank. That was meant to actually reduce red tape because in the past – you know – most of the applications were coming – now you have got banks that have been authorised. As I say that when you are a commercial bank you cannot just be authorised. Now there is a PA. If they give you a licence you can just tomorrow decide – there are requirements – reporting

10 requirements that when you are actually an authorised dealer you must be able to report so that cross border transactions may be – must be monitored and this department actually monitors cross border transactions and why do we monitor them is because we want to make sure that – you know – Exchange Control Regulations requirements that actually because by nature they are very prohibitive. So – and – and – there is – there is – it is only through exceptions that we grant or Treasury has granted the Reserve Bank and it was then cascaded down to the banks and then we have given it to the authorised dealers to say you can only do this for your customers so that you do not actually –

20 you make the system very much efficient. You do not come to us. So there is what is called a currency and exchange is manual for authorised dealers. So the banks when you come to travel – I made an example here. It touches everybody. You go to the airport you buy a ticket. You are travelling to Europe. There are rules into the manual that says that bank before it sells you currency what it should look at –

it should get your passport. It should have the confirmation that you are really travelling and then they can sell you currency and there is a requirement that when you come back that currency should be sold back to Treasury. So you go back to the bank. You are given 60 days prior to travel – you know – whether for hedging or whatever to – for exchange rate risk to be able to assess your situation whether you want to buy Dollars now travelling in August and all that. So – so – and – but when you come back within 30 days you need to sell it because South Africa is a Rand monetary area. You will not keep Dollars. So

10 authorised dealers are authorised to sell and buy foreign currency.

ADV PHILLIP MOKOENA SC: May I now – may I refer you Mr Mazibuko to page 5 of your statement starting from paragraph 10.

MR SHIWA ELIJAH MAZIBUKO: Yes.

ADV PHILLIP MOKOENA SC: Where you outline the transactions prohibited by the Exchange Control Regulations. Can you please take us through that?

MR SHIWA ELIJAH MAZIBUKO: Yes. So the – the – so when you buy foreign currency you buy it for a purpose. When you go to the bank you do not just buy foreign currency. You buy it. You say like I made an
20 example of travelling. So you are travelling. So they will give you foreign currency for your travel and then for your import transaction you will say I have ordered goods offshore. I need to actually pay the supplier that is that purpose. Should he use it for something else it is a contravention. So it is used for the purpose that you actually applied for but also taking the currency out of the country without

authorisation. Now if you go to the airport we work together with some state agencies. You will see that as I proceed we work with SARS. We are not there as financial surveillance but if you are travelling there are customs officials at the ports of entry which they can stop you and ask you and they can search you. If they find foreign currency the question they will ask you to say where did you get it and then you need to explain and then because I say this is a Rand monetary area. South Africa we are using Rand and you say I bought it from one of the banks. They say okay can we have a receipt to show to us. If you do not have

10 that money unfortunately will be confiscated and then we have got – you know – we have got what you call airport cases. We fetch these monies from time to time that confiscated from the people who are actually – you know – carrying these monies illegally. So – and then there is what is called Section 1T, 101C, Exporting of Capital. Now we are talking about big companies ...

ADV PHILLIP MOKOENA SC: Yes.

MR SHIWA ELIJAH MAZIBUKO: Here that could actually export capital without authorisation and - and if you do that as well you are going to set an operation offshore without us knowing. If you are caught – you

20 know – because the regulations in terms of – there is what is called Regulation 6 which is – talks about repatriations that whatever money that you take offshore you earn it you repatriate it ...

ADV PHILLIP MOKOENA SC: yes.

MR SHIWA ELIJAH MAZIBUKO: And you bring it back. If you do not you are actually violating – so – so 101C says even the IP you cannot

just sell it, assign it – you know – because it is a South African intellectual property. South Africa either it gains money out of it. You cannot just an IP develop in South African and then actually take it offshore without South African gaining anything.

So these rules they work that way, they are so broad because you know, here in page five Chairperson we highlighted just a few things they work in terms of falsification of information, they give us powers to block an account we can block an account immediately where we perceive there's a suspicion or actually contravention of exchange control and – so it gives us those broad powers that we can be able to use those powers to try and make sure that people comply with actually the exchange control regulations.

ADV PHILLIP MOKOENA SC: Yes and from, you know, page six if you may go there from paragraph 13 you address a question of the authorised dealers.

MR SIHWA ELIJAH MAZIBUKO: Yes.

ADV PHILLIP MOKOENA SC: Who may execute foreign exchange, I mean you did touch on it but please can you elaborate on that aspect.

MR SIHWA ELIJAH MAZIBUKO: Yes Chair, so as I said that – so these regulations have a cascading process, Minister, Reserve Bank but the Reserve Bank it's only one central bank in the country you need footprint in terms of people that will make business to tick and move so these are the banks and then you give them a license to trade in Forex but then because it's such a convoluted process which involves implementation, administration and enforcement, so you need to have

administrative rules and restrictions that apply to the banks and limits because as I alluded to there are limits, we have actually got rid of a lot of limits in the (indistinct) I made an example of it two hundred thousand and ten million that has now been expanded so much but these imbedded in those, what is called, currency and exchanges manual. So each bank as soon as it gets a licence to trade in Forex first thing we need to satisfy to the Reserve Bank, can you be able to report. You need to set up a system we want to see settlement of transactions as they take cross border between residents and non-

10 residents because we need that information and then from there you should follow the manual in terms of actually transaction that you have been given the authority to be able to actually – be able to transact on behalf of your customers because they don't do it for us they do it for their customers because as I said in the Reserve Bank, you know, serves the entire country but the footprint sits with these banks that are actually having clients whatever who want to travel who want to import who want to export. If you import/export there's a foreign currency involved and that is where actually control hits you as a resident and when I mean a resident, individual company or a Trust whatever.

20 **ADV PHILLIP MOKOENA SC:** Maybe for completeness you keep on referring to the manual, Chair I'm referring the witness now to SEM5 to be found on page 244, are you there Mr Mazibuko?

MR SIHWA ELIJAH MAZIBUKO: I'm there Chairperson.

ADV PHILLIP MOKOENA SC: Can you please identify that document for the Chair.

MR SIHWA ELIJAH MAZIBUKO: Ja, so Chair this document on top is Section (B)1 of the Currency and Exchanges Act, payment for imports and so the under A (i), authorised dealers, if I may quote it gives the guidelines there in terms of how they should deal with import payments, required documentation that is required, commercial invoices, UCP, you know, these are international standard documentation UCP600, flight forwarder certificate, or freight forwarders certificate of transport, consignees, copy of the prescribed SARS custom declaration. As I mentioned with SARS a little bit earlier, now, we as exchange control

10 we are not at the port of entry to control the movement of goods in and out of the country, however, we work with SARS. So we work with SARS – you work with SARS and for you to clear the goods there is what is called customer clearance declaration where goods need to be cleared but for this case, for imports there needs to be cleared after you have the payment. So they will work together at the airport as well they'll catch you but we get the money that actually is confiscated. They can also be able to take the money if they've got their – legislation allows them to do that as well.

ADV PHILLIP MOKOENA SC: And what are the other aspects of this

20 document which you might wish to highlight and pertinent to the issues that you (indistinct) shortly?

MR SIHWA ELIJAH MAZIBUKO: So as I alluded to Chairperson is that – so – and it goes to, because it's a manual and actually prescribes the documentation like the customers, SARS clearance declaration that you need to declare. So in this case when you declare

the goods there must be a match in terms of the foreign currency that you have acquired to pay for those imports and the goods coming into the country, there must be a match. So if you're buying these bottles about ten of them and they cost a hundred rand and you've paid a hundred rand out of the country you cannot then received the money for one bottle when you have sold ten. So make sure there's a match because it's foreign currency of the country that we need to conserve but also there needs to be an orderliness of the market because, I must just highlight to say you can see I just – next to our borders when

10 there's no foreign currency, I'm sure its something we read about every day, you cannot import – you know South African companies have suffered we have said subsidiaries offshore – not offshore but along some countries in Africa where they wanted to actually diversify and expand, to send goods there they must be able to – because it's an export the requirement in terms of the regulations when you export we must get foreign currency back in South Africa for the goods that have been produced in this country. So those are the – as I said Chairman, this regime is so broad I can focus on this only until Monday afternoon.

ADV PHILLIP MOKOENA SC: No we won't be here on Saturday and

20 Sunday, Mr Mazibuko. Now if I may refer you back to page seven of your witness statement from paragraph 14 you begin to deal with the compliance and enforcement division which I take that it's one of the divisions that it's quite critical within SAAP, please tell us about it.

MR SIHWA ELIJAH MAZIBUKO: So this is the division that enforces compliance because those rules and regulations you need to comply

with, so if you don't you know, this division, you know it does investigations but the first point of contact could be the bank reporting suspicious transactions.

ADV PHILLIP MOKOENA SC: Yes.

MR SIHWA ELIJAH MAZIBUKO: Like the FIC, there's a requirement that the banks report suspicious – so here exchange control transactions that are suspicious and then the investigation, there will be, actually a sort – an initial investigation to say if they report a certain transaction who was involved who are the parties to this
10 transaction and then we look, was the authority granted, who granted the authority to all parties and all that and if it's found that there's nothing untoward the matter will be allowed to rest but if there's suspicion that there's some contravention, a new investigation file will be opened and initiated from that time.

ADV PHILLIP MOKOENA SC: Yes.

MR SIHWA ELIJAH MAZIBUKO: And then the process will unfold from that where there will be a contract between the compliance and enforcement and the client and during that liaison there will be some required documentation to say we see this has happened because –
20 and then they will say to you, you know provide us with – that's why I said, in terms of the regulations we can request to any person, remember the Reserve Bank we do our work without fear, favour or prejudice. So we can ask any person for any information that we need from you, you have to provide that.

ADV PHILLIP MOKOENA SC: Yes, would I be also correct that from time to time, I mean the Department that you have spoken about I think Financial Services Department would from time to time receive information pertaining to various transgressions of the exchange control.

MR SIHWA ELIJAH MAZIBUKO: Yes.

ADV PHILLIP MOKOENA SC: How does it deal with that information, what happens once it has received that information.

MR SIHWA ELIJAH MAZIBUKO: So that information comes from tip-
10 offs so we can have somebody fighting with his wife in terms of assets that have been hidden in another jurisdiction, a tip-off or it's something that we take from the headlines. When I sit in my office just like newspapers nowadays, they've become digital, I used to read newspapers and transactions of big corporates, if I don't know about those transaction, I'll call the accounting manager for that company to say, I've never heard about this, how come these guys are here, they're in Australia or whatsoever. So we have found actually through newspapers – or if we found that a person that, you know has bought a villa in Southern France enjoying himself, we ask ourself, okay did he
20 have the money to do that. Now things have changed because within a 10million now that used to happen in (indistinct) but if we find that the cost I above what you can remit, you know on a yearly basis the investigation will start. So others are coming from the banks themselves but others are initiated by ourselves, you know.

ADV PHILLIP MOKOENA SC: Yes, now once that – and I take it that, you know, there would be officials that are assigned to deal with that particular information.

MR SIHWA ELIJAH MAZIBUKO: Yes.

ADV PHILLIP MOKOENA SC: What do they do in those instances, if they've really found that there might be suspicious transactions?

MR SIHWA ELIJAH MAZIBUKO: When there's a suspicious – as I said Chairperson investigation file is opened and then they will go through the whole intricacies of the transaction the parties involved and
10 the intention because most of the exchange control applications you see there, what is the intention of you going abroad, what are you going to do there and we found a lot of things sometimes that we decline because, maybe, you know, you are doing something that is not allowed in terms of the current regulations. So if we found that, indeed a contravention has taken place you will be called in for documentation whatsoever and at some stage they will do the *audi alteram partem* principle, let's hear their side to give you an opportunity because at that moment when we go for that, we say, give us a full, frank and verifiable disclosure, you're not going to lie to us because or
20 regulations are so powerful that when we apply them, we can be so stringent that we can take 100% of the contravened amount and all that. So you are able – if you come back to us and you talk to us and you say, yes, this is what happened and all that and we can – you start to cooperate and all that, and then we start talking to say, okay what has happened and all that, but in some instances, you know, when you

send, you know that letter for somebody to hear their side and to make a full, frank and verifiable disclosure, we have had a number of instances where people do not respond. So they will leave a 5million rand and just take a run and just leave it because I think there's more to it what meets, you know, to actually what meets the eye in terms of underlying transaction to that, so that's what happens.

CHAIRPERSON: In that case you let them run and keep the money.

MR SIHWA ELIJAH MAZIBUKO: Chairperson remember we have followed now the *Audi alteram partem* principle to actually give an
10 opportunity to respond, but they've decided for themselves they're not going to say anything.

CHAIRPERSON: Yes.

MR SIHWA ELIJAH MAZIBUKO: But we still have to make sure in terms of justice that we make sure that – then we proceed to the next level to say, have they actually contravened, what have they contravened and then we actually then start the process of attachment, because in terms of the regulations – Regulation 22 (A) and 22 (C) an official in the compliance and enforcement department can block an account. So things, when an account is reported or the bank suspects
20 that Elijah Mazibuko's account might be involved in nefarious activities, on that suspicion on contraventions we can block that account if we found that maybe there's a lot of monies coming in leaving the country and because we want to stop you and say, come let's talk what is happening with your – the things will start there before we even go to the attachment and all that and then we'll request documentation, are

you paying for imports, what are you importing that actually turns out so quickly and if he says (indistinct) there's no problem but if we found that there's a blockage and then he cannot satisfy what actually the documentation to prove that the transactions that you are dealing with are legitimate and all that, the actions get escalated now to the point where we'll issue – we'll request that full, frank and verifiable disclosure because you have to prove to us and we give you a certain time period. If you don't come back to us by this time - remember there's an attachment that in your account the money that is there is

10 already blocked you are unable to draw it so that is a big inconvenience to you that if you actually, you haven't done anything wrong you must be quick and say this actually is what is happening so that, that account can be – but in most cases when we do that, in most cases there's some sort of nefarious activities that actually have taken place and most of these matters get escalated to attachment and lead to the forfeiture at the end of the day. Then monies gets forfeited to the State, some people think because this department is with the Reserve Bank, the Reserve Bank actually take – this money – the monies that get forfeited and they go into the National revenue account

20 for the State to use this monies.

