

**COMMISSION OF INQUIRY INTO STATE CAPTURE**

**HELD AT**

**PARKTOWN, JOHANNESBURG**

10

**11 JUNE 2019**

**DAY 110**

20

**PROCEEDINGS ON 11 JUNE 2019**

**CHAIRPERSON:** Good morning Ms Molefe, good morning everybody.

**ADV REFILOE MOLEFE:** Good morning Chair.

**CHAIRPERSON:** Thank you. Are you ready?

**ADV REFILOE MOLEFE:** We are ready to start Chair.

**CHAIRPERSON:** Yes.

**ADV REFILOE MOLEFE:** Thank you Chair. The witness – the next witness whom we will be calling is Mr Chetan Vaghela who is an audit partner employed at the auditing firm Deloitte. In brief Chair the evidence of Mr Vaghela relates to the audit conducted by Deloitte into the agreements and transactions between Neotel and Homix. The Chair has heard evidence from several Transnet employees as well as former employees relative to these transactions rather. The Chair has also most recently heard evidence by the Reserve Bank relative to these transactions as well. Chair in his evidence Mr Vaghela will testify on the commerciality of the transaction between Neotel and Homix from an audit perspective and in this respect Mr Vaghela will testify mainly to the background to the audit conducted and the investigation by Deloitte. He will also testify to the different reports made to the independent regulatory body for auditors relative to the investigation. Might the witness be sworn in Chair?

**CHAIRPERSON:** Thank you.

**REGISTRAR:** Please state your full names for the record?

**MR CHETAN CHHAGAN VAGHELA:** Chetan Chhagan Vaghela.

**REGISTRAR:** Do you have any objections to making the prescribed

affirmation?

**MR CHETAN CHHAGAN VAGHELA:** No.

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

**MR CHETAN CHHAGAN VAGHELA:** I solemnly affirm.

**REGISTRAR:** Thank you.

**CHAIRPERSON:** Thank you very much.

**ADV REFILOE MOLEFE:** Thank you Chair.

10 **CHAIRPERSON:** You keep quiet ja.

**ADV REFILOE MOLEFE:** We will be dealing with the bundle before the Chair which has been marked Exhibit BB9.

**CHAIRPERSON:** The lever arch file containing Mr Chetan Vaghela's statement would be marked Exhibit BB9.

**ADV REFILOE MOLEFE:** Thank you Chair.

**CHAIRPERSON:** Hm.

**ADV REFILOE MOLEFE:** Mr Vaghela for the record could you please spell your name and surname?

**MR CHETAN CHHAGAN VAGHELA:** Chetan Vaghela.

20 **ADV REFILOE MOLEFE:** Thank you. Please refer to the exhibit marked BB9 which is before you and can you refer to page 1 to 28 of that exhibit. Is that your statement to the commission?

**MR CHETAN CHHAGAN VAGHELA:** Yes it is Chair.

**ADV REFILOE MOLEFE:** And on page 28 of that exhibit is that your signature appearing on that page?

**MR CHETAN CHHAGAN VAGHELA:** Yes it is Chair.

**ADV REFILOE MOLEFE:** The date of the 16 April 2019 is that the date on which you wrote the statement?

**MR CHETAN CHHAGAN VAGHELA:** Yes it is Chair.

**ADV REFILOE MOLEFE:** Are there any corrections you wish to effect to your statement?

**MR CHETAN CHHAGAN VAGHELA:** Yes Chair. If I can bring your attention to page 3 paragraph 7.8 the date in R Buck the acting CFO and X K Maimane.

10 **CHAIRPERSON:** I am sorry would you please just raise your voice a bit more.

**MR CHETAN CHHAGAN VAGHELA:** Okay.

**CHAIRPERSON:** Yes.

**MR CHETAN CHHAGAN VAGHELA:** Paragraph 7.8.

**CHAIRPERSON:** Yes.

**MR CHETAN CHHAGAN VAGHELA:** R. Buck the acting CFO was appointed in July 2015 and not 30 November 2015.

**ADV REFILOE MOLEFE:** Yes.

20 **MR CHETAN CHHAGAN VAGHELA:** In paragraph 7.9 X K Maimane director in charge was appointed in July 2015 and not 30 November 2015.

**ADV REFILOE MOLEFE:** Are there any other corrections?

**MR CHETAN CHHAGAN VAGHELA:** Chair if we – if we can go to page 15. In the top paragraph the last sentence ‘a copy of the correspondence where Transnet is attached as CV 7.1’ that should be

reference to page 97 under bundle CV14.

**ADV REFILOE MOLEFE**: Thank you Chair. A supplementary...

**CHAIRPERSON**: Do you understand that?

**ADV REFILOE MOLEFE**: I understand Mr Vaghela to be saying that the reference to CV7.1 should instead be CV 14 page 97.

**CHAIRPERSON**: Is that correct Mr Vaghela?

**MR CHETAN CHHAGAN VAGHELA**: Yes. Yes Chair.

**CHAIRPERSON**: CV 14?

**ADV REFILOE MOLEFE**: Yes Chair.

10 **CHAIRPERSON**: Okay.

**ADV REFILOE MOLEFE**: Thank you Chair. A supplementary statement will be prepared by Mr Vaghela in due course.

**CHAIRPERSON**: Yes okay.

**ADV REFILOE MOLEFE**: Thank you Chair. Mr Vaghela do you now confirm the correctness of your statement?

**MR CHETAN CHHAGAN VAGHELA**: Yes I do Chair.

**ADV REFILOE MOLEFE**: Thank you. What qualifications do you hold?

20 **MR CHETAN CHHAGAN VAGHELA**: Chair I am an audit partner at Deloitte and Touche. I have been with the firm for over 19 years of which 7 years in the role as a partner. I am a qualified chartered accountant and a registered auditor with the Independent Regulatory Board for Auditors. I am also accredited to perform audits in terms of the standards set by the public company accounting audit to oversight board in the United States. My primary industry experience is in the telecommunications media and technology industry sector. I have been

involved in the Neotel audit since its inception in the role as a senior manager and subsequently from years 2012 in the role as a partner. For the audit of 2015 I was one of the partners together with Mr Andre Dennis being the signing partner.

**ADV REFILOE MOLEFE:** Thank you. Mr Vaghela can you please move the microphone closer to you so that you do not have to lean forward every time you need to speak into the microphone. Is that better?

**MR CHETAN CHHAGAN VAGHELA:** Yes thank you.

**ADV REFILOE MOLEFE:** Thank you. What do you currently do?

10 **MR CHETAN CHHAGAN VAGHELA:** I am currently still an audit partner with Deloitte and Touche.

**ADV REFILOE MOLEFE:** Yes can we then turn to page 2 of your statement. From paragraph 4 of your statement you set out the background upon which audits were conducted on Neotel and you have stated in your opening that it was Deloitte that conducted this audit, is that correct?

**MR CHETAN CHHAGAN VAGHELA:** Yes as joint auditors.

**ADV REFILOE MOLEFE:** And during which period was the audit conducted?

20 **MR CHETAN CHHAGAN VAGHELA:** The audit ordinarily runs from February through to May in 2015.

**ADV REFILOE MOLEFE:** And can you confirm the position you held during this audit?

**MR CHETAN CHHAGAN VAGHELA:** I was one – I was an audit partner on the Neotel engagement.

**ADV REFILOE MOLEFE:** Who were the directors of Neotel during the 2015 financial year?

**MR CHETAN CHHAGAN VAGHELA:** Chair the directors of Neotel at the time were Mr Baweja who had resigned on the 4 November 2014. Mr Dhawan, Mr Joshi had resigned on the 30 November 2015, Mr Kumar, Mr Memani, Mr Ndoroma who had resigned on the 28 February 2014, Mr Offner, who was appointed on the 4 November 2014, Mr Pham who was appointed on the 4 November 2014, Mr Renade, Mr Srinath and Mr Ntsaluba.

10 **ADV REFILOE MOLEFE:** And do you know what positions those board members held during that period?

**MR CHETAN CHHAGAN VAGHELA:** They were all directors of the company.

**ADV REFILOE MOLEFE:** And who was the CEO at that point?

**MR CHETAN CHHAGAN VAGHELA:** The CEO was Mr Joshi and at the time – and during the period Mr Memani subsequently became the director in charge.

**ADV REFILOE MOLEFE:** And who was the Chairman of the Board.

**MR CHETAN CHHAGAN VAGHELA:** And the chairman was Mr Srinath.

20 **ADV REFILOE MOLEFE:** And who were the members of the auditing committee during the 2015 financial year?

**MR CHETAN CHHAGAN VAGHELA:** The members of the audit committee Chair were Mr Memani, Mr Pham and Mr Offner.

**ADV REFILOE MOLEFE:** And who were the persons constituting Neotel's management?

**MR CHETAN CHHAGAN VAGHELA:** The persons constituting management were Mr Joshi as CEO, Mr Whiley as CFO, Mr Theko as company secretary, Mr R Bucks as acting CFO and Mr Memani as director in charge.

**ADV REFILOE MOLEFE:** Yes let us then turn to page 4 of your statement. From paragraphs 8 to 14 of your statement you introduce the background to what you have titled the Homix transaction. In which year was this transaction audited?

**MR CHETAN CHHAGAN VAGHELA:** During the – Chair during the  
10 course of the audit for the year ended 31 March 2015.

**ADV REFILOE MOLEFE:** And what brought about the audit of this transaction?

**MR CHETAN CHHAGAN VAGHELA:** Chair during the audit of Neotel for the year ended 31 March 2015 there were significant accounting and auditing issues that we were engaging management on. They were also subject to an acquisition by Vodacom and as a result of the circumstances management had put us under a tighter timetable for the audit compared to previous years. As a result of the timelines we seek to amend the timing of our audit procedures particularly around the  
20 verification of trade creditors. We ordinarily test trade creditors in April based on the 31 March balances. For the 31 – for the 2015 audit we moved the timing to test creditors in March based on the 28 February balances. During the performance of these procedures we perform a routine test in analysing trade creditors and in specifically we compare the current year balances to the prior year. We look for



significant movements. We look at a new creditors or creditors not recurring as well as a new significant debit balances. During this review we identified Homix as a new vendor that had a significant debit balance to the amount of approximately R41 million. In review the audit documentation documented by our trainees they referred to this amount being relating to a commission that was payable in terms of the binding Transnet deal. In line with the terms of the agreement a certain percentage of the deal was payable to Homix by the end of February 2015. As at the end of February Neotel had not yet received an invoice  
10 for the amount yet payment had to be made in terms of the contract. On the 27 February 2015 an amount of R41 million was paid to Homix. These circumstances and the nature of this creditor made us very sceptical around this balance. And the reason we became sceptical is because it was new to the company the vendor was not known. It had never been disclosed to us in our conversations with management and they were unusual. And we had just – ordinarily we performed quarter review procedures in December and we were aware of the Transnet contract being concluded and awarded to Neotel but there was no mention of Homix used in previous discussions. And so when we  
20 picked it up in our March testing it seemed very unusual to us. Chair to just sketch the scene Transnet was a customer of Neotel and the contract – the existing master service agreement was ending in that year and Neotel needed to – Neotel and Transnet both needed to conclude the contract and they were – we were aware that they were under negotiation. So when we – when we picked up the matter I

escalated it to Mr Dennis because we were quite sceptical around the nature of this vendor. And he suggested that we use our forensics departments to do some background checks and due diligence. And that is because you know this information was withheld it was not fully disclosed and we did not know who they were. We also called for the vendor on-boarding documentation which is a process that the company Neotel has when they use vendors and when they on-board them and do their own background checks. When we looked at that information it was incomplete and raised a number of red flags and that together with  
10 our own internal checks left us with quite a bit of concern around the Homix transactions.

**ADV REFILOE MOLEFE:** Now at this point of the audit process what information or documentation did Deloitte rely on?

**MR CHETAN CHHAGAN VAGHELA:** At this point in time we had relied on the age analysis, enquiries made of finance staff, the vendor on-boarding documentation and we did have at the time the new – the consultancy agreements.

**ADV REFILOE MOLEFE:** Yes from what follows in your statement is set out from paragraphs 15 to 31 which is Deloitte's investigation into  
20 the Homix transaction and you have stated that this relates to the 2015 financial year and what in particular did the audit seek to establish?

**MR CHETAN CHHAGAN VAGHELA:** Chair the audit seeks to establish the commerciality around the fees paid to Homix. We wanted to know who Homix was, what did they do and what was their mandate in concluding the Transnet contract? We wanted to understand the

commerciality of the fees paid for the services – the alleged services rendered.

**ADV REFILOE MOLEFE:** And in your audit did you meet anyone – did you meet with anyone rather from Neotel?

**MR CHETAN CHHAGAN VAGHELA:** Yes Chair following our concerns we met with various members of management in our enquiries around the transaction. We met with Mr Whiley on the 9 April and we asked – and we raised our concern around the Homix transaction. We wanted to know who Homix was, who had engaged with Homix and what did  
10 they do? As well as who their shareholders and directors were? In that meeting Mr Whiley did not know who Homix was but he did mention that there were two payments made to Homix in the 2015 financial year. Mr Whiley then explained that during early December the negotiations with Transnet around the master services agreement had come to an impasse. Members of management within Neotel got together and Mr Joshi the CEO suggested that they engage with Homix the agent to help them overcome this impasse. Homix was known to them because they previously had brought a Cisco deal earlier in the year. Mr Whiley they went on to explain that the company had done their own background  
20 checks and there were no red flags noted around the payments and Homix. He then explained that should we need – sorry – Deloitte then contested that our background checks indicated otherwise as the company was in deregistration. Mr Whiley also then pointed out that if we needed further information around Homix we would need to see the CEO Mr Joshi. We then subsequently met Mr Joshi on the 11 April at

the Fire and Ice Hotel in Melrose Arch. Mr Joshi reiterated the same fact pattern as Mr Whiley in that they had reached an impasse and they had engaged Homix to assist them resolve the impasse and conclude the deal.