ADV PHILLIP MOKOENA SC: Now let's move on, let's go to page 10 of your statement where you're now introducing a new topic, the exchange control requirements relevant to payment for imports, are you there?

MR SIHWA ELIJAH MAZIBUKO: Yes I'm there Chairperson.

ADV PHILLIP MOKOENA SC: Now if you can please summarise the important features and relevant information under the topic.

MR SIHWA ELIJAH MAZIBUKO: Yes so the important features is that imports by nature, when you say imports...(intervention).

ADV PHILLIP MOKOENA SC: Page 10 Chair.

CHAIRPERSON: Yes thank you.

ADV PHILLIP MOKOENA SC: I just wanted to make sure the Chair is with us, you may proceed.

MR SIHWA ELIJAH MAZIBUKO: Okay, I was saying Chairperson that

10 imports – so you are importing from one jurisdiction to another, you're importing to South Africa, so in most cases it comes from the old bartering process, what I don't have, I'll give it to you, give me something that I need. So when you import – so there's a foreign currency needed, you're importing from the US, you need US Dollars to pay for imports. When you are actually to Europe maybe to one of the countries, the Euros, whatsoever and then there are rules that actually govern the imports, as I alluded to the fact that in terms of trade transaction we don't work alone as the Reserve Bank we work with SARS. Now SARS, in terms of the custom division they want you to

20 raise – if you're an exporter you need to register with them, if you're an importer you need to register with the custom division so that your goods can be cleared if you are exporting your goods can be cleared offshore where you are selling them but when you actually – SARS allow you to clear the goods for export we as the Reserve Bank monitors now to say, okay you have cleared the goods we want, within

a certain time, to bring back the money for the goods sold. So this section deals with that, that – so when you sell there's a documentation that I alluded to in B1 when I was quoting in terms of payment for imports in terms of freight forwarders, payments, payments for insurance, payments under the UCP600, standardised documents and all that. So that is pay, the requirement because people sometimes think that, for instance it's South African (indistinct) you go anywhere in the world there's a bill of lading that you need to pay even when there's no – so when documents are crossing the countries there's

10 some documentary evidence that needs to be satisfied, that needs to be stamped to show that the value of goods, it's origin, what type of goods, where are they coming from. So those are the things that actually happened within – so with South Africa it's because we've got exchange control so we insist on these things and if you break those rules and then there's some sanctions that will come to you.

ADV PHILLIP MOKOENA SC: Definitely and I saw that in your statement, I mean, you referred to the manual and in that manual there's what is called the MRN, if you can please tell the Chair as to what is that and what is its significance.

20 **MR SIHWA ELIJAH MAZIBUKO:** So the MRN number Chairperson is a number – it's a unique number issued by custom divisions of SARS when you actually going to pay for imports so it's a MRN number that it gives the validation to the importation of goods and I must say that with the banking system, and I'm now – I'm moving away from SARS we've got a system that is called an import verification system where we can

also – so the MRN number is generated by SARS, you know, confirming the movement of goods and clearance thereof through the SA Ports and we use that number, if you are an importer to actually go now for the goods that are cleared, to go and pay for those goods, and then within IVS we are able even to see if there's an enquiry, maybe in terms of a transaction that is suspicious we've got a system that is linked to SARS where we can put the MRN number and see if it is validated by SARS and all that and when you do that you find that it is valid so that is the way it is Chairperson.

- 10 **ADV PHILLIP MOKOENA SC:** Yes and if I may refer you page 13 of your statement with particular reference to paragraph 31 where you begin to outline the customs clearance process, could you please talk to that, to those paragraphs.

- MR SIHWA ELIJAH MAZIBUKO:** Yes so I've alluded, Chairperson, 31.12 that registration process with SARS by a clearing agent because normally the issue of trade for a local person that works, there's a middle man which is a clearing agent that actually help you to navigate the international world in terms of what is required between counter parties. So those people needs to actually register with SARS and then
- 20 every importer or the agent as I said, you know before the goods are imported into the Republic they need to launch what is a customer clearance declaration. So the clearance, the word, clearance is that, you know, as I said before the goods – so you clear the goods, the goods have been cleared through customs and then you can pay for the goods in that – that's why it costs customer clearance declaration and

within the customer clearance declaration, there's a link as well that unique MRN they call it a Movement Reference Number as the goods move. That's why some of the import advanced payments – so when you've got an advance payment to start with an invoice because sometimes the goods are still going to be manufactured and then the supplier abroad will say I need a down-payment so – but there will be a MRN that will be followed until someday we will ask you to say when you paid that down-payment to say you are importing a certain machine where is that machine when you put it. So it's a MRN number that

10 tracks and trace, you know, the imports.

ADV PHILLIP MOKOENA SC: Yes and how does one, you know verify the validity of that MRN number?

MR SIHWA ELIJAH MAZIBUKO: So the MRN number can be verified only by SARS it can also be verified by ourselves and the banks because we've got a system called the import verification system that links with SARS because it's got certain mandatory fields that it works with so, you know, you can try and actually jippo the MRN number and falsify it but when SARS put it into their system, I think there will be a red flag to say, this is not a valid MRN number that's been issued by

20 the customs department.

ADV PHILLIP MOKOENA SC: Now that you've educated us Mr Mazibuko and against that background could we now move on to dealing with the facts that are pertinent to the SAPS investigation in relation to Homix and the irregularities – those irregular exchange transactions. You begin to do that from paragraph 35 on page 16. This

is where we might spend much more – much more time on your evidence because at least the background, now we know what are the requirements and what does one look at when you're looking at exchange control and against that you know, (indistinct) important background and the fundamentals that one has to go through in ensuring that you don't transgress though exchange controls. Please then tell us about the specifics and deal with Homix.

MR SIHWA ELIJAH MAZIBUKO: Yes so coming to this I just need to clarify to the Chairperson that as I alluded to that I'm the head of the
 10 department there are reporting lines, there is a division called, compliance and enforcement and it's got investigators. So I was not involved in this, it comes to me once the investigation has been concluded and funds are about to be forfeited where I will go through the motivations as to why funds are supposed to be forfeited. They check the merits of the case as head of the department of which the prerogative also for signing of the forfeiture does not reside with me, it resides with the Governors and the deputy Governors. So – and that will be passed also they'll go through the process to make sure that, you know the suspicious transactions there's a – on the balance of
 20 probabilities because with us we work on the balance of probabilities to say one might have actually contravened exchange control and then the forfeiture will be signed. Now in this case here Chairperson where the counsel has asked me to start, as I've alluded to that Mercantile is one of the authorised dealers, authorised dealers...(intervention).

ADV PHILLIP MOKOENA SC: That is now the Mercantile Bank?

MR SIHWA ELIJAH MAZIBUKO: Yes the Mercantile Bank on page 16 where Homix seems to be working through Mercantile for their import transactions but you'll see that – there's what we call some intermediaries, what we call, you know, like they've mentioned here that there's a (indistinct) so these are intermediaries that work between the bank – you know it's if I like make an example with a normal thing, if you want to buy a house so there's something that is called Better Bond, so they will trace a better interest for you instead of you going direct to the bank so even these treasury outsourcing companies that's
10 how we do it, we talk to them. So they will source clients and then say, we will get a better rate for you, for these imports because remember when you buy foreign currency you buy it in terms of the rand which might be volatile today it might be – the exchange rate might be so – they try and negotiate in terms of fees whatsoever and they get – so in terms of this case of Homix they used a middle man that was called Periters which was a treasury outsourcing company.

CHAIRPERSON: Who is they, is it Mercantile Bank, when you say they used, is it Mercantile Bank...(intervention).

MR SIHWA ELIJAH MAZIBUKO: No they is Homix.

20 **CHAIRPERSON:** Oh Homix okay.

MR SIHWA ELIJAH MAZIBUKO: Sorry for that, now under 36 you'll see that, as I alluded to the matching between exports and the value of – I mean the imports and the value of money that has left the country, that 51million in terms of – was actually exported by Homix and – so if you go further, these transactions, there were about 16 transactions

that were actually done by Mercantile before they could be referred to us, it could be that they never maybe suspected anything wrong with them but then this transaction – so there was 16, so they did 13 and they did transaction number 14, 15, 16 I think was referred to us.

ADV PHILLIP MOKOENA SC: Now when you say this transactions you're referring literally to taking out the money outside South Africa.

MR SIHWA ELIJAH MAZIBUKO: Yes so this – remember the import it's a sale transaction if I may put it in a simple terms a sale transaction between two companies but underline the sale transaction, 10 there's money involved how you going to pay me now especially being so far apart, how you going to pay me. So here because of the documentation that I spoke about that there needs to be documentation, SARS customer declaration and customer clearance declaration for the goods and then that SARS customer declaration must bear what is called the MRN number. So here there was some problems with some MRN numbers suspicion of – especially the way, sometimes the turnaround into the account was happening was you know if my money is moving to the same supplier because a supplier you won't pay them within the third day, fourth day, normally they are 20 paid monthly but if I start to actually pay you very quickly I'm up to say what is that rigorous activity in this account why is the money spinning very quickly it was then that we started to investigate and then the three transactions as I said, there was 13 plus three which was 16, there were three that were actually referred to us to look at by Mercantile, they were blocked and then the monies – I think they

amounted to about 4.4million.

ADV PHILLIP MOKOENA SC: Yes but before you go there. I think you know the duration that you are talking about is quite crucial.

MR SHIWA ELIJAH MAZIBUKO: Yes.

ADV PHILLIP MOKOENA SC: And I mean if one has regard to your paragraph 13

MR SHIWA ELIJAH MAZIBUKO: Yes.

ADV PHILLIP MOKOENA SC: You are saying that during the period of 21 to 28 May that is almost 7 days on page – on paragraph 6.

10 **MR SHIWA ELIJAH MAZIBUKO:** Yes.

ADV PHILLIP MOKOENA SC: Now you saying that within that period of 7 days there was almost 13 cross border foreign exchange transactions of [indistinct]

MR SHIWA ELIJAH MAZIBUKO: Yes with an aggregate of value of 51.8 million Chairperson from 28 – from 21 to 28 May so you can see you know if I am paying because we know in these type of transactions the turnaround is not like that. So it could happen. You know one might not dispute it between the arrangement but it is a very unusual arrangement. So – because when you talk about these types of
20 transactions there is something that is called trade based money laundering. And a trade based money laundering it is a process whereby criminals use legitimate trade to hide their criminal proceeds from unscrupulous sources and whatsoever. So the trade has to look legitimate because when something looks legitimate you know you do not get suspicious you know it is a legitimate trade or we going to look

on the surface but if you start to dig deep into the [indistinct] information this is what was happening here because I think for Merchantile when these accounts were coming they started to realise and say there is something wrong here because some of them had passed through already that is why the 51.8 million passed through but we were able to block the smaller amount which is 14.4 million. But we – obviously the entire amount if you look at the goods that meshed the export of money the goods that were received were about for the value of R50 000,00 having exported R51.8 million.

10 **CHAIRPERSON**: Well let me ask this question and maybe you did touch on it and I did not appreciate it. If I am trading with somebody who is in another jurisdiction and I need to pay them.

MR SHIWA ELIJAH MAZIBUKO: Yes.

CHAIRPERSON: If I just go to a bank

MR SHIWA ELIJAH MAZIBUKO: Yes.

CHAIRPERSON: I take it they would make me fill certain forms.

MR SHIWA ELIJAH MAZIBUKO: Yes.

CHAIRPERSON: And that they have mechanisms in terms of which they ought to report to the Reserve Bank or maybe to law enforcement
20 agencies if they suspect something.

MR SHIWA ELIJAH MAZIBUKO: Yes.

CHAIRPERSON: Is that correct?

MR SHIWA ELIJAH MAZIBUKO: It is correct Chairperson but...

CHAIRPERSON: In other words if – but would I need to first go to the Reserve Bank or whether even if I do not first go the Reserve Bank if I

just go to the bank the bank will give me forms that the Reserve Bank requires to be signed if I want to pay somebody in another jurisdiction.

MR SHIWA ELIJAH MAZIBUKO: It used to be like that in the past but

CHAIRPERSON: Hm.

MR SHIWA ELIJAH MAZIBUKO: But because of the evolution in terms of technology

CHAIRPERSON: Yes.

MR SHIWA ELIJAH MAZIBUKO: And trying to reduce red tape

CHAIRPERSON: Yes.

10 **MR SHIWA ELIJAH MAZIBUKO:** You negotiate with your counter party.

CHAIRPERSON: Yes.

MR SHIWA ELIJAH MAZIBUKO: And you get into a transaction

CHAIRPERSON: Yes.

MR SHIWA ELIJAH MAZIBUKO: The payment happens in the end as I alluded to the customers

CHAIRPERSON: Yes.

MR SHIWA ELIJAH MAZIBUKO: Clearance declaration

CHAIRPERSON: Yes.

20 **MR SHIWA ELIJAH MAZIBUKO:** So you have that, you take it to the bank.

CHAIRPERSON: Yes.

MR SHIWA ELIJAH MAZIBUKO: And say I have got this customer clearance declaration that proves that the goods have arrived.

CHAIRPERSON: Yes.

MR SHIWA ELIJAH MAZIBUKO: And cleared.

CHAIRPERSON: Yes.

MR SHIWA ELIJAH MAZIBUKO: Therefore give me money.

CHAIRPERSON: Yes.

MR SHIWA ELIJAH MAZIBUKO: To pay for these goods.

CHAIRPERSON: Yes.

MR SHIWA ELIJAH MAZIBUKO: So there is no forms to be completed.

CHAIRPERSON: Okay yes.

MR SHIWA ELIJAH MAZIBUKO: It used to be in the past

CHAIRPERSON: Yes.

- 10 **MR SHIWA ELIJAH MAZIBUKO:** It used to be a red tape that was happening.

CHAIRPERSON: Ja it is technology.

MR SHIWA ELIJAH MAZIBUKO: Technology and all that yes.

CHAIRPERSON: But – but whatever happens you are supposed to rely to some extent on the bank.

MR SHIWA ELIJAH MAZIBUKO: Yes.

CHAIRPERSON: For – to be able to police this thing properly. If the bank is not vigilant enough you might not pick things up yourself?

MR SHIWA ELIJAH MAZIBUKO: You are right Chairperson.

- 20 **CHAIRPERSON:** Yes.

MR SHIWA ELIJAH MAZIBUKO: So they are the first line of defence.

CHAIRPERSON: Yes.

MR SHIWA ELIJAH MAZIBUKO: But they need to be vigilant.

CHAIRPERSON: Yes, yes

MR SHIWA ELIJAH MAZIBUKO: If they slip.

CHAIRPERSON: Yes.

MR SHIWA ELIJAH MAZIBUKO: The money escapes.

CHAIRPERSON: Yes, yes

MR SHIWA ELIJAH MAZIBUKO: So it is what normally happens because we rely on them. As I said that it is the footprint of business.

CHAIRPERSON: Yes.

MR SHIWA ELIJAH MAZIBUKO: You know they are everywhere.

CHAIRPERSON: Yes.

MR SHIWA ELIJAH MAZIBUKO: They are serving their customers but
10 if because – maybe I must just allude to the fact that there is a requirement for the FIC

CHAIRPERSON: Hm.

MR SHIWA ELIJAH MAZIBUKO: Know your customer.

CHAIRPERSON: Ja.

MR SHIWA ELIJAH MAZIBUKO: You know knowing your customer is saying if it is me where am I working?

CHAIRPERSON: Hm.

MR SHIWA ELIJAH MAZIBUKO: Where am I staying? That is why now when you renew your licence they seek proof of residence.

20 **CHAIRPERSON:** Hm.

MR SHIWA ELIJAH MAZIBUKO: Are you a South African? Where do you stay?

CHAIRPERSON: Hm.

MR SHIWA ELIJAH MAZIBUKO: But for the business it is also the type of income you are generating out of what type of business.

CHAIRPERSON: Hm.

MR SHIWA ELIJAH MAZIBUKO: You know and how much is maybe your turnover on a monthly basis? It is know your customer so that when you have got spikes that are out of place.

CHAIRPERSON: Hm.

MR SHIWA ELIJAH MAZIBUKO: Those things needs to be followed up because that is where the problem is.

CHAIRPERSON: Hm.

MR SHIWA ELIJAH MAZIBUKO: And we have picked it up that way but
10 if there is no-one in the bank to be able to say I am used to the trend in this account because that is how the banks even monitor us in terms of they will give you a blue card today and they will tell you okay next year you seem to be better, a red card and then a white card next year. You will get excited because you are being upgraded. But that is how they monitor your salary increase, your bonuses that come into your account to say [indistinct] and your turnover – the turnover into your account to say the risk profile of this person is at this level. So we can manage the risk and we can profile this client that actually belongs at this level.

20 **CHAIRPERSON:** Hm.

MR SHIWA ELIJAH MAZIBUKO: So even for companies in terms of actually knowing your clients you need to understand and understand to say what type of trade – that is why Homix you know you do not understand what type of trade they are involved in.

CHAIRPERSON: Yes okay before you proceed. So is your reliance on

the banks such that if they miss something you will not pick it up or is the position that sometimes you can pick it up – you can pick up what they have missed or you are a hundred percent reliant on them?

MR SHIWA ELIJAH MAZIBUKO: It is a – if I may answer it the other way Chairperson. It is quite a collaborative process and let me expand.

CHAIRPERSON: Ja.

MR SHIWA ELIJAH MAZIBUKO: So as I alluded to earlier that when you get registered as a bank trading in forex.

CHAIRPERSON: Hm

- 10 **MR SHIWA ELIJAH MAZIBUKO:** One of the requirements that we need is that you must be able to have what is called a reporting system.

CHAIRPERSON: Hm.

MR SHIWA ELIJAH MAZIBUKO: Every cross border transaction, forex transaction that goes through the bank and it gets settled through the bank gets reported at the Reserve Bank

CHAIRPERSON: Yes.

MR SHIWA ELIJAH MAZIBUKO: Coming to your questions. We are able now – we have got what we call – maybe I could mention another division.

- 20 **CHAIRPERSON:** Hm.

MR SHIWA ELIJAH MAZIBUKO: Within the department that is called analysis and information flow division.

CHAIRPERSON: Hm.

MR SHIWA ELIJAH MAZIBUKO: That information collects information but it is information that is being pushed by the banks into the servers

of the Reserve Bank.

CHAIRPERSON: Hm.

MR SHIWA ELIJAH MAZIBUKO: And then we analyse that information and then we pick up trend. And I must say that you know the nature of actions controlled because it is rule based.

CHAIRPERSON: Hm.

MR SHIWA ELIJAH MAZIBUKO: Action control really. So we have incorporated now because of the evolution of a lot of nefarious activities Chairperson.

10 **CHAIRPERSON:** Hm.

MR SHIWA ELIJAH MAZIBUKO: That for instance exchange control is no longer a contravention of exceeding a 10 million and actually taking 12 million instead of – there is organised crimes that are actually taking advantage of this system and all that and if we do not move to a risk base approach and not just do a tick box approach because for instance if I may tell you what is happening with credit cards. Some banks in terms of their business models and to satisfy and selling products to their client they will give you maybe one or two or three credit cards and then you will say this is for my daughter studying in
20 the US, this is or another one studying in Japan. But also the family members – we have had family members that actually will say give this to my niece, give this to my uncle and we have lost a lot of money because what happens we find that the - shenanigans that go to the bank and they get given these credit cards and the guy that remains in South Africa will just pump money into his credit cards here and the

money is drawn into – we have had millions being drawn offshore and all that. So the banks themselves we work together and you know in terms of they need not to be maybe they are ambitious in terms of – and we do not actually stop them because it is not in our business to get into the business models of banks and all that. We are the regulators and all that. But where we find that they are [indistinct] and actually they are actually compromising the South African environment to be vulnerable to illicit financial flows we deal with that. So we are not – in short because I have gone around to answer your questions.

10 There is no reliance only on the banks themselves.

CHAIRPERSON: On the banks ja.

MR SHIWA ELIJAH MAZIBUKO: We have got a system – because if I may tell you Chairperson when you go abroad with a system and you spend your credit card.

CHAIRPERSON: Hm.

MR SHIWA ELIJAH MAZIBUKO: That gets recorded into our system.

CHAIRPERSON: Hm.

MR SHIWA ELIJAH MAZIBUKO: So we always say that you know with us what happens is Vegas does not stay in Vegas. You need to be very
20 careful how you spend your money because we will know.

CHAIRPERSON: Hm. Okay so you are not hundred percent reliant on that?

MR SHIWA ELIJAH MAZIBUKO: No.

CHAIRPERSON: Ja.

MR SHIWA ELIJAH MAZIBUKO: So it is – as I said it is a [indistinct].

So other things we will pick it ourselves because we have got a – we have got analysts that works and pick up strand and all that. But – and the banks will play their role as well you know to.

CHAIRPERSON: Okay. Thank you.

ADV PHILLIP MOKOENA SC: Thank you. Mr Mazibuko I am much more fascinated by what you are saying on paragraph 36 and 37.

MR SHIWA ELIJAH MAZIBUKO: Yes.

ADV PHILLIP MOKOENA SC: In order for us to really appreciate what might have triggered these investigations and what actually occurred in
10 terms of the monies that were involved.

MR SHIWA ELIJAH MAZIBUKO: Yes.

ADV PHILLIP MOKOENA SC: You have already told the Chair that within a period of 7 days.

MR SHIWA ELIJAH MAZIBUKO: Yes.

ADV PHILLIP MOKOENA SC: There was already approximately 13 cross border foreign exchange transactions which were done by Homix via Merchantile Bank, am I correct?

MR SHIWA ELIJAH MAZIBUKO: Yes. If I may add there.

ADV PHILLIP MOKOENA SC: Yes.

20 **MR SHIWA ELIJAH MAZIBUKO**: Chairperson. So it was Homix via Merchantile Bank but through an intermediary.

ADV PHILLIP MOKOENA SC: Yes.

MR SHIWA ELIJAH MAZIBUKO: Called Peritus.

ADV PHILLIP MOKOENA SC: Definitely.

MR SHIWA ELIJAH MAZIBUKO: Yes.

ADV PHILLIP MOKOENA SC: And on paragraph 37 you say that the next day I mean the next day meaning that after the 29th.

MR SHIWA ELIJAH MAZIBUKO: On the 29th.

ADV PHILLIP MOKOENA SC: On the 29th yes, there was an attempt to effect a further three transactions.

MR SHIWA ELIJAH MAZIBUKO: Yes.

ADV PHILLIP MOKOENA SC: To the value of 14.4 million.

MR SHIWA ELIJAH MAZIBUKO: Yes.

ADV PHILLIP MOKOENA SC: And that is what you know triggered this
10 extensive investigation and to try now to begin now to interrogate the nature of the business which Homix was involved in.

MR SHIWA ELIJAH MAZIBUKO: Yes.

ADV PHILLIP MOKOENA SC: Am I correct?

MR SHIWA ELIJAH MAZIBUKO: You are correct.

CHAIRPERSON: Before you proceed maybe I should say that you know my questions about how reliant the Reserve Bank or your department is on the banks was triggered by the fact that so much money had gone out of the country by the time you became aware. R51.8 million was gone.

20 **MR SHIWA ELIJAH MAZIBUKO:** 8 million

CHAIRPERSON: Was gone.

MR SHIWA ELIJAH MAZIBUKO: Yes.

CHAIRPERSON: And I was wondering whether that was the fault of Merchantile Bank not having picked up what they should have picked up and you were not at fault that is your department because you have to

rely on them or whether you would share the blame because you could also have picked it up?

MR SHIWA ELIJAH MAZIBUKO: So Chairperson to answer your question there. Because this is a function that you know is done by the commercial banks. They do not come to us. Like you alluded to the fact that do they – do I complete documentation? You do not complete. So we have made it easier that you know do not come to the central because there is only one central bank but go to any other bank that is an authorised dealer it would be able to do these transactions.

10 **CHAIRPERSON:** Yes.

MR SHIWA ELIJAH MAZIBUKO: Now as I alluded to that the nature of these transactions for them to be able to move very rigorously in our system we will be able to catch them but remember sometimes reports they take time. You will find that – for instance there is what is called in business in terms of when you do the transactions settlement takes it is called T plus 2 so you only see it after two days whatsoever. So criminals take advantage of that. When our reporting system picks it up you know maybe after five days and all that and stats are generated this – the horse has already bolted in this regard. That is why now the

20 banks in terms of them happening at the call face and the front line they should be able to pick this up to say this person came with a MRN number from SARS yesterday and did – and said I must actually pay the supplier for 13 transactions and this is how it was actually referred to us. Because when they then saw that this thing is not stopping just in one day on the 29th they want to do three transactions and they said

there is something wrong here. And then it was referred to us and we immediately blocked those accounts. Because the banks cannot block but when they suspect they can tip us and say you know block – we can block this [indistinct].

CHAIRPERSON: But I am concerned that your department or the Reserve Bank did not pick up that R51.8 million and it went out of the country.

MR SHIWA ELIJAH MAZIBUKO: Yes.

CHAIRPERSON: So now is that because at that time namely 2015 at
10 that time you did not have certain systems that you now have which would enable you to pick things up? Or is the position that you did have those systems but those systems only pick up after the event?

MR SHIWA ELIJAH MAZIBUKO: So ...

CHAIRPERSON: In other words is the system you have or your system that you had at the time such that in regard for example to this 51.8 million you could not pick it up yourselves before the money had left the country only the bank Merchantile Bank could have picked it up before it left the country and taken steps. You could only pick it up after the event?

20 **MR SHIWA ELIJAH MAZIBUKO:** Yes Chairperson because after the event it is when it is reported to us.

CHAIRPERSON: So which means that there should be – there should be a system which lessens the chances that such a large amount of money can get out of the country before there is satisfaction that everything is in order?

MR SHIWA ELIJAH MAZIBUKO: I agree with you there Chairperson.

The difficulty with this is that because a lot of these transactions had been at the bank. Now we have got – we deal with trillions of you know in terms of the amount.

CHAIRPERSON: Transactions and the value of...

MR SHIWA ELIJAH MAZIBUKO: The amount of transactions.

CHAIRPERSON: And the value of transactions.

MR SHIWA ELIJAH MAZIBUKO: The value of transactions in the Reserve Bank.

10 **CHAIRPERSON:** Yes.

MR SHIWA ELIJAH MAZIBUKO: And a 51 million might seem to be when they do the risk base approach that where it is being packed it was just a small amount whatsoever. But – because criminals start small and they grow it because if this was not stopped I can tell you it could have been 500 million maybe after some time.

CHAIRPERSON: Hm.

MR SHIWA ELIJAH MAZIBUKO: So our system could maybe be the problem is that in terms of the threshold that we have to look at the risk once somebody might say okay 51 million in relation to 500 million you
20 know is not a big amount and then we will miss it there Chairperson.

CHAIRPERSON: Hm. Because it might be 51 million.

MR SHIWA ELIJAH MAZIBUKO: Yes.

CHAIRPERSON: With this authorised dealer.

MR SHIWA ELIJAH MAZIBUKO: Yes.

CHAIRPERSON: It is another 51 million with another authorised

dealer.

MR SHIWA ELIJAH MAZIBUKO: Yes. Ja.

CHAIRPERSON: And in no time out of ten banks you have got 500 million.

MR SHIWA ELIJAH MAZIBUKO: Yes and that is how they do it because they look at the threshold.

CHAIRPERSON: Yes.

MR SHIWA ELIJAH MAZIBUKO: At which level do they start to be suspicious and then they use various banks.

10 **CHAIRPERSON:** Yes.

MR SHIWA ELIJAH MAZIBUKO: Yes.

CHAIRPERSON: And it may well be that certain transactions need to be delayed before they can be approved to get out until certain things are checked but you might know better that maybe sometimes with some transactions no – no matter how best you can try there will always be some that will creep through.