**ADV REFILOE MOLEFE:** Yes before you go on further just to remind ourselves Mr Whiley was the Chief Financial Officer of Neotel, is that correct?

**MR CHETAN CHHAGAN VAGHELA:** Yes that is correct Chair.

**ADV REFILOE MOLEFE:** I would also like to refer you back to page 4  
10 of your statement at paragraph 10 where you read out the findings of your trainees during the early stages of the audit. In the second last sentence of the quotation on page 4 at paragraph 10 you read there that this has been raised as a debit balance until such time that the invoice is received. Just in simple layman's terms what would a debit balance refer to in this context?

**MR CHETAN CHHAGAN VAGHELA:** Chair in this context the payment had been made before the invoice had been received which resulted in a debit balance in the creditors.

**ADV REFILOE MOLEFE:** Thank you. You were then going to take the  
20 Chair through the meeting that took place with officials of Neotel or rather employees of Neotel and as I have it that appears from paragraph 32 of your statement. On what date did this meeting take place?

**MR CHETAN CHHAGAN VAGHELA:** Chair sorry if I can draw the counsel to paragraph 25 because that is where we had the meetings

with the CEO.

**ADV REFILOE MOLEFE:** Thank you. Paragraph 25 that appears on page 7. On what date did this meeting take place?

**MR CHETAN CHHAGAN VAGHELA:** The meeting with the CEO took place on the 11 April 2015.

**ADV REFILOE MOLEFE:** Yes and what was the purpose of that meeting?

**MR CHETAN CHHAGAN VAGHELA:** The purpose of the meeting was to understand more around what – who Homix was and what did they do in  
10 resolving the alleged impasse and to further understand the commerciality of the fees.

**ADV REFILOE MOLEFE:** Now was this meeting recorded in writing?

**MR CHETAN CHHAGAN VAGHELA:** Yes we do have Minutes of our meetings that we took as our evidence for our audit files.

**ADV REFILOE MOLEFE:** Can I then refer you to page 30 of the bundle which is under folder number 1 Chair. Would that be a copy of the Minutes of your first meeting with Neotel?

**MR CHETAN CHHAGAN VAGHELA:** Yes, yes Chair.

**ADV REFILOE MOLEFE:** And who recorded these minutes?

20 **MR CHETAN CHHAGAN VAGHELA:** These recorded – these minutes would have been recorded by my – the senior manager on the job Michelle Viljoen and myself.

**ADV REFILOE MOLEFE:** Yes please take the Chair through the minutes of this meeting starting with who was in attendance at this meeting?

**MR CHETAN CHHAGAN VAGHELA:** Chair in attendance at this meeting was Andre Dennis as the LCSP, [indistinct] Magellan as an engagement partner, Michelle Viljoen as the senior manager and Mr Whiley as the CFO.

**ADV REFILOE MOLEFE:** Can you just clarify what LCSP stands for?

**MR CHETAN CHHAGAN VAGHELA:** He is the lead client service partner.

**ADV REFILOE MOLEFE:** Thank you and what was discussed at this meeting

10 **MR CHETAN CHHAGAN VAGHELA:** So at that meeting we explained our concern around Homix. We wanted to understand the commerciality and what Homix did and we were unaware of the use of an agent in concluding the master services agreement.

**ADV REFILOE MOLEFE:** The payments that you were questioning what were the amounts of these payments?

**MR CHETAN CHHAGAN VAGHELA:** The amount that was under question was R36 million excluding VAT.

**ADV REFILOE MOLEFE:** And was there any other amount that you were considering?

20 **MR CHETAN CHHAGAN VAGHELA:** At the time no however the CFO did mention that there was a previous payment made to Homix regarding the Cisco deal which we then subsequently went and investigated.

**ADV REFILOE MOLEFE:** And did you discuss the involvement rather of Homix insofar as who introduced Homix to Neotel? And did you discuss

the involvement rather of Homix insofar as who introduced Homix to Neotel?

**MR CHETAN CHHAGAN VAGHELA:** We did discuss Homix however the information was very limited in that the CFO did not know who Homix was. He was aware that they had brought a previous deal to Neotel and on the recommendation of the CEO they engaged Homix and Homix helped them close the deal.

**ADV REFILOE MOLEFE:** And was there any other discussion insofar as the payment to Homix in relation to the authority to make such  
10 payment?

**MR CHETAN CHHAGAN VAGHELA:** Not at the time with the CFO Chair.

**CHAIRPERSON:** So did the CFO Mr Steven Whiley say he did not know who Homix was?

**MR CHETAN CHHAGAN VAGHELA:** Yes Chair the CFO did not know who Homix was.

**CHAIRPERSON:** Well you deal a lot with CFO's and companies as an auditor.

**MR CHETAN CHHAGAN VAGHELA:** Yes I do Chair.

20 **CHAIRPERSON:** If you look at the amount that had been paid to Homix and you look at the size of Neotel did it strike you as strange that the CFO of the company would not know who Homix was even though a lot of money had been paid to Homix as I understand the position?

**MR CHETAN CHHAGAN VAGHELA:** Yes Chair it would – that is correct it would strike us as unusual.

**CHAIRPERSON:** Yes.

**MR CHETAN CHHAGAN VAGHELA:** That the CFO would not know who Homix is particularly for the quantum and the nature of...

**CHAIRPERSON:** Yes.

**MR CHETAN CHHAGAN VAGHELA:** The activity in relation to the Transnet MSA.

**CHAIRPERSON:** Because you were having that meeting in April 2015 and according to the minutes that we were looking at in October 2014 approximately R30 million had – payment had been made and in  
10 February of that year 2015 R36 million had been paid. That is – those seem to be quite high amounts that the CFO of a company of this size would not know the entity to which they were paying such a lot of money?

**MR CHETAN CHHAGAN VAGHELA:** Yes that is correct Chair that

**CHAIRPERSON:** Yes.

**MR CHETAN CHHAGAN VAGHELA:** It would be of a concern.

**CHAIRPERSON:** Yes okay thank you.

**ADV REFILOE MOLEFE:** Thank you Chair. Paragraph 10 of your  
20 statement which appears on page 4 the quotation you were reading insofar as the trainees findings makes reference to an amount of just over R41 million having been paid on the 27 February 2015 and in these minutes and the Chair has just pointed out there was reference made to two payments of R30 million and R36 million which on my calculation is a total of R66 million. So can you please just clarify what exact amounts were paid as discovered by Deloitte?



**MR CHETAN CHHAGAN VAGHELA:** Yes Chair. The – when we identified Homix the payment under question was the R36 million ex VAT which amounts to the R41 million noted on page 4. In the inquiries with the CFO he then mentioned that a previous payment was made which we had not picked up in our routine testing. And when we further went and investigated that payment there was a payment of R30 million relating to a Cisco deal done earlier. So that is the two differences. The R41million related to the Transnet MSA and the R30 million which was paid earlier for a deal regarding sale of equipment.

10 **CHAIRPERSON:** In terms of the normal duties of CFO in a company of this size as Neotel would the CFO not have had to satisfy himself before payments of this size were made to anybody? Would he not or she have had to satisfy themselves that there was a proper reason for the payment of the money if they had done work that they had actually performed work and that that work had been done to Neotel's satisfaction and so on?

**MR CHETAN CHHAGAN VAGHELA:** Chair yes we would expect a CFO to understand who their – who they are dealing with. What is the nature of the service that was rendered to command fees of such  
20 magnitude? What work was actually done? We would expect some – some understanding and interrogation around that on behalf of the company.

**CHAIRPERSON:** Would a CFO not have had to approve that kind of payment normally for this kind – this size of company or is it something that could have gone without his authorisation that payments of this

size?

**MR CHETAN CHHAGAN VAGHELA:** Yes it would need to be approved by the CFO.

**CHAIRPERSON:** Hm.

**MR CHETAN CHHAGAN VAGHELA:** And in this case as well as the CEO.

**CHAIRPERSON:** Hm. And in this case did you establish whether the CFO had actually authorised these payments that had already taken place?

10 **MR CHETAN CHHAGAN VAGHELA:** It had been authorised under his finance department.

**CHAIRPERSON:** Yes. So he would need to take responsibility for it?

**MR CHETAN CHHAGAN VAGHELA:** Yes.

**CHAIRPERSON:** Yes. But when you say under his department is that because you are not sure whether he personally got involved in the authorisation or is that because you do know that he did not get personally involved but somebody else did get personally involved?

**MR CHETAN CHHAGAN VAGHELA:** Chair it is the latter in that if you look at the evidence his signature will not be on the payment approval.

20 But it is...

**CHAIRPERSON:** His signature was or was not on the...

**MR CHETAN CHHAGAN VAGHELA:** On the second payment on the R36 million payment.

**CHAIRPERSON:** Yes.

**MR CHETAN CHHAGAN VAGHELA:** His signature is not on the

payment approval.

**CHAIRPERSON:** Yes.

**MR CHETAN CHHAGAN VAGHELA:** But it is within his department so he was aware.

**CHAIRPERSON:** Yes.

**MR CHETAN CHHAGAN VAGHELA:** In the first payment on the R30 million both the CEO and CFO had approved that payment as a once off vendor payment.

**CHAIRPERSON:** Yes. So at least in regard to the first payment he  
10 knew and approved of the payment and therefore it would – it is quite strange that he could approve payment of R30 million to an entity that he said he did not know much about. He did not know anything about.

**MR CHETAN CHHAGAN VAGHELA:** That is the ...

**CHAIRPERSON:** Or am I being unfair to him?

**MR CHETAN CHHAGAN VAGHELA:** No your – your question is valid and we had the same questions ourselves. Hence the concern around Homix and the inquiries that we made.

**CHAIRPERSON:** Hm.

**MR CHETAN CHHAGAN VAGHELA:** Of the CFO and CEO, yes.

20 **CHAIRPERSON:** And you – did you say you asked him what exactly Homix had done. Is that right?

**MR CHETAN CHHAGAN VAGHELA:** Yes we did.

**CHAIRPERSON:** And all he said was something along the lines that Homix helped them to break an impasse with Transnet?

**MR CHETAN CHHAGAN VAGHELA:** Yes that is right and – and they

concluded the deal.

**CHAIRPERSON:** But he did not tell you exactly what it is they - they did?

**MR CHETAN CHHAGAN VAGHELA:** Yes that is correct Chair.

**CHAIRPERSON:** Okay, alright thank you.

**ADV REFILOE MOLEFE:** Thank you Chair and Mr Vaghela you deal with issues relating to the delegation of authority in parts of your statement. The meeting that you have just taken the Chair through or the minutes of the meeting you have taken the Chair through you  
10 summarise at paragraphs 17 to 23. Is that correct?

**MR CHETAN CHHAGAN VAGHELA:** 16 to 23 Chair.

**ADV REFILOE MOLEFE:** Thank you and did you hold another meeting with Neotel?

**MR CHETAN CHHAGAN VAGHELA:** Yes Chair we then after the meeting with the CFO we then had a meeting with the CEO and as the CFO had said that if we wanted more information on Homix we need to engage with the CEO. We met with the CEO on 11 April 2015.

**CHAIRPERSON:** And the CEO was?

**MR CHETAN CHHAGAN VAGHELA:** The CFO was – the CEO is  
20 Mr Joshi.

**CHAIRPERSON:** Yes, okay.

**ADV REFILOE MOLEFE:** Yes and you - when did this meeting take place?

**MR CHETAN CHHAGAN VAGHELA:** On 11 April 2015.

**ADV REFILOE MOLEFE:** And who was in attendance at the meeting?

**MR CHETAN CHHAGAN VAGHELA:** In that meeting - in that meeting was Mr Dennis, myself, Mr Whiley and Mr Joshi.

**ADV REFILOE MOLEFE:** Can I refer you to page 32 of the bundle under Folder 2 of that EXHIBIT BB9.

**CHAIRPERSON:** What page?

**ADV REFILOE MOLEFE:** Page 32 Chair.

**CHAIRPERSON:** Thank you.

**ADV REFILOE MOLEFE:** It appears under Folder 2. What is that document that appears on that page?

10 **MR CHETAN CHHAGAN VAGHELA:** It is the minutes of our meeting on that day.

**ADV REFILOE MOLEFE:** And who recorded these minutes?

**MR CHETAN CHHAGAN VAGHELA:** It was myself.

**ADV REFILOE MOLEFE:** And can you then take the Chair through the discussion that took place at this meeting?

20 **MR CHETAN CHHAGAN VAGHELA:** Chair at – at this meeting Mr Dennis raised the matter around the Homix transaction and we wanted to know who Homix was and further information around what they did. The CEO at the time reiterated the same fact pattern as was told to us by the CFO. He mentioned that in – in early December the tensions with Transnet escalated and they came to a halt and there was an impasse and Transnet were not prepared to negotiate any further on the Transnet MSA.