MR SHIWA ELIJAH MAZIBUKO: Ja there will always be some because with the delay Chairperson we have always been highly criticised to be a stumbling block to the efficient working of the commercial system.

20 **CHAIRPERSON:** Of businesses ja.

MR SHIWA ELIJAH MAZIBUKO: In South Africa so once you start to say delay

CHAIRPERSON: Ja.

MR SHIWA ELIJAH MAZIBUKO: We would rather improve our system to be more efficient.

CHAIRPERSON: Yes.

MR SHIWA ELIJAH MAZIBUKO: But also here I think the more reliance was more on Merchantile than on the Reserve Bank.

CHAIRPERSON: Yes. Okay thank you.

ADV PHILLIP MOKOENA SC: And just to piggy back on that you are – you appear to be partly you know responding to the Chairperson's concerns and I think you are doing that on page 14 paragraph 33 and I think that might give us a far much more better understanding as to what ...

10 **MR SHIWA ELIJAH MAZIBUKO:** Yes, ja.

ADV PHILLIP MOKOENA SC: You are in fact dealing with in terms of these you know volume of transactions. Maybe if you can read that.

MR SHIWA ELIJAH MAZIBUKO: Yes.

ADV PHILLIP MOKOENA SC: And talk to that maybe we will have a far much more better understanding.

MR SHIWA ELIJAH MAZIBUKO: Yes if I may read here on section – on section 22 of page 14 where it says: on average more than 500 foreign exchange transactions occur daily within South Africa. And sometimes this could be more than that. So the sheer volume of these transactions
20 require that authorised dealers diligently and show compliance with the system described above. The expeditious monitoring and approval of foreign exchange transaction is essential for the free flow of commerce into and out of South African when their suspicions are aroused however so they – when we say they we are referring to the authorised dealers they must refer transactions to the SARB for investigations. So

a lot of these trade transactions takes place within the sphere of the commercial banks.

ADV PHILLIP MOKOENA SC: Yes. But the emphasis will be that I mean on average there are 500 000.

MR SHIWA ELIJAH MAZIBUKO: Yes. Ja on a daily basis.

ADV PHILLIP MOKOENA SC: You know foreign exchange transactions that are happening on a daily basis.

MR SHIWA ELIJAH MAZIBUKO: Yes.

CHAIRPERSON: And no transaction or no system can be perfect.

10 There will always be with the best system there will always be some that will ...

MR SHIWA ELIJAH MAZIBUKO: Yes that will actually...

CHAIRPERSON: Go through.

MR SHIWA ELIJAH MAZIBUKO: Fall through the cracks Chairperson.

CHAIRPERSON: Ja okay.

ADV PHILLIP MOKOENA SC: Now you were at the point where now we know that there were almost – I mean in total there were sixteen transactions with reference to Homix.

20 **MR SHIWA ELIJAH MAZIBUKO:** Or if I may ask Chairperson – the counsel Chairperson on which page are you now?

ADV PHILLIP MOKOENA SC: Yes I am now on page 16. You have already testified about those aspects on – with reference to your paragraph 36 and 37 and that is where the Chairperson's questions were actually directed at.

MR SHIWA ELIJAH MAZIBUKO: Yes.

ADV PHILLIP MOKOENA SC: Now what I want to know is that surely at some point when investigations were conducted there must have been a purpose or declaration being made by Homix as to what informed those transactions? What was the purpose of that – of those transactions?

MR SHIWA ELIJAH MAZIBUKO: Yes. So if I...

ADV PHILLIP MOKOENA SC: What do they say to you?

MR SHIWA ELIJAH MAZIBUKO: So the purpose – I would like to go further to 38 and show

ADV PHILLIP MOKOENA SC: Yes.

10 **MR SHIWA ELIJAH MAZIBUKO:** The falsification of documentation by Homix.

ADV PHILLIP MOKOENA SC: Yes.

MR SHIWA ELIJAH MAZIBUKO: The purpose was to import something into the country but not the full amount of actually what is supposed to be imported to match actually the foreign currency that has been bought for the bank and paid to the supplier. As I said that there was that huge mismatch between a 51.18 million in terms of what has been paid out and the goods cleared through customs

ADV PHILLIP MOKOENA SC: Yes.

20 **MR SHIWA ELIJAH MAZIBUKO:** Of only about R50 000.

ADV PHILLIP MOKOENA SC: Yes.

MR SHIWA ELIJAH MAZIBUKO: So, so now I just want to take the Chairperson to folder number 8 to folder number 12 it is page 306 to 314.

ADV PHILLIP MOKOENA SC: Yes.

MR SHIWA ELIJAH MAZIBUKO: Just go there.

ADV PHILLIP MOKOENA SC: It is 317. Are you there?

MR SHIWA ELIJAH MAZIBUKO: Ja so.

ADV PHILLIP MOKOENA SC: Folder number 8 is 317.

CHAIRPERSON: Folder number?

ADV PHILLIP MOKOENA SC: Folder number SSEM8 Chair. It is page – it is on page 318 but I think it starts on page yes on page 318.

CHAIRPERSON: Okay.

ADV PHILLIP MOKOENA SC: Is that the document that you wanted to
10 refer the Chair to?

MR SHIWA ELIJAH MAZIBUKO: Yes. So this one that I have here so ja this is small print. I actually want to start at SEM7 but I have got I think a better looking one on my other – I cannot even see with glasses here Chairperson I do not know.

CHAIRPERSON: Oh is the lighting not good there?

MR SHIWA ELIJAH MAZIBUKO: So – so I think the initial one that I got – so on SEM7 so it is all the transactions that...

ADV PHILLIP MOKOENA SC: 316 Chair.

MR SHIWA ELIJAH MAZIBUKO: Oh is it 316?

20 **CHAIRPERSON:** Thank you.

MR SHIWA ELIJAH MAZIBUKO: Oh

CHAIRPERSON: Ja page 316.

ADV PHILLIP MOKOENA SC: The page 316. You are correct.

MR SHIWA ELIJAH MAZIBUKO: Okay.

ADV PHILLIP MOKOENA SC: Yes.

MR SHIWA ELIJAH MAZIBUKO: So these are transactions that have been drawn from a cross border system with regard to Homix. And so when you add them all – so you have got the Rand amount and the currency amount in terms of the dollars there.

ADV PHILLIP MOKOENA SC: Chair I beg – may I provide you with a better copy?

CHAIRPERSON: Yes thank you.

ADV PHILLIP MOKOENA SC: Of this document.

CHAIRPERSON: Thank you. And then maybe arrangements can be
10 made in due course.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: For ...

ADV PHILLIP MOKOENA SC: We have actually even numbered it far much more clearer.

CHAIRPERSON: Replacement ja.

ADV PHILLIP MOKOENA SC: We did pick it up that there is a problem with it.

CHAIRPERSON: Yes ja. Okay thank you.

ADV PHILLIP MOKOENA SC: Even with a good glasses you will not be
20 able to read the one that is on the bundle Chair.

CHAIRPERSON: Ja. Yes.

ADV PHILLIP MOKOENA SC: You may proceed Mr Mazibuko.

MR SHIWA ELIJAH MAZIBUKO: Yes. So it is a printout of these amounts and also what I – what is highlighted there that what we picked up on 29 May – 29 May as I said this goes through from SEM7

so the customs – SARS customs declarations in terms of the amounts on the 29th so you look on the 29th there which you do not get actually. They are not there because these on the 29th if I may just because I wrote them by hand here by me to say...

CHAIRPERSON: I am only seeing date 28 and 26, 27 ja.

MR SHIWA ELIJAH MAZIBUKO: Ja. So the – the rest of the amounts there they total 51.753676 if you add them and tally the rand amount down. However the one that we never – never went through the 3 on the 29th that was stopped 4. – 4 827 740 SEM8 4 839 870 SEM9 ...

10 **ADV PHILLIP MOKOENA SC:** You must take us through Mr Mazibuko tell us – tell the Chair where exactly are you ready?

CHAIRPERSON: I do not see anything like what you are reading.

MR SHIWA ELIJAH MAZIBUKO: Okay.

CHAIRPERSON: On the page that I have been given.

MR SHIWA ELIJAH MAZIBUKO: Okay.

ADV PHILLIP MOKOENA SC: Yes.

MR SHIWA ELIJAH MAZIBUKO: Okay so let me go to SEM8.

ADV PHILLIP MOKOENA SC: Ja and explain to us you know maybe firstly what is that document and then what are you trying to reflect to
20 the Chair or to convey to the Chair through that document.

MR SHIWA ELIJAH MAZIBUKO: Yes page – so page 306 Chair SEM8. So you will see the amount...

ADV PHILLIP MOKOENA SC: 316 you will see that the pages are right on top SEM316.

MR SHIWA ELIJAH MAZIBUKO: Okay let us go to page 318 so ja

apologies for that. SEM318. So there is the...

CHAIRPERSON: Is that the application to transfer?

MR SHIWA ELIJAH MAZIBUKO: Yes.

CHAIRPERSON: Okay.

MR SHIWA ELIJAH MAZIBUKO: And when you look into the deal information on your right you will see the amount of 4827 – the rand amount 4827740. I do not know whether the Chairperson can see. Under the deal information.

CHAIRPERSON: Is that in the middle of the document or at the
10 bottom?

MR SHIWA ELIJAH MAZIBUKO: Ja so as you come down the first – in

CHAIRPERSON: Can you see in the middle of that document where it says Gauteng City and where it says P O Box 3128.

MR SHIWA ELIJAH MAZIBUKO: You just go further up Chairperson.

CHAIRPERSON: I must go up.

MR SHIWA ELIJAH MAZIBUKO: Ja so.

CHAIRPERSON: That is where it says Homix?

MR SHIWA ELIJAH MAZIBUKO: Under the dealer information.

CHAIRPERSON: Under the?

20 **MR SHIWA ELIJAH MAZIBUKO**: I do not know whether you can see that?

CHAIRPERSON: Under the?

MR SHIWA ELIJAH MAZIBUKO: Deal information. So this – so there is a deal information where it talks about what foreign currency...

CHAIRPERSON: Oh yes yes.

MR SHIWA ELIJAH MAZIBUKO: Yes.

ADV PHILLIP MOKOENA SC: On the extreme right Chair. If you look from that heading Deal Information then you trace it right up until the right hand side.

CHAIRPERSON: Oh yes.

ADV PHILLIP MOKOENA SC: You will see that amount 4.827.

CHAIRPERSON: Yes I can see that here.

ADV PHILLIP MOKOENA SC: Is that the one that you are referring to Mr Mazibuko?

10 **MR SHIWA ELIJAH MAZIBUKO:** So that is SEM now 8.

ADV PHILLIP MOKOENA SC: Yes.

MR SHIWA ELIJAH MAZIBUKO: So this is the one that never went through. That is why you cannot see it on the printout that has just been given to you Chairperson.

CHAIRPERSON: Oh okay.

MR SHIWA ELIJAH MAZIBUKO: And then the next one – let us go to SEM which is on page

ADV PHILLIP MOKOENA SC: It should be 321.

MR SHIWA ELIJAH MAZIBUKO: 321.

20 **ADV PHILLIP MOKOENA SC:** 321 yes.

MR SHIWA ELIJAH MAZIBUKO: Yes. Exactly again there is an amount on your far right under the deal 48 – 4 839 870 there as well.

CHAIRPERSON: Yes.

MR SHIWA ELIJAH MAZIBUKO: This as well never went through.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Hm.

MR SHIWA ELIJAH MAZIBUKO: So which means here Chairperson that similar documents like this for a 51 million annotated on the printout here they were able to go through.

CHAIRPERSON: Hm.

MR SHIWA ELIJAH MAZIBUKO: So I am here I am just showing what actually never go through.

CHAIRPERSON: Yes.

MR SHIWA ELIJAH MAZIBUKO: So we can go now to SEM10 which is
10 page 323 or 324.

ADV PHILLIP MOKOENA SC: 324.

MR SHIWA ELIJAH MAZIBUKO: 324.

ADV PHILLIP MOKOENA SC: Yes.

MR SHIWA ELIJAH MAZIBUKO: And then there is an amount on your far right there 4 830 480.

ADV PHILLIP MOKOENA SC: Yes.

MR SHIWA ELIJAH MAZIBUKO: So when you all – we add all these amounts SEM8, SEM9, SEM10 it comes to 14.471 090 the amount that was blocked.

20 **CHAIRPERSON:** Oh.

MR SHIWA ELIJAH MAZIBUKO: Yes.

CHAIRPERSON: Yes okay.

MR SHIWA ELIJAH MAZIBUKO: Okay.

ADV PHILLIP MOKOENA SC: So this would be the one Mr Mazibuko that you are – that you have recorded on paragraph 37 on page 16 of

your statement.

MR SHIWA ELIJAH MAZIBUKO: Yes that is that amount.

ADV PHILLIP MOKOENA SC: So in order for us to get that amount we will have to look at this

MR SHIWA ELIJAH MAZIBUKO: Yes.

ADV PHILLIP MOKOENA SC: Annexures that you have actually taken us through.

MR SHIWA ELIJAH MAZIBUKO: That is why I am saying that if you look at that amount 14.4.

10 **ADV PHILLIP MOKOENA SC:** Yes.

MR SHIWA ELIJAH MAZIBUKO: It is made up by SEM8.

ADV PHILLIP MOKOENA SC: Yes.

MR SHIWA ELIJAH MAZIBUKO: 9 and SEM10.

ADV PHILLIP MOKOENA SC: Yes.

MR SHIWA ELIJAH MAZIBUKO: Which never went through. The ones above on the printout they went through and they actually come to 51.8 million.

ADV PHILLIP MOKOENA SC: I see. I follow that and then you were – you were demonstrating to the Chair that whatever purpose that might
20 have been proffered ...

MR SHIWA ELIJAH MAZIBUKO: Yes.

ADV PHILLIP MOKOENA SC: By Homix in relation to this transaction one could not be able to verify it through ...

MR SHIWA ELIJAH MAZIBUKO: Yes.

ADV PHILLIP MOKOENA SC: The documentation (intervenes).

MR SHIWA ELIJAH MAZIBUKO: So ...

ADV PHILLIP MOKOENA SC: I want to take the Chairperson to Section 38 just to look at ...

CHAIRPERSON: Paragraph 38? Paragraph 38?

ADV PHILLIP MOKOENA SC: Ja, paragraph 38 and ...

CHAIRPERSON: Of your statement?

MR SHIWA ELIJAH MAZIBUKO: Yes.

ADV PHILLIP MOKOENA SC: I just want to highlight the difference between some documents there. So let me just maybe go to the next
10 page. I would rather maybe – do you want to go to Annexures 12 end 14 maybe to make those comparisons of that irregularities or are you trying (intervenes) ...

MR SHIWA ELIJAH MAZIBUKO: Let me ...

ADV PHILLIP MOKOENA SC: From a much more different point?

MR SHIWA ELIJAH MAZIBUKO: Ja. Let me go back Chairperson and see because there is a difference between SEM14 and 12.

ADV PHILLIP MOKOENA SC: Yes.

MR SHIWA ELIJAH MAZIBUKO: Where there one is the falsified clone of - of the other. It has been cloned and falsified. So I am trying to
20 look for that.

ADV PHILLIP MOKOENA SC: Yes.

MR SHIWA ELIJAH MAZIBUKO: So that ...

ADV PHILLIP MOKOENA SC: But before you go there because ...

MR SHIWA ELIJAH MAZIBUKO: Ja.

ADV PHILLIP MOKOENA SC: I do not want to lose the sequence of

your evidence. It is quite – it is quite crucial.

MR SHIWA ELIJAH MAZIBUKO: Okay.

ADV PHILLIP MOKOENA SC: Let us – let us stay on page 16. Let us conclude what you were telling the Chair with reference to paragraph 39 and I think that is where you neatly convey what was actually – you know – uncovered through the documentation ...

MR SHIWA ELIJAH MAZIBUKO: Yes.

ADV PHILLIP MOKOENA SC: At your disposal.

MR SHIWA ELIJAH MAZIBUKO: Yes.

10 **ADV PHILLIP MOKOENA SC:** Yes.

MR SHIWA ELIJAH MAZIBUKO: Yes. *Ja*, I wanted to highlight that thanks Chairperson for that opportunity. So on - on SEM7 - I think what also we need to highlight here because it will come out later in – in my evidence the printout that you got for the transaction that actually total 51 or 7 million.

ADV PHILLIP MOKOENA SC: Yes.

MR SHIWA ELIJAH MAZIBUKO: So if you look at that in terms of the beneficiaries of those payments (intervenes).

ADV PHILLIP MOKOENA SC: Where are you now?

20 **MR SHIWA ELIJAH MAZIBUKO:** I am at the – I am at SEM7. I am going to come to this 39 Chairperson. So I am – I am back to that printout that you actually gave to the – that was not clear – you gave to the Chairperson.

ADV PHILLIP MOKOENA SC: Page 3-1-6?

MR SHIWA ELIJAH MAZIBUKO: Yes. I just want to highlight

something there as well.

ADV PHILLIP MOKOENA SC: Yes.

MR SHIWA ELIJAH MAZIBUKO: About the beneficiaries who were paid 51.8 million.

ADV PHILLIP MOKOENA SC: Yes.

MR SHIWA ELIJAH MAZIBUKO: To say about a lot of - of these transactions were paid to a company in Hong Kong called Morningstar International. Only two of them were paid what is called YKA International Trading Company.

10 **ADV PHILLIP MOKOENA SC:** Yes.

MR SHIWA ELIJAH MAZIBUKO: So – so you can see that one company was being paid quite a lot of money. So out of the 16 transactions they intended included the ones that never went through. 14 was going to go to Morningstar and two was going to go to YKA ...

ADV PHILLIP MOKOENA SC: YKA.

MR SHIWA ELIJAH MAZIBUKO: And you will see when you start to look at Sole Directors of these companies to say who they are because they have got Sole Directors – you see where the monies were going. I just wanted to highlight that to say Morningstar and YKA.

20 **ADV PHILLIP MOKOENA SC:** Yes.

CHAIRPERSON: They have got one Director each?

MR SHIWA ELIJAH MAZIBUKO: Sole Directors.

CHAIRPERSON: Yes.

MR SHIWA ELIJAH MAZIBUKO: Most of the corporates- because the – in terms of your registration of the company Chairperson you can have

a Sole Director ...

CHAIRPERSON: Yes.

MR SHIWA ELIJAH MAZIBUKO: It does not preclude you from having that.

CHAIRPERSON: Yes.

MR SHIWA ELIJAH MAZIBUKO: But what is very – a common thread here is almost all these companies have got Sole Directors.

CHAIRPERSON: Ja.

MR SHIWA ELIJAH MAZIBUKO: I do not know for ...

10 **CHAIRPERSON:** Ja.

MR SHIWA ELIJAH MAZIBUKO: For what reason and what benefit because ...

CHAIRPERSON: Yes.

MR SHIWA ELIJAH MAZIBUKO: I am not au fait with - you know – how companies are set up ...

CHAIRPERSON: Yes.

MR SHIWA ELIJAH MAZIBUKO: But in most cases you will see as we unfold

CHAIRPERSON: Hm.

20 **MR SHIWA ELIJAH MAZIBUKO:** And go further this person – while sometimes he is not only one company but it is a Sole Director of three companies.

CHAIRPERSON: Hm.

MR SHIWA ELIJAH MAZIBUKO: Yes Chairperson.

CHAIRPERSON: Okay.

ADV PHILLIP MOKOENA SC: Then you can then correlate that with your paragraph 39 on page 36. Is that what ...?

MR SHIWA ELIJAH MAZIBUKO: Ja. So – so I have already alluded to – to this Chairperson (intervenes)

CHAIRPERSON: I am sorry. Just one ...

ADV PHILLIP MOKOENA SC: Page – page 1-6 Chair.

CHAIRPERSON: Just one second. Thank you.

ADV PHILLIP MOKOENA SC: You may proceed Mr Mazibuko. I was referring back to page 1-6 paragraph 39.

10 **MR SHIWA ELIJAH MAZIBUKO:** Okay. Thanks Chairperson. So the – the – if I may quote paragraph 39.

ADV PHILLIP MOKOENA SC: Yes.

MR SHIWA ELIJAH MAZIBUKO: “The documentation provided revealed that Homix declared the purpose of the above mentioned 16 transactions (13 previous transactions that went through plus three attempted transactions) as been to effect payment in favour of only two beneficiaries domiciled in Hong Kong being Morningstar International Trade Limited (Morningstar), YKA International Trading Company (YKA). Of the 16 transactions 14 were in favour of Morningstar and the remaining two were in favour of YKA.”

20

I just wanted to highlight.

ADV PHILLIP MOKOENA SC: Yes and in ordinary commercial practice

was this usual?

MR SHIWA ELIJAH MAZIBUKO: No. It is – it is not – you know – but I was alluding to that fact earlier in terms of the – the speed at which these transactions were being paid on a number of days that they are not even aggregated because in a forex transaction when you aggregate you start to save on costs but if you are going to do a sole transaction on a daily basis so you are incurring a number of costs in that regard and you ask yourself why if I am trading with somebody because in most cases - you know - people get paid on a monthly basis
10 – you know – to say why were they not aggregated to say the 51.7 million minus two and then you pay the bulk amount to – to Morningstar and then these two amounts whatever but they were just done separate – separately within the number of days and it is a *modus operandi* that you will see as we proceed with my statement in terms of the flurry of activity into the Homix account and how they move because sometimes when you move the money very quickly your intention is for anybody who tries to block that money or identified to be something fraudulent not to be able to catch it in time.

ADV PHILLIP MOKOENA SC: Yes.

20 **MR SHIWA ELIJAH MAZIBUKO:** So that by the time the horse has bolted the money is gone.

ADV PHILLIP MOKOENA SC: Yes and then may I refer you to page 18 of your witness statement? You know and take ...

MR SHIWA ELIJAH MAZIBUKO: I am there – I am there Chairperson - page 18.

ADV PHILLIP MOKOENA SC: And take us from paragraph 46. You did mention an entity called the Peritus Forex and tell us more about those transactions there that were booked through Mercantile.

MR SHIWA ELIJAH MAZIBUKO: Yes. So – so these transactions that were booked through Mercantile we now were informed that they came through what is called the Treasury Outsourcing Company. As I said it is an intermediate – intermediary company that will actually source clients and promise them to say to get them some better rates. So as it is alluded to on the last sentence of paragraph 46 that:

10 “These entities typically shop around for the best
 foreign exchange rate for their clients and arrange
 discount on fees.”

So there is nothing wrong in going through the Treasury Outsourcing Company but in the next statement on 47 where we allude to the ampacity. I alluded to the fact that there is know your customer for the bank ...

ADV PHILLIP MOKOENA SC: Yes.

MR SHIWA ELIJAH MAZIBUKO: For their customers. Now once you add a layer we have had a problem with these Treasury Outsourcing
20 Companies to say who takes responsibility for knowing your customer for FYC requirements. So we just were making that statement to say and it might have been the reason why there was a delay in actually picking this up that they were done through a Treasury Outsourcing Company because if it was known in terms of the history of the company what turnover it does, who do they help in terms of the related

parties and all that. Maybe they could have actually arrested more of these transactions earlier than later. So there is this Treasurer and we are not – I am not blaming them. It is a – it is part of business but they also now when you look at the banks like Chairperson in terms of the vigilance now when there is a layer that is being brought in you also look at that other layer. So that – you know – it does not blame the bank. The bank does not blame back and say oh it was not me. It was the Treasurer.

CHAIRPERSON: But you also want to see that the layer is not been
10 used to hide something?

MR SHIWA ELIJAH MAZIBUKO: Yes.

CHAIRPERSON: Hm.

MR SHIWA ELIJAH MAZIBUKO: *Ja*, it helps as I said. It – the intention is to help clients as I made an example of – you know – a better bond if you are looking for a bond. At work I say relax we will shop for you for a better interest rate. You do not need to phone the banks, go there, discuss it and then they say there are the four banks. This what we have got for you and it does work because I have used it before. So – so it is not something wrong about it but one has to be
20 very careful that things that as I alluded to credit cards issued by banks. The things that – you know – or the system we open it up to assist the client and to make the system efficient. It does not come back to bite us. So those are the things that you must always close the loopholes.

ADV PHILLIP MOKOENA SC: Yes and I think it is important also

Mr Mazibuko – you know – let me take you slightly back ...

MR SHIWA ELIJAH MAZIBUKO: Hm.

ADV PHILLIP MOKOENA SC: To your statement because from page 17 paragraph 41 you neatly capture the irregularities – you know – in relation to these payments which were made by Homix to these other entities. If you can please summarise – you know – those paragraphs – paragraphs 41 to 45 please. They are quite key.

MR SHIWA ELIJAH MAZIBUKO: This is on page Chair ...?

ADV PHILLIP MOKOENA SC: 1-7.

10 **MR SHIWA ELIJAH MAZIBUKO:** 1-7?

ADV PHILLIP MOKOENA SC: Yes.

MR SHIWA ELIJAH MAZIBUKO: Okay. *Ja*, so and I think there on – on page – on page 17 ...

ADV PHILLIP MOKOENA SC: Paragraph 41.

MR SHIWA ELIJAH MAZIBUKO: Paragraph 41.

ADV PHILLIP MOKOENA SC: Yes.

20 **MR SHIWA ELIJAH MAZIBUKO:** You know where there is a red flag so when we refer to two entities these are the two entities that when we did the investigation as to who actually is receiving the money on the other side we found that it was YKA and Morningstar.

ADV PHILLIP MOKOENA SC: Yes. The beneficiaries ...

MR SHIWA ELIJAH MAZIBUKO: Sorry the beneficiaries.

ADV PHILLIP MOKOENA SC: From Homix, yes.

MR SHIWA ELIJAH MAZIBUKO: *Ja* and – and it was found they have got a little online presence and other commercial presence. We could

not a track record of these companies. Not that a company with a website that looks very good is a legitimate. We know how many have been robbed thinking that a number of websites because they look you know – beautiful and they have got full information it – but in this case when you look at it to say monies that can flow to these guys very quickly when you go into – and you will see that when we look we are going to look through the Directors of the company were – you know – at what stage in terms of these transactions in terms of their passport numbers that are reflected in some of these documents.

10 **ADV PHILLIP MOKOENA SC:** Yes.

MR SHIWA ELIJAH MAZIBUKO: So it was a red flag that actually – because you start to worry when you see something to say there is a company receiving 51 point but it does not have - seem to have a good track record and then ...

ADV PHILLIP MOKOENA SC: (Intervenes) yes.

MR SHIWA ELIJAH MAZIBUKO: And 42 I alluded to the reference movement numbers that are generated by SARS and can be verified by the commercial banks themselves and they are used actually to pay when you are paying for – for imports. So – so these three movement
20 reference numbers which were supplied by Homix to justify the 16 transactions mentioned above.

“A validation of this MRNs on the...”

I am quoting now on paragraph 42.

“...on the IVF System reveal that while the MRNs
were valid the total value of goods cleared

amounted ...”

So they were valid – these MRNs – and the money was paid out but remember you pay out for – to confirm the goods cleared that there is a match.

ADV PHILLIP MOKOENA SC: Yes.

MR SHIWA ELIJAH MAZIBUKO: That is where the MRNs - to say when you go to the bank you say to the bank okay origin of the goods supplier, value and how much am I paying for the goods. How much did you clear and they said okay 51 million paid out only 50 000 was
10 cleared in this. So the significance of this discrepancy is that the value of the payments made out of South Africa did not match the value of the goods claimed to be imported. You know – authorisation was sought for 51.8 million from the bank to leave the country while only 50 000 worth of goods were to be imported into the country. So I just want to highlight that out of this transaction.

ADV PHILLIP MOKOENA SC: Yes. Now let me take you back where you from page 18. You were still telling the Chair about the Peritus Forex Solutions.

MR SHIWA ELIJAH MAZIBUKO: Yes.