**ADV REFILOE MOLEFE:** Sorry if I may just interject. When you refer to early December is that early December 2014?

**MR CHETAN CHHAGAN VAGHELA:** Yes. Yes Chair.

**ADV REFILOE MOLEFE:** Please continue.

**MR CHETAN CHHAGAN VAGHELA:** So the – the negotiations came to an impasse and as a result of that the members of management of Neotel came together and in that meeting they needed – they needed help and Mr Joshi was reminded of Homix and he suggested that they engage Homix to assist them resolve the impasse. He then – he advised us in the meeting that Homix wanted 10 percent of the deal and – and they could not afford the 10 percent and they negotiated it down  
10 to 2 percent. In that meeting Mr Dennis asked Mr Joshi who engaged Homix? With whom did Neotel deal at Homix? What was the mandate and who were Homix supposed to engage with at Transnet and did Mr Singh - the Transnet CFO at the time - know who Homix was and that Transnet was engaging with an agent and the extent of the fee paid to the agent. The CEO – Mr Joshi - responded that he did not know who Homix was and he did not engage with Homix in any manner. He also mentioned at the time that the company had done their own background checks into the payments made to Homix and in their view the payments were valid and the reasons for the payments were valid.  
20 He then – the CEO said he was introduced to Homix by Neotel's General Manager Strategic Customers Mr Francois Van Der Merwe and the communication between Neotel and Homix took place through Mr Van Der Merwe as the key contact person within Neotel in respect of Homix engagements. Mr Dennis also asked Mr Joshi at the time that did he have Board approval and Mr Joshi replied that he did and he

would send a note to Mr Dennis. Mr Dennis indicated further that Deloitte had concerns about the payments made to Homix and that the Deloitte Audit Team needed to understand the commerciality of the fee paid and required to – required support that the payment was not a facilitation payment which could bring the Transnet Master Service Agreement into question. Because of the above inquiries we became highly – we – we were highly sceptical about the Homix transactions and we were suspicious about the commercial validity of those transactions and we needed – we needed more evidence to support  
10 these fees paid.

**ADV REFILOE MOLEFE:** At the stage of your interaction with Neotel had you been furnished with any invoices upon which these payments had been made?

**MR CHETAN CHHAGAN VAGHELA:** We did – we did have the invoice. We also did have the contract and the contract was dated in February – February 2015. Whereas the service – alleged service was rendered in December. So the contract was put after the event but we did – we did have that documentation but we – we looked – we were very sceptical and we increased our professional scepticism because we really wanted  
20 to know what they did. We were looking through the documentation to see what Homix did. We had an impasse on 11 December. We engaged them on 12 December and Neotel had signed the contract on 14 December. Transnet signed it on the 19<sup>th</sup>. So when one looks at that timeline we really wanted to understand what Homix did to warrant the payment of such fees.

**ADV REFILOE MOLEFE:** And what was the nature of work or services set to have been done or provided on the invoices?

**MR CHETAN CHHAGAN VAGHELA:** Chair so I cannot answer that without recollecting the invoice which I am not sure if it is in the pack.

**ADV REFILOE MOLEFE:** Okay. We will deal with that at a later ...

**CHAIRPERSON:** Before that – so you have a situation where you ask the CFO who is Homix and the CFO says I do not know them and then you meet with the CEO. You say who is Homix. He also says he does not know them. Is that correct?

10 **MR CHETAN CHHAGAN VAGHELA:** That is correct Chair.

**CHAIRPERSON:** Hm.

**ADV REFILOE MOLEFE:** And at this meeting with Neotel was there ever any discussion in relation to the Board of Transnet?

**MR CHETAN CHHAGAN VAGHELA:** Sorry Chair can you rephrase the question?

**ADV REFILOE MOLEFE:** At this meeting which you have recorded at page 32 was there any discussion between yourselves and Neotel in relation to Transnet's Board?

20 **MR CHETAN CHHAGAN VAGHELA:** Chair no – no discussion in relation to the Transnet's Board. We only raised the question that was Transnet aware that an agent - that Neotel had engaged in an agent and the reason for that question is because in general knowledge and understanding of transacting with such an entity. Generally there – there is a clause that prohibits the use of agents unless disclosed and therefore based on that knowledge we – we raised the question.



**ADV REFILOE MOLEFE:** Yes.

**CHAIRPERSON:** So the CFO could not tell you what exactly Homix had done other than to say they have to break the impasse between Neotel and Transnet. Did you ask the CEO the same question and what was his answer if you did?

**MR CHETAN CHHAGAN VAGHELA:** Chair we did ask him the same question and he answered in the same way as the CFO ...

**CHAIRPERSON:** Yes.

**MR CHETAN CHHAGAN VAGHELA:** And he resolved – they resolved  
10 an impasse.

**CHAIRPERSON:** Yes.

**MR CHETAN CHHAGAN VAGHELA:** But they cannot ...

**CHAIRPERSON:** But you did not ask for details or did you ask for details (intervenes)?

**MR CHETAN CHHAGAN VAGHELA:** We did ask for – we did ask for details Chair.

**CHAIRPERSON:** Yes and what was the answer?

**MR CHETAN CHHAGAN VAGHELA:** They could not tell us what they specifically did other than resolving the impasse.

20 **CHAIRPERSON:** Yes, thank you and they said the person at Transnet that you could talk to who was dealing with Homix was Mr Van Der Merwe?

**MR CHETAN CHHAGAN VAGHELA:** Mr Van Der Merwe was the person at Neotel.

**CHAIRPERSON:** *Ja.*

**MR CHETAN CHHAGAN VAGHELA:** He was the Neotel General Manager that looked after the Transnet account ...

**CHAIRPERSON:** Yes.

**MR CHETAN CHHAGAN VAGHELA:** And he – he engaged with Homix on behalf of Neotel.

**CHAIRPERSON:** But I thought you also asked them according to the minutes who at Transnet has been dealing with Homix or did I misread the minutes?

**MR CHETAN CHHAGAN VAGHELA:** We – we did ask that question but  
10 I think ...

**CHAIRPERSON:** Yes.

**MR CHETAN CHHAGAN VAGHELA:** I think Chair in the minutes when we talk about Francois Van Der Merwe he – he is a Neotel employee.

**CHAIRPERSON:** Oh.

**MR CHETAN CHHAGAN VAGHELA:** The – the minutes – the minutes when it says GM Transnet it is actually – he is the General Manager but he looked after the Transnet account for Neotel.

**CHAIRPERSON:** Oh, so the minutes are not correct in – in attaching him to Transnet?

20 **MR CHETAN CHHAGAN VAGHELA:** It is – it is just – it may be misleading but he is the General ...

**CHAIRPERSON:** Oh ...

**MR CHETAN CHHAGAN VAGHELA:** *Ja.*

**CHAIRPERSON:** Oh he – he is at Neotel. He was at Neotel but dealing with Transnet?

**MR CHETAN CHHAGAN VAGHELA:** Yes that is correct.

**CHAIRPERSON:** On behalf of Neotel?

**MR CHETAN CHHAGAN VAGHELA:** Yes that correct Chair.

**CHAIRPERSON:** Okay. You never go to know who at Transnet knew about Homix.

**MR CHETAN CHHAGAN VAGHELA:** No, they could never tell us ...

**CHAIRPERSON:** Yes.

**MR CHETAN CHHAGAN VAGHELA:** Who – who they dealt with at ...

**CHAIRPERSON:** Yes.

10 **MR CHETAN CHHAGAN VAGHELA:** At Transnet but we did ask the question that did the Transnet CFO ...

**CHAIRPERSON:** Yes.

**MR CHETAN CHHAGAN VAGHELA:** Know about Homix and we can come later to – there is a Transnet letter ...

**CHAIRPERSON:** Hm.

**MR CHETAN CHHAGAN VAGHELA:** That will indicate a – will give more facts around that that Transnet did know about Homix.

**CHAIRPERSON:** Yes. Okay, alright. Let us – we proceed.

20 **ADV REFILOE MOLEFE:** Thank you Chair. Can I refer you to page 199 of the bundle? It is the last page in the exhibit. Are you able to identify that document?

**MR CHETAN CHHAGAN VAGHELA:** Yes Chair. It is the invoice from Homix on R356 million.

**ADV REFILOE MOLEFE:** And is this the invoice you were furnished with during your engagement with Neotel?

**MR CHETAN CHHAGAN VAGHELA:** Yes Chair.

**ADV REFILOE MOLEFE:** And what is the description provided in that invoice?

**MR CHETAN CHHAGAN VAGHELA:** “For Master Services Agreement’s success conclusion success fee”.

**ADV REFILOE MOLEFE:** And the amount there is 36 million?

**MR CHETAN CHHAGAN VAGHELA:** Yes that is correct Chair.

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

**MR CHETAN CHHAGAN VAGHELA:** The date is 2 January 2015.

10 **ADV REFILOE MOLEFE:** You have summarised detail regarding your second meeting with Neotel from ...

**CHAIRPERSON:** Just one second. I say – I see that it says success fee there. Is that right?

**MR CHETAN CHHAGAN VAGHELA:** Yes Chair.

**CHAIRPERSON:** So that suggests that the R36 million that Homix was demanding payment of from Neotel was a succession – a success fee?

**MR CHETAN CHHAGAN VAGHELA:** Yes Chair it would appear so.

20 **CHAIRPERSON:** In one of your meetings with Neotel either with the CFO only with the CFO and the CEO you asked or your colleague asked whether this payment was not a facilitation fee and I think there was a denial that it was a facilitation fee if I recall correctly. One, am I correct in saying there was a denial that it was a succession - a facilitation fee. Two, irrespective of the answer to that question what will be the difference in your experience between a success fee and a facilitation fee in the context of the conclusion of a contract?

**MR CHETAN CHHAGAN VAGHELA:** Chair I think a fee needs – any fee needs to have some sort of activity and one needs to have done something in order to earn those fees and the last thing is no – there was no acceptance around the facilitation – alleged facilitation fee. The management could not articulate what was done to earn those fees and we raised – we raised our concern that it – it would appear – we needed more evidence to negate that this is not a facilitation fee because based on what we were seeing it – it appeared to be as such and – and I think it – it boils down to between success fees or  
10 facilitation fees. One needs to deal – deal – one needs to dig deeper as to what activity and what tasks did the service provider perform and understand the commerciality behind that.

**CHAIRPERSON:** Well what I am seeking to establish is whether in terms of your understanding and experience with these matters as an auditor there would be a distinction between what is called a success fee and a facilitation fee in the context of the conclusion of a contract. Here we do know that there is a contract that was concluded between Transnet and Neotel and – and that the CFO and CEO of Neotel told you that the role of Homix was to help break an impasse which led to  
20 the conclusion of the contract between Transnet and Neotel. So when you asked them that is the CEO and CFO or one of them whether the payment was not a facilitation fee you obviously had in mind certain features by which you identify a facilitation fee. So I am asking whether the features of a facilitation fee are different from the features of a success fee.

**MR CHETAN CHHAGAN VAGHELA:** Chair I guess to – to answer that question when - when looking at it – it is not just the – the invoice. It was all the – the facts surrounding the vendor and whether one calls it – I mean – ordinarily no one would call it a facilitation fee. You would always rename it something else either a commission or a success fee.

**CHAIRPERSON:** Hm. They might not call it a facilitation fee but you know ...

**MR CHETAN CHHAGAN VAGHELA:** Yes.

**CHAIRPERSON:** How you identify facilitation fees even if it is called  
10 by another name and my question is whether there is a difference in the features of a facilitation fee and in the features of a success fee.

**MR CHETAN CHHAGAN VAGHELA:** Chair in our mind to answer ...

**CHAIRPERSON:** Or whether it is one and the same thing just different names being used – different words being used.

**MR CHETAN CHHAGAN VAGHELA:** Yes I think irrespective of what it is called then I guess that is where we were – irrespective of what – what it is - what the fee is termed on the invoice we needed to understand what the service provider did.

**CHAIRPERSON:** *Ja* but what is it that you identify in the transaction or  
20 in a payment that makes you conclude this is a facilitation fee? As I understand in my own understanding is that most of the - or many times a facilitation fee is like an agency fee but that might not be the case in all cases. It might not apply in all cases. I am not sure. So I am just wondering whether since you did ask this question to them whether you knew what the features are for the facilitation fee so that even if they

deny that it was a facilitation fee you would still be able to say we can see the features of this transaction. This was a facilitation fee. This denial is disingenuous.

**MR CHETAN CHHAGAN VAGHELA:** Chair to – to respond I think there were various flags. When we looked at Homix the entity – you know - there were discrepancies in the vendor onboarding documentation. The directors of that company were different to the people who they had engaged with. No one could articulate – when we looked at their website there was an invalid webpage. No one could articulate – no  
10 one could say who they actually dealt with. You could not name an individual. One could not articulate which elements of the MSA they did. So it appeared as if – you know – it is just a shelf company and when we did our own background searches you could not get to a corporate entity that had an – an identity that could resolve an impasse. So I guess it is all those elements that were - that we working through at the time that led us to believe – we – we had suspected that it was a facilitation fee at that point in time.

**CHAIRPERSON:** What is a facilitation fee? That is what I am trying to establish.

20 **MR CHETAN CHHAGAN VAGHELA:** Paying a fee for no value or no service.

**CHAIRPERSON:** Sorry.

**MR CHETAN CHHAGAN VAGHELA:** Paying a fee for no value or no service would be - in my view.

**CHAIRPERSON:** It is a fee paid somebody who has not rendered any

service ...

**MR CHETAN CHHAGAN VAGHELA:** Yes.

**CHAIRPERSON:** Or who has not given you anything of value?

**MR CHETAN CHHAGAN VAGHELA:** Yes Chair. That would be in my understanding.

**CHAIRPERSON:** Is that the normal understanding – is that the normal kind of definition?

**MR CHETAN CHHAGAN VAGHELA:** It – it is - Chair it is – it is based on circumstances. I guess one needs to look at each – each case in its  
10 - in its - based on its merit and then the circumstances.

**CHAIRPERSON:** But there must be something you have done which falls under facilitation. If – if you just give me money when I have done nothing. Why would facilitation come in there if I have not – I am not alleged to have facilitated anything?

**MR CHETAN CHHAGAN VAGHELA:** Chair I will – I would – in your view I would imagine that where one has not rendered a service and cannot substantiate the fees earned it – it may allege to a facilitation payment.

**CHAIRPERSON:** If I facilitate a transaction and I – or maybe a sale  
20 and I charge a fee to one of the parties or – or both would that not be a facilitation fee?

**MR CHETAN CHHAGAN VAGHELA:** It maybe but we need to go into what activities did that person perform in order to earn the fee.

**CHAIRPERSON:** Okay. You may proceed.

**ADV REFILOE MOLEFE:** Thank you Chair. Mr Vaghela in your years of



practice as an auditor have you ever come across a facilitation fee arrangement except the one under reference?

**MR CHETAN CHHAGAN VAGHELA:** This would be my first one.

**ADV REFILOE MOLEFE:** Okay. At paragraph 20 of your statement you state there that:

“Mr Whiley indicated that the first payment to Homix related to the Cisco equipment – equipment deal to Neotel.”

And you have given that evidence. Is that correct?

10 **MR CHETAN CHHAGAN VAGHELA:** Sorry Chair – counsel which paragraph are you referring ...?

**ADV REFILOE MOLEFE:** Paragraph 20 on page 7.

**MR CHETAN CHHAGAN VAGHELA:** And – and the question is?

**ADV REFILOE MOLEFE:** The first payment that is said to have been made to Homix what was that payment?

**MR CHETAN CHHAGAN VAGHELA:** It is for the Cisco equipment deal.

**ADV REFILOE MOLEFE:** Can I then refer you back to page 199 of the bundle which is the invoice we were looking at a few minutes ago and we are going to cross reference that with paragraph 10 of your  
20 statement at page 4. The date of this invoice as you have told the Chair is 2 January 2015. Is that correct?

**MR CHETAN CHHAGAN VAGHELA:** Yes Chair.

**ADV REFILOE MOLEFE:** And as you have earlier testified a debit balance would relate to payment made before invoice. Do I have that correct?

**MR CHETAN CHHAGAN VAGHELA:** Yes Chair.

**ADV REFILOE MOLEFE:** Can you please then just explain insofar as the date of this invoice your paragraph 10 in relation to the debit balance and what Mr Whiley told you to have been the first basis of the first payment – the first payment to Homix? Was this the first payment to Homix? Let me ask it differently.

**MR CHETAN CHHAGAN VAGHELA:** Chair no this was not the first payment to Homix.

**ADV REFILOE MOLEFE:** Now at paragraph 10 you speak of a payment  
10 being made on 27 February 2015 and you say that it was for an amount of just over 41 million. Is that correct?

**MR CHETAN CHHAGAN VAGHELA:** Yes Chair.

**ADV REFILOE MOLEFE:** You also say that this payment was made before invoice. Is this correct?

**MR CHETAN CHHAGAN VAGHELA:** Yes Chair.

**ADV REFILOE MOLEFE:** However the invoice that you have referred us to at page 199 is dated 2 January 2015?

**MR CHETAN CHHAGAN VAGHELA:** Yes Chair.

**ADV REFILOE MOLEFE:** Can you please just explain how that would  
20 be a debit balance if just by virtue of the date it would have preceded this date of 27 February 2015?

**MR CHETAN CHHAGAN VAGHELA:** Well it depends on when it was actually received ...

**ADV REFILOE MOLEFE:** Yes.

**MR CHETAN CHHAGAN VAGHELA:** By Neotel ...

**CHAIRPERSON:**

**ADV REFILOE MOLEFE:** And ...

**MR CHETAN CHHAGAN VAGHELA:** And how many versions there were because there were – there was another version of it ...

**ADV REFILOE MOLEFE:** Yes.

**MR CHETAN CHHAGAN VAGHELA:** But in Neotel recording it at the time they had not recorded this – this invoice. So it – it is quite possible that the invoice has not been received although it is dated an earlier date.

10 **ADV REFILOE MOLEFE:** And did Neotel ever confirm when this invoice was actually received from Homix?

**MR CHETAN CHHAGAN VAGHELA:** Chair I cannot answer that specifically. I do not recall the noting of the receipt of the invoice.

**ADV REFILOE MOLEFE:** From paragraphs 32 to 38 of your statement you then set out details relevant to further investigations conducted by Deloitte. At the outset of that topic you speak to events that took place on 13 April 2015. Is that correct?

**MR CHETAN CHHAGAN VAGHELA:** Yes Chair.

**ADV REFILOE MOLEFE:** What happened on this day?

20 **MR CHETAN CHHAGAN VAGHELA:** Following our inquiries with the CEO we were advised to engage with Mr Van Der Merwe who was the primary contact between Neotel and Homix. Myself and Ms Viljoen at the time had a meeting with Van Der Merwe who we – where we inquired about Homix and – and their role in the Transnet MSA Contract.

**ADV REFILOE MOLEFE:** Can I refer you to page 34 of the bundle which appears under the Folder 3? Can you please identify what document appears on page 34 of the bundle?

**MR CHETAN CHHAGAN VAGHELA:** Chair it is the minutes of meeting with Francois Van Der Merwe.

**ADV REFILOE MOLEFE:** And who recorded these minutes?

**MR CHETAN CHHAGAN VAGHELA:** Michelle Viljoen, the Senior Manager and myself.

**ADV REFILOE MOLEFE:** And what is the date on those minutes?

10 **MR CHETAN CHHAGAN VAGHELA:** It is 13 April 2015.

**ADV REFILOE MOLEFE:** 2015, thank you. Who was in attendance at the meeting?

**MR CHETAN CHHAGAN VAGHELA:** Michelle Viljoen the Senior Manager, Francois Van Der Merwe the General Manager at Neotel and myself.

**ADV REFILOE MOLEFE:** Yes and what was discussed at this meeting?

20 **MR CHETAN CHHAGAN VAGHELA:** We inquired about Transnet. There were various transactions with Transnet and we wanted to understand Homix as he had engaged with Homix and we wanted more information around who Homix was and what they did and so it was a third conversation following the CFO/CEO and – and now the direct person.

**ADV REFILOE MOLEFE:** Now in the minutes just under the second bullet point starting with:

“FVDM ...”

There are certain contracts that are discussed there. Is that correct?

**MR CHETAN CHHAGAN VAGHELA:** Yes Chair.

**ADV REFILOE MOLEFE:** Can you please just read those sub bullets under the second bullet?

**MR CHETAN CHHAGAN VAGHELA:** Okay.

“FVDM provided an overview of all the Transnet transactions that took place in the current year. (Indistinct) switches transaction in March 2014. CCTV1 in June/July 2014. The MSA, sale of assets mobilisation and CCTV2.”

10

**ADV REFILOE MOLEFE:** And on the sixth bullet there is discussion round the MSA process. Is that correct?

**MR CHETAN CHHAGAN VAGHELA:** Yes Chair.

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

**MR CHETAN CHHAGAN VAGHELA:** So in our – in our discussion Chair Mr Van Der Merwe provided an overview of the MSA process.

“He indicated that in November 2013 Neotel had lost the Transnet tender and the tender was awarded to T-Systems. Neotel and Transnet signed an extension agreement that terminated in December 2014. In January 2014 Homix sent a letter to FVDM notifying Neotel of a deal at Transnet that Neotel was not invited to tender for. That is how Neotel became aware of the routers and

20

switches deal and how they became aware of Homix. Neotel was made aware by their two people at Transnet Gerrie and Yousuf that Transnet has an exit plan from Neotel being dimension data. According to Mr Van Der Merwe Transnet had trust issues with Neotel. CV asked Mr Van Der Merwe who Homix were and their background.”

**ADV REFILOE MOLEFE:** Sorry if – if – when you refer to – to the initials CV please just confirm who that would be?

10 **MR CHETAN CHHAGAN VAGHELA:** Chetan – myself Chetan Vaghela.

**ADV REFILOE MOLEFE:** Thank you please proceed.

**MR CHETAN CHHAGAN VAGHELA:** “He asked Mr Van Der Merwe who Homix where and their background. Mr Van Der Merwe answered Homix is a Dubai based company. They offered specialised consultancy services with staff of 100 employees. They have offices in South Africa and their offices are based in Pretoria Silverton where Mr Van Der Merwe has visited before. However he usually meets Homix at Melrose Arch. Homix does a lot of work for Transnet and Government. They play at board level.”

20

**ADV REFILOE MOLEFE:** Now what did – what was your understanding of what you have just stated there where it says that they play at board level?

**MR CHETAN CHHAGAN VAGHELA:** It – it alludes to influence in – influence in higher levels of management.

**ADV REFILOE MOLEFE:** Which management?

**MR CHETAN CHHAGAN VAGHELA:** At – at a Transnet level.

**ADV REFILOE MOLEFE:** Was this explained specifically by Mr Van Der Merwe to you?

**MR CHETAN CHHAGAN VAGHELA:** No. We just recorded what he told us.

10 **ADV REFILOE MOLEFE:** Did you ask him what he meant by “they play at board level”?

**MR CHETAN CHHAGAN VAGHELA:** No.

**ADV REFILOE MOLEFE:** Okay. Please proceed.

**MR CHETAN CHHAGAN VAGHELA:** “CV ...”

Which is myself.

20 “...asked Mr Van Der Merwe who he deals with specifically at Homix. Mr Van Der Merwe replied that his contact person at Homix is Ashok. He does not recollect this name but he would send his details to me. According to Mr Van Der Merwe Ashok is the President of Homix Middle East and African Business. Mr Van Der Merwe also indicated that he could arrange a meeting for myself if we would like to meet him. I indicated that there was no need to meet him. Homix was able to swing the MSA deal for Neotel because Transnet did not sign

a legally enforceable with T-Systems. As the MSA stipulates the supplier needs to be the sole supplier which T-Systems at that point was not. The actual contacts at Transnet with regards to the MSA are Gerrie Van Der Westhuizen and Yusuf Mohammed.”

Shall I continue?

**ADV REFILOE MOLEFE**: Yes on – on the following page – page 35.

**MR CHETAN CHHAGAN VAGHELA**: *Ja*.

10 **ADV REFILOE MOLEFE**: The first sub bullet that appears there can you please take the Chair through the discussion that – that took place in that respect.

**MR CHETAN CHHAGAN VAGHELA**: At the - is that at the top of the page Chair?

**ADV REFILOE MOLEFE**: Page 35. The sub bullet that appears – the first sub bullet appears at page 35 starting with:

“The wheels ...”

**MR CHETAN CHHAGAN VAGHELA**: “The wheels ...”

20 “The wheels can move on the 10<sup>th</sup> and 11 December 2014. No one at Transnet was willing to talk to Neotel anymore. Neotel management tried to make contact with Transnet and they were not taking their calls. The information received by Neotel through their sources was that there were talks with (indistinct). A meeting between Sunil Joshi, Steven Whiley, Tracy Cohen and



Mr Van Der Merwe was held during this impasse when the decision to use Homix was made by Sunil. Sunil Joshin sent an email to the Neotel people involved in this transaction suggesting making use of Homix. Neotel negotiated with Homix a fee of 2 percent of the MSA. Initially they wanted 10 percent which was consistent with the previous deal terms. However this pricing was not acceptable to Neotel as it would make the deal unprofitable.

10 Mr Van Der Merwe is expecting another payment of 20 million based on the asset sale. Dependant on Transnet and Neotel signing the operational agreement. Neotel's new primary contact at Transnet is Helen Welshinger."

But that is an error.

**CHAIRPERSON:** Mr Van Der Merwe according to the minutes of – to facilitate a meeting between you and Ashok from Homix and according to the minutes you declined that invitation. Why did you decline it?

**MR CHETAN CHHAGAN VAGHELA:** Chair I declined the – the meeting

20 because it – it was not in my ambit to make those inquiries at that level. It was for management to engage with Homix and understand what they did.

**CHAIRPERSON:** No but you wanted to understand because as auditors you wanted to see what you were dealing with. Is it not? That is my understanding. That is why you had a meeting with the CFO. That is

why you had a meeting with – with the CEO. That is why were now having a meeting with Van Der Merwe because you were told by the CEO that Van Der Merwe was the contact person with Homix. He would be the one who has information.

**MR CHETAN CHHAGAN VAGHELA:** Yes.

**CHAIRPERSON:** Is it not?

**MR CHETAN CHHAGAN VAGHELA:** Yes.

**CHAIRPERSON:** And now you have a chance you meet with Van Der Merwe and he tells you what he tells you and he says the person at Homix that he was dealing with because you wanted to know who he dealt with at Homix. He says that person is Ashok and he offers to arrange for a meeting between you and him and you would have got a chance to say to Ashok what exactly you did that justifies this fee and then you decline. That is what I do not understand.

**MR CHETAN CHHAGAN VAGHELA:** Chair at the time we were still making our inquires and so we – I did not take – take the opportunity to engage Ashok at the time.

**CHAIRPERSON:** Yes, but you were going to a meeting with Ashok and make same inquires that you have been making with the CFO, the CEO and now with the Van Der Merwe. You want to know something and from what I gather the answer they were giving you were not – were not satisfactory. Am I right?