20 **ADV PHILLIP MOKOENA SC:** Any other thing that you want to highlight in that regard?

MR SHIWA ELIJAH MAZIBUKO: So I just want to on page – you said page 16?

ADV PHILLIP MOKOENA SC: 18 – 1-8.

MR SHIWA ELIJAH MAZIBUKO: 1-8 - *ja* so I have – I have explained

how they work in terms of the capacity where sometimes they facilitate money laundering but also now come to page 49 as I was talking about ...

ADV PHILLIP MOKOENA SC: Paragraph 49?

MR SHIWA ELIJAH MAZIBUKO: Yes paragraph 49 – where it says:

“According to Mr Conrad Kriel of Peritus it receives instructions for the relevant transaction for Homix from Mr Bhikhu.”

Now more about Mr Bhikhu as is it alluded to in the brackets will follow.

10 “He was one of the Sole Directors and that he gave these either telephonically to whom – to Peritus – by email from an email address identifies as – as Homix786@gmail.com.”

ADV PHILLIP MOKOENA SC: Yes.

MR SHIWA ELIJAH MAZIBUKO: Now for a company to have such an email it becomes very suspicious. By nature to say no not that there is nothing wrong with an email because people use those types of email but for an established company that has got an email of that nature – you know – raise some concerns and then he says:

20 “Relevant correspondence between the (indistinct) Department and Mr Kriel in this regard is annexed hereto and marked as Annexure SCM13 on 315.”

Here if the Chairperson would want to go there. So these are the emails that were between the client – Homix - and Peritus giving them instructions and normally when you are trading in forex and you are

giving the rates those type of transactions gets recorded. It is like a dealing room in a bank. That when you work in a dealing room whatever type of activity that takes place there needs to be recorded so that when something goes wrong you can go back. So even here. So here the FinServe had requested information when investigation was happening and it – it wanted the recorded whatever which took about a long time to be actually given to FinServe in terms of what was happening here but there is nothing wrong here in terms of the middleman which is the – the Peritus. The problem was their client
 10 which was problematic but I want to move to – to 50 – paragraph 50 (intervenes).

ADV PHILLIP MOKOENA SC: Yes. You are referring there to ...

MR SHIWA ELIJAH MAZIBUKO: Yes.

ADV PHILLIP MOKOENA SC: EDI Releases ...

MR SHIWA ELIJAH MAZIBUKO: Ja, so ...

ADV PHILLIP MOKOENA SC: Which are related to Mercantile. Firstly ...

MR SHIWA ELIJAH MAZIBUKO: So (intervenes).

ADV PHILLIP MOKOENA SC: Explain to us – explain to us firstly what
 20 these EDIs are.

MR SHIWA ELIJAH MAZIBUKO: So the EDI is an Electronic Data Interchange. So it is a modern system of moving information between counterparties without paper. So it is – it is a system – it is a – it is a system that is being utilised nowadays. That is why SARS uses that system that is something – I - I alluded to the – to something that SARS

Custom Declaration with an MRN but there is what is called also an EDI Release with an M – so it is an equivalent of the same system in SARS that - you know – with the release because the release means that I am saying now to the bank – you know – I have got a release from SARS because that release means that my goods have arrived. I have got a right now to pay for these imports. So I want my goods so that I can pay the supplier and there is a difference as I said that between advanced payments for goods for goods are still going to be manufactured – but I want to dwell on paragraph 50.

10 **ADV PHILLIP MOKOENA SC:** Yes.

MR SHIWA ELIJAH MAZIBUKO: That:

“The EDI Releases which were provided to Mercantile by Homix via Peritus in support of the relevant foreign exchange transaction also indicated that Tutugar (?) Close Corporations had acted as the clearing agent on behalf of ...”

So – so there was a claim that a company by the name of Tutugar Close Corporations has also besides Peritus acted as a clearing agent on behalf of – of Homix. So I wish to proceed with your permission

20 Chairperson to page 19.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Yes.

MR SHIWA ELIJAH MAZIBUKO: It is just to take this further.

ADV PHILLIP MOKOENA SC: Ja.

MR SHIWA ELIJAH MAZIBUKO: So - you know – on paragraph 51 we

say that:

“Homix would have provided Tutugar with the necessary information for loading on the EDI and instructed Tutugar to attend to the specific customs clearances.”

So here is shows that even these companies that are Treasury Outsourcing Companies they do have this system installed. As I said it is an international system in terms of the clearance of goods between various jurisdictions that you can use.

10 **ADV PHILLIP MOKOENA SC:** But did SARB – SARB – you know – independently verify from Tutugar whether it was indeed involved in this transaction?

MR SHIWA ELIJAH MAZIBUKO: Yes. From Tutugar you will see under paragraph 52 Chairperson where that when there was a suspicion Tutugar was requested and asked to say whether they were involved in these type of transactions with the 51. 8 million and they said no and then they provided SARB that is why under paragraph 52 the last sentence:

20 “In support hereof an example of one authentic SARS EDI Release Notification.”

Now SARS EDI Release Notification this is actually the same as SARS Customer Clearance Declaration. It is just - as I said – different systems but the *modus operandi* is the same. You release. Obtain Tutugar is attached because when you be the release notification is that paper that you say my goods are here. The bank can you sell me

foreign currency because they are here. I want to pay the supplier.

ADV PHILLIP MOKOENA SC: Yes, while you are there Mr Mazibuko.

MR SHIWA ELIJAH MAZIBUKO: Hm.

ADV PHILLIP MOKOENA SC: You then – you know – on paragraph 53

...

MR SHIWA ELIJAH MAZIBUKO: Yes.

ADV PHILLIP MOKOENA SC: Deal with two important annexures that is Annexure SEM12 and SEM14.

MR SHIWA ELIJAH MAZIBUKO: Yes. I want to take the Chairperson
10 there.

ADV PHILLIP MOKOENA SC: Yes. Chair they are to be found on page 3-3-0 and 3-3-9. It is important to open those annexures together.

MR SHIWA ELIJAH MAZIBUKO: Ja, we open together.

ADV PHILLIP MOKOENA SC: So that we can illustrate the point.
Chair I beg leave to hand in – I think – I am not sure whether we have better copies of those two annexures or not.

CHAIRPERSON: 3-3-0 and 3-3-9?

ADV PHILLIP MOKOENA SC: Yes Chairperson.

MR SHIWA ELIJAH MAZIBUKO: So ...

20 **ADV PHILLIP MOKOENA SC:** 3-3-0 and 3-3-9.

MR SHIWA ELIJAH MAZIBUKO: So those are the pages. So 3-3-0 is SEM12 and 3-3-9 is SEM14. I just want to show the ...

CHAIRPERSON: One second. I think they are legible.

ADV PHILLIP MOKOENA SC: They are Chair. I can see them ...

CHAIRPERSON: (Intervenes).

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Ja. I think I will manage.

ADV PHILLIP MOKOENA SC: Okay.

MR SHIWA ELIJAH MAZIBUKO: So ...

CHAIRPERSON: Yes.

MR SHIWA ELIJAH MAZIBUKO: So we will need to look and correlate the two documents Chairperson so that we can see what is happening there. Now let us just glance at SEM12 on page 330. So you see there is a SARS EDI Response Notification?

10 **CHAIRPERSON:** Yes.

MR SHIWA ELIJAH MAZIBUKO: Status: release.

CHAIRPERSON: Hm.

MR SHIWA ELIJAH MAZIBUKO: So it means release the goods ...

ADV PHILLIP MOKOENA SC: Ja.

CHAIRPERSON: Hm.

MR SHIWA ELIJAH MAZIBUKO: And then effect the payment. Now the other one on the other side on page 339 is SARS EDI Response Notification. It is the same but underneath status: ready for cash payment.

20 **CHAIRPERSON:** Hm.

MR SHIWA ELIJAH MAZIBUKO: So you can see the difference between the two but I want to take you now into the document details ...

ADV PHILLIP MOKOENA SC: Yes.

MR SHIWA ELIJAH MAZIBUKO: And – and just show what was happening here. Now the – the SEM12 when you come to the document

details although the heading SARS EDI Response Notification status: release is different from the other one SEM14 where SARS EDI Release Notification status: ready for cash payment. If you now you start to go into the document details you - you look at the agent file number.

CHAIRPERSON: Yes.

MR SHIWA ELIJAH MAZIBUKO: So the better one for me is on the one SEM14 which – you know – looks like S115/04-68.

ADV PHILLIP MOKOENA SC: Yes.

MR SHIWA ELIJAH MAZIBUKO: It is the same ...

10 **CHAIRPERSON:** Well there is SEM12

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Looks the same except that after dash ...

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: It looks 66. It looks as 66.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: 66.

MR SHIWA ELIJAH MAZIBUKO: So – so - and then you come and look at the difference at ...

CHAIRPERSON: *Ja*, I think the one on SEM14 ...

20 **ADV PHILLIP MOKOENA SC:** Yes.

CHAIRPERSON: Looks to me like 66 at the end as well but you may be seeing it as 88 or I see it as 66 but it looks like the same number.

MR SHIWA ELIJAH MAZIBUKO: You are right Chairperson.

ADV PHILLIP MOKOENA SC: It is the same number.

MR SHIWA ELIJAH MAZIBUKO: So it is the same number.

CHAIRPERSON: *Ja*, it is the same number.

MR SHIWA ELIJAH MAZIBUKO: It is not 68. It is 66.

CHAIRPERSON: Okay.

MR SHIWA ELIJAH MAZIBUKO: Yes. So – and then you look at the – let us look at the MRN number on SEM12 and MRN number on SEM14 as well – you know. So it is quite long but it also looks the same Chair.

CHAIRPERSON: I am trying to locate ...

ADV PHILLIP MOKOENA SC: Where do we find it? Let us deal first with S ...

- 10 **MR SHIWA ELIJAH MAZIBUKO:** So further down Chairperson from the agent file number which ends with 66 ...

CHAIRPERSON: Yes.

MR SHIWA ELIJAH MAZIBUKO: You just go a little bit down.

CHAIRPERSON: Oh, yes I have got it.

MR SHIWA ELIJAH MAZIBUKO: You will find the MRN number on your left.

CHAIRPERSON: *Ja*, I have got it.

MR SHIWA ELIJAH MAZIBUKO: Which is clear in Durban. So ...

CHAIRPERSON: Yes. Starts with DBN.

- 20 **MR SHIWA ELIJAH MAZIBUKO:** DBN, yes.

CHAIRPERSON: Huh-uh.

MR SHIWA ELIJAH MAZIBUKO: And then you see the date as well below that – bill of entry release date: 2015/04/03, bill of entry assessment date ...

CHAIRPERSON: I think it looks to me bill of entry release date looks

like 2015/04/13.

ADV PHILLIP MOKOENA SC: 13 yes, yes.

MR SHIWA ELIJAH MAZIBUKO: And then the next one is also 2015 ...

CHAIRPERSON: *Ja*, same day.

MR SHIWA ELIJAH MAZIBUKO: Which is a bill of entry assessment date.

ADV PHILLIP MOKOENA SC: Same date, *ja*.

MR SHIWA ELIJAH MAZIBUKO: But then look on the right of SEM14. So when you look on the right - as I alluded to – so the SEM14 one is
10 what was given by Tutugar to us to say it is an authentic payment. So you will see that just opposite those numbers Chairperson 2015 on your right invoice number and date - on your right on SEM14.

CHAIRPERSON: You say on my right.

MR SHIWA ELIJAH MAZIBUKO: On your – on your ...

CHAIRPERSON: On my left on the other one they seem to be on the left on this one.

MR SHIWA ELIJAH MAZIBUKO: So I was – I was alluding to the bill of entry release date.

CHAIRPERSON: *Ja*.

20 **MR SHIWA ELIJAH MAZIBUKO:** 2015/04/03 and bill of entry assessment date.

CHAIRPERSON: Yes.

MR SHIWA ELIJAH MAZIBUKO: And then on your right of those numbers ...

CHAIRPERSON: Oh.

MR SHIWA ELIJAH MAZIBUKO: To me they are on my right there is an invoice number and date.

CHAIRPERSON: Yes. I can see that.

MR SHIWA ELIJAH MAZIBUKO: And it starts with an INV.

CHAIRPERSON: Yes. I can see that.

MR SHIWA ELIJAH MAZIBUKO: So on SEM14 you can see it. Come on the SEM12 it is not there.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Okay. On SEM14 the invoice number and date appear
10 to be INV820150312-31.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: And below that appears 15.03.17.

ADV PHILLIP MOKOENA SC: 17, yes.

CHAIRPERSON: Which might be 17 March 2015 and you say when we go to SEM12 at page 330 ...

MR SHIWA ELIJAH MAZIBUKO: Look to the right (intervenes).

CHAIRPERSON: That invoice number and date is not shown.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Yes.

20 **MR SHIWA ELIJAH MAZIBUKO:** So you can go further but I want us to go to the amount. On the SEM14 just – because we could go to a number of numbers. There is what is called ICN – Import Control Number is the same as well but I just want to besides just now analysing the whole document. It also looks the same but I want to go to the CIFC amount on SEM14 – on the authentic one that came from

Tutugar.

CHAIRPERSON: What number are you going to now?

MR SHIWA ELIJAH MAZIBUKO: So - so if you can just – just where you see in – in letters “transport details” just above there is a total payment, customer value and the total CFIC value of 44.

ADV PHILLIP MOKOENA SC: Yes.

MR SHIWA ELIJAH MAZIBUKO: I want to go through those amounts.

CHAIRPERSON: Is that the first third of the document, second third or last third? Help me to locate where you ...?

10 **MR SHIWA ELIJAH MAZIBUKO**: So above the transport details is the third number. You know under ...

CHAIRPERSON: I can see “transport code”.

MR SHIWA ELIJAH MAZIBUKO: When you look under mass/kilogram of 12035 under SEM14 when you go for – when you go down.

ADV PHILLIP MOKOENA SC: Let me assist Chair. If – if you go to S...

CHAIRPERSON: Oh there is “transport details”.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Now I can see that.

ADV PHILLIP MOKOENA SC: Yes.

20 **MR SHIWA ELIJAH MAZIBUKO**: Just above that Chairperson.

CHAIRPERSON: Oh, yes.

MR SHIWA ELIJAH MAZIBUKO: I just want to show you the amounts to say ...

CHAIRPERSON: Yes.

MR SHIWA ELIJAH MAZIBUKO: And then things start to differ here. A

number of details they seem to the same – you know – as I have shown that on the authentic one there is invoice and date is not here on the falsified one.

CHAIRPERSON: Huh-uh.

MR SHIWA ELIJAH MAZIBUKO: So when you look at here you can see that even the mass/kilogram on the – and that is – this is very strange because ...

CHAIRPERSON: On SEM14?

ADV PHILLIP MOKOENA SC: Yes.

10 **MR SHIWA ELIJAH MAZIBUKO:** So let us start on SEM14.

CHAIRPERSON: *Ja*.

MR SHIWA ELIJAH MAZIBUKO: The mass/kilogram 12 035. Can you see that Chairperson on SEM ...

CHAIRPERSON: Yes, 1 203 ...

ADV PHILLIP MOKOENA SC: Five.

CHAIRPERSON: Five or six – I think five *ja*.

MR SHIWA ELIJAH MAZIBUKO: Yes. So that is the mass/kilogram of goods that one.

CHAIRPERSON: Yes.

20 **MR SHIWA ELIJAH MAZIBUKO:** And the total CFC is 44 397 for 12 035 mass/kilogram. So what was paid is 44 – so the amount there for the customer insurance value is 44 397.

CHAIRPERSON: Yes.

MR SHIWA ELIJAH MAZIBUKO: I am trying to correlate that with the SEM12 where the mass has been so inflated when you look at the one

that is falsified. That goes to – you know – it is 4 million. I do not know what type of mass is that whether even on a ship (intervenes).

CHAIRPERSON: Mass/kilogram 4 ...

MR SHIWA ELIJAH MAZIBUKO: Mass/kilogram 420-and ...

CHAIRPERSON: 4 250 000.

MR SIHWA ELIJAH MAZIBUKO: Yes and then the amount is so inflated it becomes 3 63 or it's 36 326 548.

CHAIRPERSON: It looks to me like 39 326 548.

MR SIHWA ELIJAH MAZIBUKO: Ja,

10 **CHAIRPERSON:** That is the total CIFC is that right?

MR SIHWA ELIJAH MAZIBUKO: Yes, yes, so these are the documents that almost look the same but they are different.

CHAIRPERSON: Yes.

MR SIHWA ELIJAH MAZIBUKO: This ME14 is the authentic one that we got from Tutuga with all their relevant details.

CHAIRPERSON: Yes.

MR SIHWA ELIJAH MAZIBUKO: And then the one that, from Homix that, part of that 51.7million that 36million this is the one that was used.

20 **CHAIRPERSON:** Yes.

MR SIHWA ELIJAH MAZIBUKO: Yes so I just wanted to show that in terms of as I said when you talk about the trade base money laundering the falsification of documents for a transaction that looks legit it's a process, you can see the time we spent just spending time to, it's good, nice, the figures here that if you are working in a bank ...(intervention)

CHAIRPERSON: And you are very busy.

MR SIHWA ELIJAH MAZIBUKO: Are you are every busy.

CHAIRPERSON: You might not have time.

MR SIHWA ELIJAH MAZIBUKO: You might just stamp but you just take this and stamp and at a later stage this is what happens, the money has gone out of the country.

CHAIRPERSON: Hmm, hmm.

ADV PHILLIP MOKOENA SC: In addition to that Mr Mazibuko if you go to page SEM14 on page 339, right, are you there?

10 **MR SIHWA ELIJAH MAZIBUKO:** I want to go, so SEM14?

ADV PHILLIP MOKOENA SC: Ja, just stay there at SEM14, it's the one that you have been telling the Chair with on page 339.

MR SIHWA ELIJAH MAZIBUKO: Ja, SEM14, yes that one Chairperson yes.

ADV PHILLIP MOKOENA SC: Let's go to – you have the two big headings on top.

MR SIHWA ELIJAH MAZIBUKO: Yes.

ADV PHILLIP MOKOENA SC: The second heading it says status, ready for cash payment can you see that?

20 **MR SIHWA ELIJAH MAZIBUKO:** Yes.

ADV PHILLIP MOKOENA SC: If you go down there's document detail and it has importer, consignee, then you have Homix, can you see that?

MR SIHWA ELIJAH MAZIBUKO: Yes i can see that.

ADV PHILLIP MOKOENA SC: Immediately after there there's an exporter, FGC, can you see that?

MR SIHWA ELIJAH MAZIBUKO: Yes.

ADV PHILLIP MOKOENA SC: Now are you able to see the same if you go to page 330 in relation to SEM12, are the companies the same?

CHAIRPERSON: I'm sorry, I lost you, what were you looking at, at SEM14?

ADV PHILLIP MOKOENA SC: On SEM14 Chair you will see that there is two headings, the first one says SARS EDI response recognition.

CHAIRPERSON: Yes, yes.

ADV PHILLIP MOKOENA SC: The second one says status ready for
10 cash payment.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: And then there's a heading, sub-heading documents details.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: And it gives you importer and consignee, and it says Homix Pty Ltd, then exporter, supplier, FGC Commodities.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: Now I wanted the – Mr Mazibuko to
20 compare that with SEM12, whether the same information exist?

MR SIHWA ELIJAH MAZIBUKO: On SEM12 Chairperson are you, counsel are you alluding to the exporter, the supplier?

ADV PHILLIP MOKOENA SC: Yes, yes.

MR SIHWA ELIJAH MAZIBUKO: Ja, so on SEM12 the exporter is Morning Star, no the supplier is Morning Star International, you know

an exporter is because it's from the other side.

CHAIRPERSON: Ja, they are exporter.

MR SIHWA ELIJAH MAZIBUKO: Yes for exporting to SA, and then here on the SEM41 the export is FGC Commodities Pty Limited.

ADV PHILLIP MOKOENA SC: That is also different.

MR SIHWA ELIJAH MAZIBUKO: Yes they are different.

ADV PHILLIP MOKOENA SC: We can go to a number of examples but I want you to conclude by going back to your statement page 19, because I think that's where the essence of your testimony lies,
10 paragraph 53, can you see?

MR SHIWA ELIJAH MAZIBUKO: Yes.

ADV PHILLIP MOKOENA SC: If you go to line number 4 if you can read for the Chair where it starts by saying "notably".

MR SHIWA ELIJAH MAZIBUKO: Yes.

ADV PHILLIP MOKOENA SC: Now I take it that this notably it's now after you have now done this thorough exercise, and alluded to these discrepancies, and then can you read that into that record?

CHAIRPERSON: You said what page?

ADV PHILLIP MOKOENA SC: It's page 19 Chair.

20 **CHAIRPERSON:** One nine?

ADV PHILLIP MOKOENA SC: 19, paragraph 53.

CHAIRPERSON: Okay.

ADV PHILLIP MOKOENA SC: And line number four.

MR SHIWA ELIJAH MAZIBUKO: Yes, so it reads thus Chairperson I don't know whether you – are you there now?

CHAIRPERSON: Yes, can read up there, ja you can read.

MR SHIWA ELIJAH MAZIBUKO: Notably the exporter/supplier customs values and duties payable differ. This was found to be the case on more than one occasion. It follows that on a balance of probabilities the EDI releases provided to make entirely by Homix were falsified.

ADV PHILLIP MOKOENA SC: That's exactly the point that you want to convey to the Chair?

MR SHIWA ELIJAH MAZIBUKO: Yes, but as (indistinct) this is part and parcel of trade base money laundering by Homix.

10 **ADV PHILLIP MOKOENA SC:** Yes. Now if we can move now to page 21, paragraph 54 of your witness statement where you're dealing with the enforcement action taken against Homix, and please tell the Chair if you are able to summarise those contents but if you are not able to please emphasize whatever points you may want to emphasize under that heading.

MR SHIWA ELIJAH MAZIBUKO: Yes. So Chair under the enforcement action taken against Homix, now this is the division I alluded to, compliance and enforcement action, a letter was addressed to the director of Homix, both by email and registered mail inviting his
20 director to make representation as to why the funds blocked that R14million in the Merchant Mercantile Bank account should not be declared forfeit to the State in terms of Exchange Control 22B.

ADV PHILLIP MOKOENA SC: Yes.

MR SHIWA ELIJAH MAZIBUKO: Ja.

ADV PHILLIP MOKOENA SC: May I refer you to because that is quite

an important letter may I refer you to SEM14, Chair it's on page 341.

CHAIRPERSON: 341?

ADV PHILLIP MOKOENA SC: Yes Chair.

CHAIRPERSON: I've got it.

ADV PHILLIP MOKOENA SC: Is that the letter that you are referring to?

MR SHIWA ELIJAH MAZIBUKO: That was directed to Mr Biko, remember Mr Biko is the one that gave instruction to Perutis through you know a gmail account so the letter was directed to him, and they
10 were just ...(intervention)

ADV PHILLIP MOKOENA SC: The date of the letter?

MR SHIWA ELIJAH MAZIBUKO: The date of the letter is 2015/07/29.

ADV PHILLIP MOKOENA SC: So 29 July 2015?

MR SHIWA ELIJAH MAZIBUKO: Yes.

ADV PHILLIP MOKOENA SC: And if you go to the heading if you can read the heading for us Mr Mazibuko so that we can appreciate what was the purpose of this letter.

MR SHIWA ELIJAH MAZIBUKO: So the heading reads like this
Chairperson "Alleged Contraventions of the Provisions of Exchange
20 Control Regulations made under Section 9 of the Currency and
Exchanges Act 1933, Act number 9 of ...(intervention)

ADV PHILLIP MOKOENA SC: As you read please mind your mic so at least we can be able to catch your evidence, yes.

MR SHIWA ELIJAH MAZIBUKO: Alright, yes, apologies for that. So maybe let me start so that one is not lost in translation.

ADV PHILLIP MOKOENA SC: Yes.

MR SHIWA ELIJAH MAZIBUKO: It reads like this:

“Alleged contraventions of the Provisions of the Exchange Control Regulations made under Section 9 of the Currency and Exchanges Act 1933, (Act Number 9 of 1933 as amended), as promulgated by Government Notice R111/1961 Clause 01 is amended Homix Pty Limited Registration Number”

ADV PHILLIP MOKOENA SC: Yes, what do they call it there.

MR SHIWA ELIJAH MAZIBUKO:

10 “...Registration number 2012/176951/07) and/or its sole director being Mr Jacobo Ahmed Suleiman Biko ...”

ADV PHILLIP MOKOENA SC: You don't have to mention the ID number, it's fine.

MR SHIWA ELIJAH MAZIBUKO: Yes, yes so that was the heading of the letter.

ADV PHILLIP MOKOENA SC: Yes, and I – and from paragraph one you refer to the relevant legislation to this letter.

MR SHIWA ELIJAH MAZIBUKO: Ja.

ADV PHILLIP MOKOENA SC: You don't have to go through that, but
20 importantly page 342, if you can take the Chair, because this is quite important Mr Mazibuko please read from paragraph 2 up until paragraph 3.3.

MR SHIWA ELIJAH MAZIBUKO: Okay, I will read Chairperson.
Paragraph 2:

“On or about 29 May 2015 Homix Pty Limited herein referred to

as Homix and/or its sole director Mr Jacobo Ahmed Suleiman Biko herein referred to as Mr Biko was party to certain acts and/or omissions which constituted contraventions of the provisions of the regulations of which are on reasonable grounds suspected to have constituted such conventions, details of which contraventions or suspected contraventions are more fully set out in paragraph 3 *infra*.”

Paragraph 3:

10 “As referred to in paragraph 2 above the following contraventions of the provisions of the regulations have been committed or are on reasonable grounds suspected to have been committed, namely:

3.1 Contraventions or suspected contraventions Regulation 2.4 in that Homix and/or Mr Biko applied for foreign currency to the value of R29 885 671 to be transferred via Mercantile Limited out of the Republic on behalf of Homix which foreign currency which was to be used for or applied to a purpose other than stated in the relevant application.

20 3.2 Contraventions or suspected contraventions or Regulation 3.1 in that Homix and/or Mr Biko attempted to transfer foreign currency from the Republic without permission granted by the Treasury or not in accordance with the condition that the Treasury may have imposed.”

You said I must stop here?

ADV PHILLIP MOKOENA SC: No, no you must proceed.

MR SHIWA ELIJAH MAZIBUKO: Okay.

10 “3.3 Contraventions or suspected contraventions of
 Regulations 10(1)(c) in that Homix and/or Mr Biko
 entered into transactions whereby capital or any right
 to capital was directly or indirectly exported from the
 Republic without permission granted by the Treasury
 and not in accordance with the conditions that the
 Treasury may have imposed.”

ADV PHILLIP MOKOENA SC: And you refer also to those transactions,
they go up until paragraph 6 on page 343, am I right?

MR SHIWA ELIJAH MAZIBUKO: Yes, yes.

ADV PHILLIP MOKOENA SC: Now what I want to know upon this that
had been dispersed to Homix and its sole director did they ever
respond to this correspondence?

MR SHIWA ELIJAH MAZIBUKO: They never responded Chairperson.

ADV PHILLIP MOKOENA SC: And am I correct that they were also
afforded an opportunity to make representations.

20 **MR SHIWA ELIJAH MAZIBUKO:** Yes this letter is where we want them
so it's a *audi alteram partem* principle being applied, this here the other
side, where we are looking for, because we have now identified that
they have contravened to say they must come and explain themselves
and we want a full, frank and verifiable disclosure from them, so they
never came back to us.

ADV PHILLIP MOKOENA SC: And these, I mean these transgressions are very serious am I correct?

MR SHIWA ELIJAH MAZIBUKO: Yes they are very, very serious.

ADV PHILLIP MOKOENA SC: Now you highlight the seriousness also with reference, if I may take you back to page 342.

MR SHIWA ELIJAH MAZIBUKO: 342?

ADV PHILLIP MOKOENA SC: Yes. It's the very same letter.

MR SHIWA ELIJAH MAZIBUKO: Yes.