**MR CHETAN CHHAGAN VAGHELA:** Yes Chair.

**CHAIRPERSON:** You were not getting what you were looking for from the CFO, from the CEO, from Van Der Merwe and now Van Der Merwe

says I can arrange a meeting for you to meet with Ashok and that is the person who at least should be able to tell you what he did or what his team did to justify this fee and you decline.

**MR CHETAN CHHAGAN VAGHELA:** Chair ...

**CHAIRPERSON:** I do not understand why you declined that opportunity.

**MR CHETAN CHHAGAN VAGHELA:** Chair at the time he just referred to it as Ashok and he said he would send us the full details of the name later. So once he had ...

10 **CHAIRPERSON:** No but he said I can arrange. He knew – he knew Ashok. It is not like he – he would not because he did not remember the surname. He could not pick up the phone and say I want you to meet my auditors – our auditors. He knew Ashok. He had met with him. He was dealing with him and you were – you were seeking certain answers and he says I can arrange a meeting and you decline.

**MR CHETAN CHHAGAN VAGHELA:** Chair for us it was – at the time it is quick answer to say I can – I can let you met Ashok. In that instance we were not necessary at that point in time take up the opportunity because there – you know – otherwise I am - we wanted – we wanted  
20 the Neotel Board and – and management and articulate to us. So it is – it is an element of one – one can further the inquiry but it is a matter of timing during the audit process that one would take up the opportunity.

**CHAIRPERSON:** Did you later take that opportunity?

**MR CHETAN CHHAGAN VAGHELA:** The opportunity was later taken up by Neotel when the commissioned the investigation.

**CHAIRPERSON:** Hm. It was taken up by...?

**MR CHETAN CHHAGAN VAGHELA:** By the company Neotel.

**CHAIRPERSON:** Yes.

**MR CHETAN CHHAGAN VAGHELA:** When they – when they commissioned an independent investigation.

**CHAIRPERSON:** But you did not take it?

**MR CHETAN CHHAGAN VAGHELA:** No.

**CHAIRPERSON:** Ja, okay.

**ADV REFILOE MOLEFE:** Thank you Chair. In ...

10 **CHAIRPERSON:** Maybe I can just say part of the reason why you were asking these questions to the company was to enable you to decide whether what was happening was something that was reportable in terms of your obligations as an auditor. Is it not?

**MR CHETAN CHHAGAN VAGHELA:** Yes Chair.

**CHAIRPERSON:** And speaking to somebody from Homix could help you to get information that would help you decide is this reportable or not.

**MR CHETAN CHHAGAN VAGHELA:** Yes Chair.

**CHAIRPERSON:** Yes, okay.

20 **ADV REFILOE MOLEFE:** Thank you Chair. It is 11:15. I do not know if this is an opportune time to take the short adjournment.

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

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**ADV REFILOE MOLEFE:** ...which you've recorded at page 34 of your bundle, from 34 to 35. Earlier the Chair asked you why you did not meet with Mr Ashok when the opportunity was presented to you and you sought to explain to the Chair why this was not necessary. At this point of your engagement with Neotel what was the basis upon you engaging Neotel?

**MR CHETA CHHAGAN VAGHELA:** Chair at the time we were still – our audit was a routine audit, a company audit and in such circumstances we wouldn't necessarily engage with creditors directly. Homix was a  
10 creditor of Neotel and we were still in the fact finding process of our audit.

**ADV REFILOE MOLEFE:** And as I understand it the audit you were conducting was an audit on Neotel?

**MR CHETA CHHAGAN VAGHELA:** Yes the audit we were conducting was the audit of the company and not necessarily an investigation into their actual contracts. As part of our audit we identified these contracts that we looked into further.

**ADV REFILOE MOLEFE:** And in the normal course of an audit of a company would you engage that company's creditors?

20 **MR CHETA CHHAGAN VAGHELA:** No we would not directly engage the company's creditors.

**CHAIRPERSON:** Well if you must satisfy yourself whether the transaction is reportable or not and if your client, Neotel is happy for you to speak to a creditor and you have no reason to think the creditor has any problem, what would be wrong with saying, let me take this

offer and talk to Ashok and see whether I can reach – see what conclusion I can reach about whether this transaction is reportable or not?

**MR CHETA CHHAGAN VAGHELA:** Chair there's nothing stopping that it's just we were going through our process where at that point in time we didn't take the need to engage Ashok directly...(intervention).

**CHAIRPERSON:** You see that's my difficulty unless your position is you didn't have to satisfy yourself or that the transaction was reportable or not, number one, or unless you say there's nothing that  
10 Mr Ashok could tell me that could help me make that decision, that's how I see it but there may be something I don't understand I'm not an auditor so feel free to explain to me your thinking if there's anything other than what you've already told me that you can tell me to make me understand.

**MR CHETA CHHAGAN VAGHELA:** Chair I'll take you through my thinking at the time. We were making inquiries of the different levels of management. To us Homix was an unknown entity and we couldn't understand what they had done. There were a lot of red flags as I had mentioned earlier in my testimony and the entity did not appear to have  
20 substance and at the time of our inquiries Amir gathered information around who he had engaged with and at the time Mr van der Merwe only quoted Ashok, you know, I don't know who that individual is and we wanted to go back and do our own background checks, investigation around that. We further wanted to understand what the company had done in forming their background checks which I had a subsequent

discussion on Tuesday the 14<sup>th</sup> of April and so we were going through our own process in collating information in unpacking who were we dealing with and what information had the company had done around Homix and therefore I didn't take up the need. Subsequent to our background checks and once we had received the information as to who Ashok was in paragraph 33.1 Ashok he was referring to was Ashok Narayan Buthenveedu and when we, Dennis and myself were doing our own background checks, Ashok that was identified was linked to the Sahara Group of companies which is linked to the Gupta family. So we  
10 were going through our own process at the time prior to engaging directly with creditors.

**CHAIRPERSON:** At the end of that meeting did you have an understanding of what Homix had done to be – to deserve these payments?

**MR CHETA CHHAGAN VAGHELA:** No, we were no further – we had no further knowledge of exactly what they did.

**CHAIRPERSON:** But you agree with me that somebody from Homix certainly would have to answer that question to say, this is what we did, that person couldn't say I don't know what we did to deserve that  
20 amount?

**MR CHETA CHHAGAN VAGHELA:** Yes I agree with you Chair someone would need to answer that question.

**CHAIRPERSON:** Yes.

**MR CHETA CHHAGAN VAGHELA:** But after that meeting we did not have answers to the questions as to what they did.

**CHAIRPERSON:** You see my understanding is – is that if in your meeting with Mr van der Merwe, you got satisfactory answers then that would explain why you didn't – wouldn't want to waste time and see somebody else, you know but if you did not get satisfactory answers and he offered you somebody else that related to Homix, who could – who should know what Homix did, it seems natural to say, yes let's see him. It might be different if he is not prepared to be seen.

**MR CHETA CHHAGAN VAGHELA:** Chair in this situation we were getting the same fact pattern from the CFO, the CEO, the General  
10 Manager, Strategic Projects and we were – the matter was significant and it wasn't getting the attention that it deserved and our subsequent steps was that actually Mr Dennis escalated the matter to the Board of Neotel. So it wasn't for us to resolve the matter through our inquiries directly with Homix, it was for the Board of Neotel to understand what they commissioned Homix to do, what did they do in resolving the impasse and how Neotel satisfy themselves that the fees were commensurate with the services and therefore in order to take the level of inquiry to another level the inquiries were formalised in a letter to the Board of Neotel and therefore that was our approach in dealing with  
20 the matter rather than, I myself engaging with Ashok.

**ADV REFILOE MOLEFE:** Thank you Chair can we go to page 35 of your bundle at the second sub-bullet which you, earlier read out to the Chair which says that, Neotel negotiated with Homix a fee of 2% of the MSA, initially they wanted 10% which was consistent with previous deal terms, what were the previous deal terms, referred to?



**MR CHETA CHHAGAN VAGHELA:** Chair the previous deal referred to is the Cisco switchers and routers deal.

**ADV REFILOE MOLEFE:** And did you discuss when this negotiation with Homix took place?

**MR CHETA CHHAGAN VAGHELA:** Not specifically with Mr van der Merwe but we – in our discussions with the CEO we were aware that it took place on or approximately the 12<sup>th</sup> of December.

**ADV REFILOE MOLEFE:** Of 2014?

**MR CHETA CHHAGAN VAGHELA:** 2014 yes Chair.

10 **ADV REFILOE MOLEFE:** And how did this meeting conclude?

**MR CHETA CHHAGAN VAGHELA:** The meeting with Mr van der Merwe, he just articulated further information around CCTV1 and CCTV2 and as our meeting was a sort of a discussion around Transnet as a whole as part of a routine audit discussion we left the meeting as such and we did – Mr van der Merwe needed to give me the full name of Ashok and if there was any information that we needed, we would reach out to him.

**ADV REFILOE MOLEFE:** And were you eventually provided with the full details with the person referred to as Ashok?

20 **MR CHETA CHHAGAN VAGHELA:** Yes I was Chair.

**ADV REFILOE MOLEFE:** And what detail was provided?

**MR CHETA CHHAGAN VAGHELA:** He provided his full name in an email to me which was Ashok Narayan (indistinct) as described in clause 33.1.

**ADV REFILOE MOLEFE:** Can you please spell then name and

surname of Mr Ashok.

**MR CHETA CHHAGAN VAGHELA:** Ashok - A-s-h-o-k Narayan - N-a-r-a-y-a-n – Buthenveedu - B-u-t-h-e-n-v-e-e-d-u.

**ADV REFILOE MOLEFE:** And what did you do with these details once you obtained them?

**MR CHETA CHHAGAN VAGHELA:** Once we obtained them we did some background searches on the internet to try and identify who the person potentially may be.

**ADV REFILOE MOLEFE:** Yes and who did you find the person to be?

10 **MR CHETA CHHAGAN VAGHELA:** Chair through our searches we potentially identified him as a Director – Ex-Director or Sahara Group of Companies.

**ADV REFILOE MOLEFE:** Yes and what did you do with this information.

**MR CHETA CHHAGAN VAGHELA:** Chair I was with Mr Dennis and we shared the information between ourselves and that's where we left that information, but we remained concerned – it increased our worry around the commerciality of the fees.

**ADV REFILOE MOLEFE:** What increased your worry?

20 **MR CHETA CHHAGAN VAGHELA:** The person who Homix was linked to just caused more doubt around the fees being paid and whether there was actually substance behind Homix.

**ADV REFILOE MOLEFE:** And why is that?

**MR CHETA CHHAGAN VAGHELA:** Just by virtue of who the party is, I mean you know that party or the persons in our view we struggle to

understand what they would have done and based media knowledge and inferences you know there was a concern.

**CHAIRPERSON:** You say in paragraph 34 of your statement that Mr van der Merwe said that Joshi had suggested to him that Neotel engage Homix in respect of the Transnet MSA, is that right?

**MR CHETA CHHAGAN VAGHELA:** Yes Chair.

**CHAIRPERSON:** But I think in one of the minutes Joshi had said to you he didn't know Homix, and now, according to van der Merwe he's the one that suggested they use Homix, is that right?

10 **MR CHETA CHHAGAN VAGHELA:** Yes Chair.

**CHAIRPERSON:** Did you understand that to be rather contradictory or you understood it differently. The CFO said he didn't know who Homix was, Joshi said he didn't know who Homix was, as I understand in the minutes in the meeting that you had but now Mr van der Merwe says it's actually Joshi – Mr Joshi who suggested that Neotel should use Homix.

**MR CHETA CHHAGAN VAGHELA:** Chair, yes that is correct, the sequence of events is, at the time of the impasse Homix had brought a previous deal to Neotel which was in March/April 2014 and so he was aware of Homix bringing a deal to the company and when they were at  
20 this impasse Joshi then – he was reminded by van der Merwe of Homix and then he said, okay well let's – he suggested that, let's get that agent to assist us. So he didn't now – when we asked him who Homix was he couldn't give us details but he just knew of the reference point that Homix was an agent that brought a deal to us, so we are told based on the inquiries that we had with management.

**CHAIRPERSON:** He knew of Homix and he knew that Homix had, had dealings with Neotel before, what he might not have known might be certain details about them but he knew of them at the time he met with you, Mr Joshi.

**MR CHETA CHHAGAN VAGHELA:** Chair that's right, he knew that Homix had brought the Cisco deal to Neotel and he recommended that Mr van der Merwe engage with Homix for the impasse but when we asked him who Homix actually is, you know who are the individuals who deal with – he doesn't have that knowledge of the entity.

10 **CHAIRPERSON:** Okay.

**ADV REFILOE MOLEFE:** Thank you Chair, from paragraph 36 on page 10 of your statement you deal with further engagements that Deloitte had with Neotel, that is paragraph 36, please take the Chair through these engagements.

**MR CHETA CHHAGAN VAGHELA:** Yes Chair, I then further engaged with the company secretary, Mr Calvin Theko as the CEO had advised that he had done background checks on Homix and there were no flags raised in terms of their own background checks. I wish to draw the Chair to page 95...(intervention).

20 **ADV REFILOE MOLEFE:** Before you do so, on what date did you have this engagement with Mr Theko?

**MR CHETA CHHAGAN VAGHELA:** The engagement was on the 14<sup>th</sup> of April 2015.

**ADV REFILOE MOLEFE:** And just to confirm the spelling of Mr Theko's names you said that his name is Calvin, that would be C-a-l-v-

i-n.

**MR CHETA CHHAGAN VAGHELA:** Yes that's correct Chair.

**ADV REFILOE MOLEFE:** And the surname T-h-e-k-o for Theko.

**MR CHETA CHHAGAN VAGHELA:** Yes that's correct Chair.

**ADV REFILOE MOLEFE:** Yes you were referring the Chair to page 95.

**MR CHETA CHHAGAN VAGHELA:** Yes Chair, under paragraph 13, and this was the response we had received from Neotel on page 95...(intervention).

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

10 **MR CHETA CHHAGAN VAGHELA:** The date of that response is 5<sup>th</sup> June 2015.

**ADV REFILOE MOLEFE:** Yes.

**MR CHETA CHHAGAN VAGHELA:** Chair under paragraph 13 the response from Neotel, the company was that,

20 "concerns were raised by Tracy Cohen and Steve Whiley about Sunil Joshi about Homix and whether there was knowledge of untoward engagements of facilitation fees to anyone in Transnet. On 20 March Joshi got the team together to discuss the concerns and asked if anyone knew of any such conduct. Each member was asked and each replied in the negative, members were also asked if anyone was aware of money changing hands involving employees and the response was also negative. After the meeting Theko was asked to do checks on Homix to assess if any red flags were raised but none were reported by him".

That was the company's response in relation to the background checks that they had done and was in line with our inquiries of the 14<sup>th</sup> of April 2015.

**ADV REFILOE MOLEFE:** Yes and we will go to correspondence that preceded that letter, did you know the nature of investigation that was said to have been undertaken by Mr Theko?

**MR CHETA CHHAGAN VAGHELA:** No.

**ADV REFILOE MOLEFE:** Did you enquire with him as to the nature of the investigation undertaken?

10 **MR CHETA CHHAGAN VAGHELA:** At a higher level yes but not in detail

**ADV REFILOE MOLEFE:** Now at paragraph 37 you then set out the processes or further processes that Deloitte pursued in it's audit. What did Deloitte do in this respect?

**MR CHETA CHHAGAN VAGHELA:** Subsequent to us concluding our inquiries on the 14<sup>th</sup> of April Mr Dennis raised a letter, a formal letter to the Board of Neotel making specific inquiries around the Homix transactions. If I can draw the Chair to Annexure...(intervention).

20 **ADV REFILOE MOLEFE:** Before doing so Mr Vaghela can I refer you first to paragraph 37 which is on page 10, that is where you set out the further audit process that was undertaken by Deloitte, you then go further to set out the concerns that Deloitte had at this juncture, can you please take the Chair through these two aspects first?

**MR CHETA CHHAGAN VAGHELA:** Chair during this – during the audit process, we reviewed various pieces of information around the on-

boarding process, the contract with Homix and other supporting documentation. We had various concerns noted by us as the Deloitte team and these included the CIPC search on the registration number of Homix as per the Homix contract, returned no result. Telephone calls made to the specified contract details were unanswered, these were telephone details noted on the on-boarding information as well as on the invoice. An internet search on the registered address of Homix returned an address as being a registered – registered to a charity...(intervention).

10 **ADV REFILOE MOLEFE:** Sorry Mr Vaghela before you proceed I'm informed that the mic is too close to you could you please put it slightly forward, thank you.

**MR CHETA CHHAGAN VAGHELA:** Forward or back?

**ADV REFILOE MOLEFE:** Forward, away from you thank you, please proceed.

**MR CHETA CHHAGAN VAGHELA:** The website address mentioned in Homix contract did not return a valid web page, the on-boarding documentation did not contain all the standard information that was required, such as registration documents, proof of banking details, 20 copies of ID's. The Homix contract, signed by Joshi was also without Board approval and the invoice submitted to Neotel's finance department for the first Cisco deal was a payment for a once-off vendor. All these elements in our process of inquiry and in reviewing the information were of concern and were red flags for us.

**ADV REFILOE MOLEFE:** Then from paragraph 39 you then deal with

Deloitte's engagement with the Board, the Audit Committee and other parties and in doing so did you engage any further assistance to assist you in your audit?

**MR CHETA CHHAGAN VAGHELA:** Yes Chair, at this point in time Mr Dennis engaged external legal counsel – external attorneys Cliffe Dekker Hofmeyr to assist us as him as a signing partner and us as a firm, with the legal aspects of the matter due to the significance and complexity around this matter. So we had the external legal attorneys assisting us.

10 **ADV REFILOE MOLEFE:** Yes you deal with a letter that was sent from paragraph 40 of your statement, to whom was this letter sent?

**MR CHETA CHHAGAN VAGHELA:** This letter was sent to the Chairman of the Board of Neotel, Mr Shunat, it was dated the 17<sup>th</sup> of April as we were not satisfied with the information and the explanations provided by Management. In this letter we posed a number of questions to the Board of Neotel in the hope that the answers to these questions would assist us to conclude on whether or not there was an acceptable commercial basis for the Homix transaction.

20 **ADV REFILOE MOLEFE:** And you said that it was the 17<sup>th</sup> of April would this be the 17<sup>th</sup> of April 2015?

**MR CHETA CHHAGAN VAGHELA:** Yes Chair, that is correct.

**ADV REFILOE MOLEFE:** Can I refer you then to page 40 of the bundle which appears under folder number four. Page 37, pardon me, it's on page 37, is that the letter that Deloitte sent to the Board?

**MR CHETA CHHAGAN VAGHELA:** Yes that is correct Chair.



**ADV REFILOE MOLEFE:** And what are you – what contents are addressed in this letter to the Board?

**MR CHETA CHHAGAN VAGHELA:** So we specifically outlined the Homix contract and the agreement that was signed on the 19<sup>th</sup> of February and we specifically asked the management and Board to provide information around the commerciality and substance of the arrangement with Homix. In the letter there are a number for bullet points asking key questions, such as the selection criteria and he reasons for appointing Homix, other service providers considered, the  
10 credentials and expertise which Homix possesses, what- did Neotel's management or the Board know exactly what would be done by Homix or implemented by Homix in carrying out the mandate. The terms and conditions relating to Homix's involvement in the price negotiation, the mandate in terms of reference that Neotel provided to Homix, the clear explanation of what Homix brought to the table, which individual at Homix did Neotel deal or engage with. Did Neotel require Homix to engage with any particular individuals at Transnet and if so, who they were. Was Transnet made aware that Neotel was going to engage or had engaged Homix or any other agent in connection with the  
20 negotiation and conclusion of the Master Services Agreement. Documentation showing the compliance with the levels of authority as per the Board approval's framework and/or showing that there was authority from the Board of Neotel to transact with Homix, example the Board resolution or minute. As well as Neotel's own assessment of the Homix relationship as this was indicated by the CEO on the Saturday 11

April that a process was followed by his team during March to ensure that the payments to Homix are not irregular by nature.

**ADV REFILOE MOLEFE:** Yes and how does that letter conclude.

**MR CHETA CHHAGAN VAGHELA:** The letter concludes in that,

“We require the above information to assess the commerciality of the arrangement and to support the fee paid and/or payable to Homix as part of our general duties under auditing legislation. This is required before we can (indistinct) to the Annual Financial statements”.

10 **ADV REFILOE MOLEFE:** And following this letter, what then took place?

**MR CHETA CHHAGAN VAGHELA:** Following this letter a special Audit Committee was called for on the 21<sup>st</sup> of April 2015 in order for us to discuss our concerns relating to the Homix transaction and the 17<sup>th</sup> of April letter.

**ADV REFILOE MOLEFE:** Who called this meeting?

**MR CHETA CHHAGAN VAGHELA:** Neotel, the company called the meeting.

**ADV REFILOE MOLEFE:** Can I then refer...(intervention).

20 **CHAIRPERSON:** Who in the company?

**MR CHETA CHHAGAN VAGHELA:** Sorry?

**CHAIRPERSON:** Who in the company called the meeting? you were asked who called the meeting what was your answer?

**MR CHETA CHHAGAN VAGHELA:** I said, Neotel the company called it.

**CHAIRPERSON:** Neotel?

**MR CHETA CHHAGAN VAGHELA:** Yes.

**CHAIRPERSON:** Oh okay.

**ADV REFILOE MOLEFE:** Can I then refer you to page 40 of the bundle which appears under folder number five. What document appears at page 40 of the bundle?

**MR CHETA CHHAGAN VAGHELA:** It's the minutes of the emergency Audit Committee meeting on Neotel.

**ADV REFILOE MOLEFE:** And is this the same meeting you've just told  
10 the Chair about?

**MR CHETA CHHAGAN VAGHELA:** Yes Chair.

**ADV REFILOE MOLEFE:** And on what date did this meeting take place?

**MR CHETA CHHAGAN VAGHELA:** 21 April 2015.

**CHAIRPERSON:** So this was a meeting of the Audit Committee of Neotel.

**MR CHETA CHHAGAN VAGHELA:** Yes Chair.

**CHAIRPERSON:** And that included you and Mr Dennis.

**MR CHETA CHHAGAN VAGHELA:** Yes Chair and Michelle Viljoen.

20 **CHAIRPERSON:** Yes okay, thank you.

**ADV REFILOE MOLEFE:** Thank you Chair and who else was in attendance at that meeting?

**MR CHETA CHHAGAN VAGHELA:** It was Mr Andre Dennis, myself, Michelle Viljoen and the Audit Committee members Mr Memane, Mr Ophner and Mr Fam.

**ADV REFILOE MOLEFE:** Please provide the full names of the Committee members.

**MR CHETA CHHAGAN VAGHELA:** Mr Kennedy Memane, Mr Peter Ophner, Mr Tri-Lou Fam.

**ADV REFILOE MOLEFE:** And did you attend the meeting at its commencement?

**MR CHETA CHHAGAN VAGHELA:** Yes we did.

**ADV REFILOE MOLEFE:** Okay can I refer you to the top of page 40...(intervention).

10 **MR CHETA CHHAGAN VAGHELA:** Sorry Chair, sorry we attended into the meeting, so the meeting was scheduled for three we attended at ten past four, sorry for the correction.

**ADV REFILOE MOLEFE:** And who led the discussions that took place at the meeting?

**MR CHETA CHHAGAN VAGHELA:** Mr Dennis led the discussions at the meeting on behalf of Deloitte.

**ADV REFILOE MOLEFE:** Yes and what in particular was discussed at this meeting...(intervention).

20 **CHAIRPERSON:** I'm sorry I just want to understand this, was it a meeting of Deloitte and a committee of Neotel or members of Deloitte such as yourself and Mr Dennis, although coming from Deloitte are members – were members of the Neotel Audit Committee together with people internal at Neotel?

**MR CHETA CHHAGAN VAGHELA:** Chair we are not members of the company's committee. We as auditors are invited to the committee

meeting, the audit committee meeting was a Neotel audit committee meeting...(intervention).

**CHAIRPERSON:** An internal committee meeting?

**MR CHETA CHHAGAN VAGHELA:** Yes it's a sub-committee of the Board and obviously financial statements and the financial reporting process.

**CHAIRPERSON:** So they were having their own meeting the audit committee and at a certain stage you came to meet with the audit committee? At a certain stage of their meeting.

10 **MR CHETAN CHHAGAN VAGHELA:** Yes.

**CHAIRPERSON:** You came to attend their meeting so that that part of their meeting was a meeting between yourselves and the audit committee?

**MR CHETAN CHHAGAN VAGHELA:** Yes that is correct Chair.

**CHAIRPERSON:** Ja so that one was not just a meeting of the audit committee but it involve people from Deloitte and it was a meeting between the two?

**MR CHETAN CHHAGAN VAGHELA:** Yes Chair but the meeting was called for.

20 **CHAIRPERSON:** Ja.

**MR CHETAN CHHAGAN VAGHELA:** Yes.

**CHAIRPERSON:** Yes, yes. No that is fine.

**ADV REFILOE MOLEFE:** Thank you. And just so to remind ourselves this meeting was – where you joined the meeting at least as Deloitte was as a result of your letter dated the 17 April 2015 wherein you

asked certain questions or sought clarification from the chairman of Neotel – Neotel’s board?

**MR CHETAN CHHAGAN VAGHELA:** Chair the meeting was – the audit committee had called a meeting for us to take them through our concerns and the letter to brief them about the letter.

**ADV REFILOE MOLEFE:** And at this meeting was there any response given to any of the concerns or questions you had raised in your letter of the 17 April 2015?

**MR CHETAN CHHAGAN VAGHELA:** The meeting was a briefing  
10 meeting where we took them through the enquiries and the responses that we had with management. It was clear from that meeting that the directors were enquiring more into the transactions in – than they possible should have. Because it was communicated to us that they – the matter had been approved by the board so if it had been approved by the board the members would have more knowledge of the matter. So that was unusual to us. We walked through the...

**CHAIRPERSON:** Did you get the impression that they were – those members of the board who were – those directors were asking more questions which you say was unusual? Did you get the impression that  
20 they were pretending not to know much about the transaction?

**MR CHETAN CHHAGAN VAGHELA:** I do not...

**CHAIRPERSON:** Is that your concern or no – is your concern something else when you say it was unusual?

**MR CHETAN CHHAGAN VAGHELA:** Well we do not know. Either they did know and were pretending or they actually did not know.

**CHAIRPERSON:** Ja.

**MR CHETAN CHHAGAN VAGHELA:** There are two elements to it.

**CHAIRPERSON:** Okay. Okay.

**MR CHETAN CHHAGAN VAGHELA:** We took them through the transactions. There was debate around accounting. There was a debate we raised around our concern around authority and we kept asking you know who – what Homix did and what was their mandate? And I think it was more an investigate – it was more an inquiry meeting from the audit committee members and we presented the facts as we  
10 understood it at that point in time and we then left the meeting. I think – I think just to make the Chair aware one of the bullets on the minutes regarding this transaction ...