ADV PHILLIP MOKOENA SC: I was just interposing put some
10 questions to you but I want to proceed with paragraph 3.4 onwards.

MR SHIWA ELIJAH MAZIBUKO: Yes, okay, so 3.4 contraventions or suspected contravention of Regulation 19 read with Regulation 22, so Regulation 19 refers to false information, if I may just allude to that.

ADV PHILLIP MOKOENA SC: Yes if you can read the following page.

MR SHIWA ELIJAH MAZIBUKO: And then 341:

“Incorrect statements were made in declaration in applications to purchase foreign currency to an authorised dealer.”

ADV PHILLIP MOKOENA SC: And this is what you were alluding to in your testimony earlier on to the Chair am I correct.

20 **MR SHIWA ELIJAH MAZIBUKO:** Yes, yes Chairperson.

ADV PHILLIP MOKOENA SC: Yes and then 3.4.2?

MR SHIWA ELIJAH MAZIBUKO:

“3.4.2 False documentation and/or documentation containing false or incorrect statements were provided to an authorised dealer in support of applications to purchase foreign currency.”

ADV PHILLIP MOKOENA SC: Yes, and paragraph 4?

MR SIHWA ELIJAH MAZIBUKO: Paragraph 4:

“On or about 29 May 2015 a duly authorised officer of the Financial Surveillance Department of the South African Reserve Bank issued an order in terms of the provisions of Regulation 22A whereby no person may withdraw or cause the withdrawal of or appropriating any manner an amount of 144 720 475.00 together with interest thereon or accrual thereto Sterling to the credit of Homix in account number”

10 Should I read the account number?

ADV PHILLIP MOKOENA SC: No don't.

MR SIHWA ELIJAH MAZIBUKO: Okay.

“...held at Mercantile Bank Limited.”

ADV PHILLIP MOKOENA SC: Yes, now may I refer you back to page 21 of your statement.

MR SIHWA ELIJAH MAZIBUKO: I'm there Chairperson.

CHAIRPERSON: Just while, before you do that, so your procedure would be you first block the account and then you give them *audi alteram partem*.

20 **MR SIHWA ELIJAH MAZIBUKO:** Yes.

CHAIRPERSON: And then if they don't respond the money is forfeited to the State.

MR SIHWA ELIJAH MAZIBUKO: Ja sometimes it defaults a little bit Chairperson so when we block so what normally happens immediately if your account is blocked you're going to jump to say you will say you

know how am I going to live, how am I going to pay for my living expenses, so then phone immediately in or ask the bank to say why is my account blocked and they will tell you it's the South African Reserve Bank because there are suspicious – or it's us that reported you, I don't know whether they do say that to the client, and hence the Reserve Bank has actually blocked your account and then you can make arrangements to come to us immediately so that you can clarify the situation as to ...(intervention)

CHAIRPERSON: Ja, but sometimes people just disappear.

- 10 **MR SIHWA ELIJAH MAZIBUKO:** Yes so immediately there is some shenanigans going on there's some delay in coming to us, so in order now to fulfil the whole process of giving a fair process to everybody we will wait until you come, sometimes you are allowed to bring your representative which is an attorney to come and talk on your behalf, that you are allowed to do, so we will engage with them and sometimes they will promise to provide documentation, as I said now we need to provide full frank and verifiable, so I will bring this to confirm this so that it is not – so you need to prove to us that what is happening here is not what we see.

- 20 **CHAIRPERSON:** So you take time before you conclude that the person maybe is not interested in making representations.

MR SIHWA ELIJAH MAZIBUKO: Yes, so when we open ...(intervention)

CHAIRPERSON: If it is quiet they don't contact you over a long period.

MR SIHWA ELIJAH MAZIBUKO: A long period, sometimes – we are given a maximum time of three years when we open the investigation

file to actually institute the forfeiture.

CHAIRPERSON: Okay.

MR SIHWA ELIJAH MAZIBUKO: If we don't we have to give the money back.

CHAIRPERSON: Okay, alright, thank you.

ADV PHILLIP MOKOENA SC: Chair there is one more topic but we are still busy with this topic, it's four o'clock I'm not sure up until what time should we go Chair, whether Chair is going to use the helicopter.

CHAIRPERSON: I think we can go up to quarter past four.

10 **ADV PHILLIP MOKOENA SC**: Quarter past four Chair.

CHAIRPERSON: Ja, I understand that the witness is not available beyond ...(intervention)

ADV PHILLIP MOKOENA SC: That were days that he is not available I can just try to ...(intervention)

CHAIRPERSON: Yes, we – if he is not available on Monday we can – arrangements can be made for another day.

ADV PHILLIP MOKOENA SC: Let me turn my back for a moment Chair, let me just verify it.

CHAIRPERSON: Oh he seems to indicate availability or ...

20 **MR SIHWA ELIJAH MAZIBUKO**: I am available ...(intervention)

CHAIRPERSON: You are available on Monday, oh okay, alright, thank you. I think that's very helpful so we can go up to quarter past.

ADV PHILLIP MOKOENA SC: Quarter past, then maybe even on Monday we can start early?

CHAIRPERSON: On Monday we can start early to finish with him,

maybe we will start at nine?

ADV PHILLIP MOKOENA SC: Nine o'clock would be quite appreciative
Chair yes.

CHAIRPERSON: Okay and would that suit you Mr Mazibuko?

MR SIHWA ELIJAH MAZIBUKO: It will suit me Chairperson.

CHAIRPERSON: Okay thank you and I take it would suit your legal
team as well, they indicated as such.

ADV PHILLIP MOKOENA SC: Chair the legal team is always available,
I'm sure, they will make arrangements.

10 **CHAIRPERSON:** Okay thank you very much.

ADC PHILLIP MOKOENA SC: They will make arrangements, the
Commission comes first.

CHAIRPERSON: Now everybody is cooperating with, thank you.

ADV PHILLIP MOKOENA SC: Now let's go back to page 20 of your
witness statement and with reference to paragraph 55 you have already
informed the Chair that there was no response we now know there was
no response but fundamentally take us through paragraph 56 of your
statement.

20 **MR SIHWA ELIJAH MAZIBUKO:** Yes Chairperson so the process that I
described earlier in my introduction that then when they never
responded to us after the letter we have been looking at on 30th
December 2016 and noticed an order of forfeiture declaring the amount
of R14 472 075 standing to the credit of Homix in its Mercantile Bank
account was forfeited to the State in terms of the Exchange Control
Regulation 22B and was published in the Government Gazette, so the

date of forfeiture is the date when it is published in the Government Gazette, because once there's a forfeiture when the matter is dealt with from the beginning the public will never know that Elijah Mazibuko account is suspicious or he is involved in nefarious activities, but even here when there's a publication it doesn't even state you know your sins as to what you have done, we just say the amount for this company, registration number or if it's a person Elijah Mazibuko ID number so and so his money has been forfeited you know to the State, so people will read between the lines to say people can't just – the
10 Government can't take your money you must have done something.

CHAIRPERSON: (laughing) ja, okay.

ADV PHILLIP MOKOENA SC: Now do you know if Homix or its sole director ever challenged this forfeiture?

MR SIHWA ELIJAH MAZIBUKO: So they have about two years to do that.

ADV PHILLIP MOKOENA SC: But they've never challenged this forfeiture?

MR SIHWA ELIJAH MAZIBUKO: In most cases, it is very rare that we have been challenged in the past, of taking it to court because it is
20 within their right, but in most cases the type of Homix companies that run away or individuals that run away when you say to them make representation so that we can talk, in most cases they have run they have just left everything.

ADV PHILLIP MOKOENA SC: They opt to run away as the Chair said.

MR SIHWA ELIJAH MAZIBUKO: Yes they just run away from

R14million, so somebody – R14million is not a small amount of money, we can share it amongst ourselves here, we will be very happy for this weekend, it's not a small amount of money but if you're going to run away from it hey there must be something wrong.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Well even if you might not have worked for it you would still want it.

MR SIHWA ELIJAH MAZIBUKO: Yes.

CHAIRPERSON: Okay.

- 10 **ADV PHILLIP MOKOENA SC:** Now could you please summarise for us what you are saying in paragraph 57 and 58.

MR SIHWA ELIJAH MAZIBUKO: Yes, here – so in 57 it takes back the type of transactions that Homix were doing in terms of the flurry of transactions within a few days to only two beneficiaries and also the falsification of documentation that we found that actually was driving these amounts to these two companies and also I think the biggest factor is what we have just been alluding to in terms of to say whenever it was now discovered that these entries have been falsified, the amount is blocked, when they are asked to make representation you
20 know a normal company or normal person where there is a legitimate trade and there's a misunderstanding will come and make representation to say this is actually the actual situation but – so they are in action you know typically of the behaviour to be expected from an illegitimate company because a company that is legit with a legitimate registration number, offices and all that, they will be able to

deal with that, so this one it seems like a letterbox company yes, that was just used to actually take money out of the country.

ADV PHILLIP MOKOENA SC: Chair we should remind ourselves that these are the monies which the other witnesses have spoken about, directly arising from the tenders which are awarded to Transnet and these are the monies that find themselves in Homix and this is where we now know that when people have to account they would rather run away from accounting as to what was the legitimacy of those monies.

MR SIHWA ELIJAH MAZIBUKO: If I now can just emphasize
10 Chairperson with paragraph 58 to say pursuant to the above all information presented it is submitted that the transactions over the accounts of Homix displayed all the hallmarks of a scheme aimed at disguising the origin, the nature and ultimate destination of funds in other words a money laundering scheme.

ADV PHILLIP MOKOENA SC: Yes. Now it was not only Homix you know as an entity that we investigated but when you look at the account of Homix I think that you also looked at other related or associated companies, and you're doing that from paragraph 59, page 21 Mr Chair, if you can tell us about those entities as well.

20 **MR SIHWA ELIJAH MAZIBUKO:** Yes.

CHAIRPERSON: Before you do so just as a matter of interest when you discover as you did here in relation to Homix and this R14million that there seems to have been a problem, but you know that there's R51million that's left.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Would you then interact with maybe the Reserve Bank of the jurisdiction where the money was sent or with other – with Law Enforcement Agencies to say they must look at that money in that other jurisdiction or alert them so that they can make whatever decisions they make about whether they will look or they will not look.

MR SIHWA ELIJAH MAZIBUKO: I must say Chairperson we have never done that because that is facilitated between the two countries where the money has gone there's a mutual legal assistance.

CHAIRPERSON: Yes.

10 **MR SIHWA ELIJAH MAZIBUKO:** If it doesn't exist it becomes very difficult even to engage with authorities on the other side.

CHAIRPERSON: Okay, but you would – would you alert the authorities within the country whether it's the police or it's the Minister of Justice or the Minister of Foreign Affairs, the authorities who should look at the possibility of alerting other law enforcement agencies to say there's something suspicious, just have a look and follow up if you are persuaded that there is something suspicious as well.

MR SIHWA ELIJAH MAZIBUKO: We have never, I think it might be because when you start now to look at police and other enforcement
20 across, because if you look at in terms of how we work because we are the then the central bank and some of the – a transaction of this nature because there's qualification of information they get given to the NPA, I think those are – those they can be the ones that will because even with the mutual legal assistance when we are working because I must say that we have been trying to between ourselves and Dubai trying to

get a mutual legal assistance, which I don't know how far it is, but that is being worked over I think by the NPA so that – because we work with, there's something that we have established that we call inter-agency working group, this involve the SAPS, the NPA, FIC, SARS, whatever, so we work together so that we can see a bigger picture because some of these transactions like the ones that maybe when I come back on Monday you see them now they are local, but they are not – but how we looked at local we say who funded Homix to be able to do this cross-border transaction, you need to start, but from there it

10 is no longer our mandate, we are just looking who are the feeder accounts that are feeding into this so that the money can go out, but looking into the account now that are actually moving within the country it will be the Financial Intelligence Centre Act that they should be able to, but I must admit that we don't write or to – I think maybe it might be we need to collaborate more amongst ourselves to say without maybe the mutual – because I was told that to say look you won't be successful if there is no mutual legal assistance between the two jurisdictions.

CHAIRPERSON: Hmm, and then after you have found with regard to

20 this R14million Homix or its director was not interested in making representations I guess your suspicions about the R51million would have been strengthened, I don't know whether you deal with it here but I would like to know whether you went to check whether that R51million even though it may have – the horse had bolted – whether it was also problematic as a matter of fact?

MR SIHWA ELIJAH MAZIBUKO: Yes, it's because the 14million was blocked because of the 51.

CHAIRPERSON: Yes, but what I mean is on the 14million we now know based on what you have said about it.

MR SIHWA ELIJAH MAZIBUKO: Yes, yes.

CHAIRPERSON: Where this was.

MR SIHWA ELIJAH MAZIBUKO: Yes.

CHAIRPERSON: Did you complete any investigation about the 51million, or it was just picking up red flags and then blocking this one.

10 **MR SIHWA ELIJAH MAZIBUKO:** So had we, if I may put it this way that – so when you do a forfeiture based on exchange control contravention you try and recoup, so we're saying exchange control capital exported illegally out of the Republic you cannot take more but you can take the equivalent and less.

CHAIRPERSON: Yes, yes.

MR SIHWA ELIJAH MAZIBUKO: In most cases like you alluded to Chairperson that because maybe our systems are not that efficient by the time we block an account for maybe five million you find that the perpetrator has taken 25 and so there's no match between the two, but
20 it's what the sanction we can only put that to that person to say now you have seen you of doing this, and I don't think they will do it again if you have taken a portion off a person, so even here we ended up just taking the 14 million and that is where it ended.

CHAIRPERSON: Yes, ja, okay, no thank you.

ADV PHILLIP MOKOENA SC: Chair I see that there's no way that in

two minutes we can be – do anything meaningful.

CHAIRPERSON: Ja, no, no we can't.

ADV PHILLIP MOKOENA SC: Maybe we should adjourn then Chair.

CHAIRPERSON: Yes we are going to adjourn for the day, and on Monday then we will start at nine o'clock. We adjourn.

INQUIRY ADJOURNS TO 10 JUNE 2019