**ADV REFILOE MOLEFE:** Can you just confirm which bullet point?

**MR CHETAN CHHAGAN VAGHELA:** It is the second – it is the second last bullet.

**ADV REFILOE MOLEFE:** On page 40?

**MR CHETAN CHHAGAN VAGHELA:** On page 40 yes.

**ADV REFILOE MOLEFE:** The second last from the bottom, yes.

**MR CHETAN CHHAGAN VAGHELA:** Regarding this transaction Mr  
20 Dennis AD which is Mr Dennis therefore explained that no one in management can provide a clear answer as to who Homix is. What is there scope of work agreed upon? Who does Homix engage with at Transnet? Does Transnet know that an agency involved? What their mandate was? What the terms of authority of the price negotiation they had? I.e. the questions raised in the letter to the board.

**ADV REFILOE MOLEFE:** And the point that follows speaks of the amount in question. Can you please take the Chair through the – the last bullet point on that page?

**MR CHETAN CHHAGAN VAGHELA:** TLP which is Tri Luu Pham asked whether we would have a different view if the amount was a fixed amount rather than a percentage of the contract value.

**ADV REFILOE MOLEFE:** And what was your response to that?

**MR CHETAN CHHAGAN VAGHELA:** Mr Dennis said it is not relevant because the question remains what did the agent do for the fee and  
10 what was the commerciality for engaging the agent? The question in the letter – the questions in the letter would have remained the same.

**ADV REFILOE MOLEFE:** Yes.

**MR CHETAN CHHAGAN VAGHELA:** I.e. whether it is a percentage or a fixed fee. We needed to understand what they did.

**ADV REFILOE MOLEFE:** And did the audit committee respond to your stance in that respect?

**MR CHETAN CHHAGAN VAGHELA:** There were various comments made KM – Mr Kennedy Memani said making use of agents and paying an agents fees is not abnormal and so we had discussion around that  
20 as noted in the minutes. But there was not a conclusive answer.

**ADV REFILOE MOLEFE:** Yes and you earlier said that at this meeting you also discussed the issue of authority and that would appear on page 41 where that discussion is set out. Can you please give detail around this discussion?

**MR CHETAN CHHAGAN VAGHELA:** Yes we raised with the audit



committee that we felt that the CEO did not have the board's authority. The reason for that was the agreement was signed by Neotel on the 14 December. We engaged Homix on the 12 December. The note he had provided to the board was dated the 16 December and when we look at the delegation of authority the delegation of authority talks about unbudgeted expenditure, having a limit of R10 million. And budgeted expenditure having a limit of R40 million. And the MSA fee of R36 million was in our view unbudgeted because you had an impasse in December and that value exceeded the R10 million. We also in the  
10 extreme circumstances if you had to take the R36 million and the R25 million asset sale and add the two together you will get to an amount of R61 million and that R61 million exceeded the R40 million limit. So in either way we did not believe he had authority, explicit authority as required.

**ADV REFILOE MOLEFE:** Yes and you deal with the issue of authority in paragraphs to follow in your statement. Now on page 41 of the minutes there was some discussion around the payments and payment dates, is that correct?

**MR CHETAN CHHAGAN VAGHELA:** Sorry Chair is there – can you  
20 repeat that?

**ADV REFILOE MOLEFE:** Was there any discussion insofar as the payment dates? Perhaps let me refer you to the fifth last bullet point. Please take the Chair through that discussion?

**MR CHETAN CHHAGAN VAGHELA:** Chair the – Mr Pham asked Mr Dennis why Mr Dennis felt comfortable with the first transaction but not

the second. Mr Dennis responded that the first payment occurred in April 2014 which was in the current financial year. The first transaction was not selected as part of our audit testing and we came to find out about the engagement with Homix during our creditors testing in February 2015. Therefore the second transaction was included in our testing. The transaction remained to be investigated but we understand that management said this was a finder's fee based on a deal that was brought to them and we will still investigate these. So the payment he is referring to is the payment on the Cisco transaction. It was still in  
10 the financial year and we would investigate it subsequently.

**ADV REFILOE MOLEFE:** Yes and the discussion appears to have continued please take the Chair through that?

**MR CHETAN CHHAGAN VAGHELA:** Mr Dennis also indicated that there was an additional payment that was due of R5 million which we are unclear as to which part of the deal it relates to. CV – Mr Vaghele explained that the R25 million and that the client CFO indicated that it was part of the conclusion of the operating agreement. Whereas the CEO indicated it was part of the concluding sale of assets agreement which agreement had taken place in December 2014 and which should  
20 therefore be accrued.

**ADV REFILOE MOLEFE:** And did you gain any clarity as to what the R25 million payment would relate to?

**MR CHETAN CHHAGAN VAGHELA:** The R25 million payment would relate to the sale of assets agreement which – which was concluded as part of the MSA and which was subsequently accrued in the 31 March

2015 accounts.

**ADV REFILOE MOLEFE:** And were you able to establish that as a matter of fact as according to this discussion it was the CEO of Neotel who would – who had indicated that the R25 million payment was part of the concluding the sale of assets agreement.

**MR CHETAN CHHAGAN VAGHELA:** Yes Chair there was a disconnect between the CEO and CFO and the disconnect was because based on the CEO fact pattern you would need to have accrued it based on the CFO fact pattern one would delay accrual to a bit later so that was the  
10 disconnect in the fact pattern. On looking through the evidence we concluded that it needed to be accrued however we did not get comfortable with the commerciality with that fee as well. It is part of the R36 million fee paid in that we could not understand what Homix did and was there a commercial basis for the fee arrangement.

**ADV REFILOE MOLEFE:** And how did that meeting conclude?

**MR CHETAN CHHAGAN VAGHELA:** The audit – after we presented our fact pattern we left the meeting and the audit committee members would have their own internal discussion on their own and that is how we left that meeting.

20 **CHAIRPERSON:** The one thing that Mr Dennis kept on going back to in that meeting was what did Homix do and what authority was – what was their mandate, is that correct?

**MR CHETAN CHHAGAN VAGHELA:** Yes Chair.

**CHAIRPERSON:** And each time was he not getting any satisfactory answers or answers at all?

**MR CHETAN CHHAGAN VAGHELA:** We were not getting satisfactory answers.

**CHAIRPERSON:** Were you being told what the CFO, CEO and Mr Van Der Merwe had told you namely they helped to break an impasse between Neotel and Transnet or were you not being told that at this meeting?

**MR CHETAN CHHAGAN VAGHELA:** In this meeting we were not told that. We were actually giving our...

**CHAIRPERSON:** And what were you...

10 **MR CHETAN CHHAGAN VAGHELA:** Version of our enquiries.

**CHAIRPERSON:** What was happening when these questions were put? The board of directors or the committee just kept quiet or what? Because he went to that question quite a few times it seems to me, what did Homix do? What was their mandate? They were mandated to do what?

**MR CHETAN CHHAGAN VAGHELA:** Chair at the...

**CHAIRPERSON:** Did the committee members just keep quiet or they avoided answering that question – those questions or what happened?

**MR CHETAN CHHAGAN VAGHELA:** They could not – if one – if we  
20 look at the minutes that are not – that question is never...

**CHAIRPERSON:** Answered.

**MR CHETAN CHHAGAN VAGHELA:** Answered.

**CHAIRPERSON:** Yes.

**MR CHETAN CHHAGAN VAGHELA:** And subsequent to that the board commission and independent investigation.

**CHAIRPERSON:** Yes.

**MR CHETAN CHHAGAN VAGHELA:** As the – inter – as their process.

**CHAIRPERSON:** But it must have been quite a very strange thing that here was a company that paid very, very large amounts to another company and the CFO could not tell you what this was for in any satisfactory way. The CEO could not, Mr Van Der Merwe could not. Now the audit committee could not. It must have been quite a strange thing?

**MR CHETAN CHHAGAN VAGHELA:** Yes Chair that is why we were  
10 concerned.

**CHAIRPERSON:** Ja. At the end of this meeting did you and Mr Dennis come to any firm conclusion as to your suspicions or not yet?

**MR CHETAN CHHAGAN VAGHELA:** Chair after that meeting we did come to a conclusion that the audit committee members were not fully aware of the Homix transaction and therefore it formed the basis for reporting our first reportable irregularity around the breach of delegation of authority as well as the commerciality – and for the directors to not act in the best interest of the company.

**ADV REFILOE MOLEFE:** And just for completeness sake insofar as the  
20 audit committee's response or – to your questions can you just go through the last two bullet points on page 41?

**MR CHETAN CHHAGAN VAGHELA:** The audit committee said they will discuss this matter further without the attendance of Deloitte or management. Deloitte subsequently left the meeting for the audit committee to discuss on their own.

**ADV REFILOE MOLEFE:** Thank you. Can we then return to page 12?

**CHAIRPERSON:** Before you do that. You know the third bullet point at the top of paragraph – of page 41 says KM asked AD why his letter is addressed to the board. Why was that an important issue, do you know? Was he taking objection to something KM?

**MR CHETAN CHHAGAN VAGHELA:** Chair in our view if one – if a matter is addressed to the board it highlights the severity or the significance of the matter. And Mr Dennis responded there that you know the CEO, The CFO, Mr Theko, Mr Van Der Merwe could not  
10 provide answers or responses to our questions and that the CEO said to him that board approval was obtained for this transaction. And the board approved the Transnet MSA transaction. And therefore that is – that is – because of the – because we were not getting responses to our enquiries the next logical step was to escalate it to the board.

**CHAIRPERSON:** And that explanation seemed to satisfy him? Or you do not know?

**MR CHETAN CHHAGAN VAGHELA:** I would not be able to answer that.

**CHAIRPERSON:** Ja okay.

**ADV REFILOE MOLEFE:** And we turn to page – return to your  
20 statement at page 12 and paragraph 43 where you set out events that took place subsequent to your meeting with the audit committee of Neotel, can you please take the Chair through this?

**MR CHETAN CHHAGAN VAGHELA:** So subsequent to the 21 April 2015 meeting with the audit committee Deloitte then evaluated the information it had obtained from management in response to the

queries addressed to management in relation to the Homix transaction and payments made to Homix. I am referring here to all our enquiries the on-boarding information, the contracts that we had reviewed and based on the meeting with the audit committee we then concluded our first RI as required by the Act the Auditors Professions Act. Chair and RI is the act of governing auditors requires us as auditors to act in a certain way and it became – and we have a statutory obligation to report matters where we have reason to believe that management has committed an unlawful act that would have resulted in material financial  
10 loss or is fraudulent to amounts to theft or is a material breach of fiduciary duties. So in those instances where we have reason to believe we would need to report an RI. And at this point in time we had reason to believe that we had a RI regarding – I just want to – I just want to –

**ADV REFILOE MOLEFE:** Can I then refer you to page 46 please of that bundle? May – page 43 my apologies. Page 43 not 46. You earlier said to the Chair that based on your engagement with the audit committee you then issued your first RI, is that correct?

**MR CHETAN CHHAGAN VAGHELA:** Yes.Mr Dennis issued the first RI.

20 **ADV REFILOE MOLEFE:** Now at page 43 what document is that?

**MR CHETAN CHHAGAN VAGHELA:** This is the first RI letter issued by Deloitte addressed to Urber on the 28 April 2015.

**ADV REFILOE MOLEFE:** And what is Deloitte reporting?

**MR CHETAN CHHAGAN VAGHELA:** So in this RI letter we articulate the success fee of R36 million paid to the agent. We record that the

commerciality of this transaction remains unclear and we reporting that the contents of our investigation suggest that Section 76(3) of The Company's Act as well as the common law duty of the directors of the company to act in the best interest of the company may have been breached. In our opinion this constitutes an unlawful act or omission committed by any persons responsible for management of an entity which is likely to cause material financial loss to the entity or to any partner, member, shareholder, creditor or investor of the entity in respect of their dealings with the entity is fraudulent or amounts to  
10 theft and represents a material breach of any fiduciary duty owed by such person to the entity of any partner, member, shareholder, creditor or investor of the entity under any law applying to the entity or conduct or management thereof.

**ADV REFILOE MOLEFE:** That is fine and when this first report was sent to Urba in preparation of this report. Did you engage the assistance of CDH attorneys whom you earlier said you had engaged in assisting you with this audit process?

**MR CHETAN CHHAGAN VAGHELA:** Yes Chair. We had engaged CDH in our correspondence from the first letter of the 17 April.

20 **ADV REFILOE MOLEFE:** Yes and did Neotel receive a copy of this report?

**MR CHETAN CHHAGAN VAGHELA:** Subsequent to your reporting to the – to Urba the board of Neotel would have received a copy of this letter.

**ADV REFILOE MOLEFE:** What then happened after the issuance of



this letter?

**MR CHETAN CHHAGAN VAGHELA:** Subsequent to the issuance of the letter the board commissioned an investigation – an independent investigation into the Homix transactions through Werksmens Attorneys and the investigation commenced on the 4 May 2015.

**ADV REFILOE MOLEFE:** Before that detail around the investigation at paragraph 51 of your statement on page 14 you deal with events that took place on the 16 May 2015 which relate to a previous occurrence as set out in the preceding paragraph. Please take the Chair through  
10 these two paragraphs that you have at page 14?

**MR CHETAN CHHAGAN VAGHELA:** Chair during the time there were various accounting matters that were impacting the audit and I had asked one of my trainees to obtain the waiver letter on the [indistinct] governance which had been received from the lenders agents from the general manager corporate finance treasury Ms Albie Van Der Merwe. During – when = at the time Ms Van Der Merwe made some disparaging comments around the Deloitte partners and said that Deloitte is – Deloitte partners were pedantic and that we would be the reason for Neotel going down. She went further with comments around myself  
20 specifically which are concerning. She is quoted as having said that Chetan must know of xenophobia and that we know that he is a Zimbo and we know people that can sort him out.

**ADV REFILOE MOLEFE:** What – what happened following that – that paragraph 51?

**MR CHETAN CHHAGAN VAGHELA:** Mr Dennis raised this threat on a

Deloitte partner with the chairman on the board on the 16 May 2015. An apology was received from the chairman and a disciplinary enquiry was followed by Neotel.

**ADV REFILOE MOLEFE:** Would you say that Deloitte was being hampered in its investigation or audit by the employee in question?

**MR CHETAN CHHAGAN VAGHELA:** I would not say hampered or – it was a bit hostile and non-cooperative.

**ADV REFILOE MOLEFE:** Yes. You then deal with the Werksmans investigation from paragraph 52 to 58 of your statement. Who initiated  
10 this investigation?

**MR CHETAN CHHAGAN VAGHELA:** The Werksmans investigation was initiated by the board of Neotel in order to address the contents of the 17 April letter.

**ADV REFILOE MOLEFE:** And on what date did this investigation commence?

**MR CHETAN CHHAGAN VAGHELA:** It commenced on the 4 May 2015.

**ADV REFILOE MOLEFE:** Then on paragraph 53 you deal with events that took place on the 20 May 2015. What happened on this day?

**MR CHETAN CHHAGAN VAGHELA:** Chair in terms of the – there was  
20 correspondence between Neotel and Deloitte and the first RI was issued on the 28 April 2015. In terms of the RI process we would have a responsibility to issue our second report within 30 days from that date meaning there was a deadline of 28 May 2015 to issue the second report. Through that process there was correspondence between Transnet – oh sorry between Neotel and Deloitte which is articulated in

paragraph 53. So in paragraph 53 we received a letter on the 20 May which articulated that the investigation was in process and not complete and that Transnet had been approached by Neotel to assist Neotel with this investigation in relation to the Homix matter.

**ADV REFILOE MOLEFE:** Yes can I then refer you to page 97 of the bundle. Are you on that page?

**MR CHETAN CHHAGAN VAGHELA:** Yes Chair.

**ADV REFILOE MOLEFE:** Are you able to identify this document?

**MR CHETAN CHHAGAN VAGHELA:** Yes Chair. It is a letter from  
10 Transnet to Neotel that we had received as part of the 20 May letter from Neotel to us.

**ADV REFILOE MOLEFE:** And – and what is the date of this letter?

**MR CHETAN CHHAGAN VAGHELA:** The date of this letter is 19 May 2015.

**ADV REFILOE MOLEFE:** And who signed this letter?

**MR CHETAN CHHAGAN VAGHELA:** The letter is signed by Siyabonga Gama the acting Group Chief Executive.

**ADV REFILOE MOLEFE:** It is a very short letter can you just read the letter into the record?

20 **MR CHETAN CHHAGAN VAGHELA:**

“Dear Mr Srinath Neotal Private Limited Master Services Agreement with Transnet SOC Limited. Your letter dated 16 May 2015 and delivered to my office on the 18 May 2015 refers. I have read your letter with great concern regarding its content and

alleged implications to both Transnet and Neotel. As you know Transnet is a public owned entity that is governed by the Public Finance Management Act among others. As a result Transnet must ensure that its procurement practices are fair, equitable, transparent and cost effective. Therefore any allegation that purports transgression of the PFMA has to be taken very seriously. Depending on the outcome of your investigation the possible consequence could include the termination of the contract and the caption and the blacklisting of companies involved. Transnet is comfortable and confident of the voracity of its procurement process and that [indistinct] would have been breached in the award of the contract to Neotel. This is because the process of award of such high value contracts is subject to review by both our internal and external audit process. Should you have any concrete evidence against Transnet, any Transnet executive having committed any wrongdoing I invite you to immediately make the evidence of such available to me so that we can conduct an internal investigation. The result of which will determine whether we agree to your request to interview Transnet executives. In order to assist you in the client investigation we can

confirm that it is normal practice for Transnet to engage business consultants or advisors to navigate complex, financial, technical and commercial aspects of transactions. In this regard we can confirm that Transnet had employed the services of such advisors and we are aware of Homix' similar role on behalf of Neotel. Please be guided accordingly. Kind Regards. Siyabonga Gama.”

**ADV REFILOE MOLEFE:** And you say that this letter was attached to a  
10 letter that Neotel had addressed to you?

**MR CHETAN CHHAGAN VAGHELA:** Yes that is correct Chair.

**ADV REFILOE MOLEFE:** Can I then refer you to page 70 of the bundle which is under folder number 8. Is that the letter that was sent to Deloitte from Neotel?

**MR CHETAN CHHAGAN VAGHELA:** Yes Chair.

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

**MR CHETAN CHHAGAN VAGHELA:** It is the 20 May 2015.

**ADV REFILOE MOLEFE:** And who from Neotel had sent this letter?

**MR CHETAN CHHAGAN VAGHELA:** This came from the chairman of  
20 the board.

**ADV REFILOE MOLEFE:** Now in essence this response from Neotel did it confirm or refute your first report on the reportable irregularity that you had reported to Urba?

**MR CHETAN CHHAGAN VAGHELA:** Sorry Chair can you repeat the question?

**ADV REFILOE MOLEFE:** Did this response from Neotel confirm or refute the reportable irregularity that you had reported to Urba in respect of Neotel?

**MR CHETAN CHHAGAN VAGHELA:** This letter disagreed with our view on the reportable irregularity.

**ADV REFILOE MOLEFE:** And on what basis did this letter disagree on your view?

**MR CHETAN CHHAGAN VAGHELA:** In their view they – in the view of the directors they said – they were of the view that the investigation  
10 does not confirm the breach of a director in terms of Section 76(3). So that was their view in terms of how they were reading the transaction and we had to clarify that in subsequent letters.

**ADV REFILOE MOLEFE:** Yes. And what is the conclusion of Neotel's letter to Deloitte?

**MR CHETAN CHHAGAN VAGHELA:** In this letter, this is the first letter where we have correspondence with Transnet and because part of the accounting considerations was that we ask Neotel whether Transnet had known and they needed to seek a waiver from Transnet and this letter indicated that Transnet did know of Homix but was quite non co  
20 operational with Neotel in this regard.

**ADV REFILOE MOLEFE:** Did Deloitte then respond to this letter that was sent by Neotel in which they attach Transnet's letter and in that particular letter Mr Siyabonga Gama having stated that they are aware of Homix? Did you ...?

**MR CHETAN CHHAGAN VAGHELA:** Hm.

**ADV REFILOE MOLEFE:** Did you Deloitte respond to this letter?

**MR CHETAN CHHAGAN VAGHELA:** We responded to this letter on – in Annexure CV9 which is on page 73.

**ADV REFILOE MOLEFE:** And what is the date of this letter?

**MR CHETAN CHHAGAN VAGHELA:** The letter is dated 22 May 2015.

**ADV REFILOE MOLEFE:** And to whom is it addressed?

**MR CHETAN CHHAGAN VAGHELA:** It is addressed to the Chairman of Neotel.

**ADV REFILOE MOLEFE:** Yes and what was your response in essence  
10 to Neotel?

**MR CHETAN CHHAGAN VAGHELA:** In this letter we – our response is essentially that in our view there was a breach of the delegation of authority because when we look at the delegation of authority – sorry – can I just have two minutes to just clarify ... - in – in this letter we – we responded to the – the Board confirming that the CEO did not have the requisite authority. The transaction needed the Board approval and we had not seen a Board minute or a resolution authorising the CEO to transact with Homix and therefore we believe that the reportable regularity was still continuing. We further – we further state that:

20           “The investigation and inquiry into the Transnet side of the transaction and the Transnet interaction with Homix is still underway but yet there – there – we are still awaiting definite answers and what was strange to us was that Neotel cannot provide readily answers to some of the questions on

17 April. They were awaiting completion of the investigation and ordinarily some of those questions could be answered at the time and that seemed strange to us.”

**ADV REFILOE MOLEFE:** Yes and those questions that you stated could be easily answered you had set out from paragraphs 5.1 to 5.5 of your letter?

**MR CHETAN CHHAGAN VAGHELA:** Yes that is correct Chair.

**ADV REFILOE MOLEFE:** Can you just take the Chair through that list?

10 **MR CHETAN CHHAGAN VAGHELA:** We said for example:

“The selection criteria and reasons for appointing Homix as a consultancy firm agent. Other service providers which were considered by Neotel in this process. The credentials and expertise which Homix possesses and which warranted its engagement by Neotel in connection with the Master Services Agreement with Transnet. Did any member of Neotel’s management or board at any stage inquire from Homix what exactly would be done undertaking and/or implemented by Homix in carrying out its mandate in connection with the negotiation and/or conclusion of the Master Services Agreement? If so how did Homix respond to the above inquiry? What did it communicate to Neotel and that it would do, undertake or implement

20



in carrying out its mandate in connection with negotiating and/or conclusion of the Master Services Agreement.”

**ADV REFILOE MOLEFE:** Yes and – so in essence as at 22 May 2015 Deloitte had still not received satisfactory answers to their letters or concerns raised as early as April 2015. Is that correct?

**MR CHETAN CHHAGAN VAGHELA:** Yes that is correct.

**ADV REFILOE MOLEFE:** And did Neotel respond to your letter?

**MR CHETAN CHHAGAN VAGHELA:** Chair they did on 26 May 2015.

10 **ADV REFILOE MOLEFE:** Can I refer you to page 78 of the bundle which appears under the Folder 11? Can you please identify that document?

**MR CHETAN CHHAGAN VAGHELA:** It is a letter from Neotel addressed to Mr Andre Dennis.

**ADV REFILOE MOLEFE:** Yes and is this the letter that was sent in response to Deloitte’s letter of 22 may 2015?

**MR CHETAN CHHAGAN VAGHELA:** Yes that is correct.

**ADV REFILOE MOLEFE:** And what was Neotel saying to Deloitte in response?

20 **MR CHETAN CHHAGAN VAGHELA:** In this letter they were still disputing the authority that the CEO had and – and their view was that it was within his day to day operations – day to day operations authority.

**ADV REFILOE MOLEFE:** Yes.

**MR CHETAN CHHAGAN VAGHELA:** Which we – we disagreed with.

**ADV REFILOE MOLEFE:** And in reply and stating that this was within the day to day operations did Neotel apply itself to any threshold limitations that might apply in line with any delegation of authority?

**MR CHETAN CHHAGAN VAGHELA:** No they did not in this – in this letter.

**ADV REFILOE MOLEFE:** And did Neotel refer you to any resolution that might have been passed by the company in line with entering into the Master Services Agreement?

**MR CHETAN CHHAGAN VAGHELA:** No. No resolution or minute had  
10 been provided.

**ADV REFILOE MOLEFE:** Can I refer you to page 79 at paragraph 3.6 of that letter? Can you please take the Chair through that paragraph?

**MR CHETAN CHHAGAN VAGHELA:** “On 24 October 2014 the  
Board passed a resolution authorising the company  
to enter into the Master Services Agreement with  
Transnet SOC Ltd upon the terms set out in  
paragraph 8.6.5 of the Board Minute. The authority  
concluded with the following statement that:  
Mr Sunil Joshi in his capacity as Managing  
20 Director/CEO be and is hereby authorised with the  
power substitution to take all necessary steps to  
give effect to the above resolution including the  
authority to sign all documents and contracts for  
and on behalf of the company.”

**ADV REFILOE MOLEFE:** And so if one – is one to understand that

Neotel's stance in this letter was that a Board had – the Board had passed the resolution authorising the company to enter into the MSA?

**MR CHETAN CHHAGAN VAGHELA:** Yes that was the – that was their defence.

**ADV REFILOE MOLEFE:** And that authority was given to Mr Sunil Joshi?

**MR CHETAN CHHAGAN VAGHELA:** Yes in their view.

**ADV REFILOE MOLEFE:** Yes and the letter then goes on to respond to some of the concerns that you had raised. Can you please summarise  
10 these – these – the reply that Neotel provided to Deloitte?

**MR CHETAN CHHAGAN VAGHELA:** Sorry Chair in which – in which – which letter are you referring to?

**ADV REFILOE MOLEFE:** We are still on the same letter of 26 May 2015 which is sent – which was sent by Deloitte – by Neotel rather to Deloitte and you have just taken the Chair through their response relative to a resolution that has said to have been passed. The letter then goes on to speak to certain concerns that you had raised and I was requesting you to summarise the response that Neotel provided to Deloitte.

20 **MR CHETAN CHHAGAN VAGHELA:** The letter then continues to just outline the steps that had been taken. So on 30 November the CEO had provided an update to the Board. On 16 December 2014 the CEO had reported to the Board on the successful conclusion and in that paragraph there is mention of an increase cost. So it says that:

“This resulted in an interest cost due to (indistinct),

increased SLAs as well as the engagement of the consultant Homix to assist us with negotiations and closure of the contract. We were also made aware that Transnet have been negotiating with the competitor in order to reduce the risks should the negotiations with Neotel fail or not conclude and we understand that a parallel offer was made by them to Transnet as an alternative to Neotel. This was considered a threat.”

- 10 This is the – this is the reference and the CEO had made in terms of his Board approval of – of Homix.

**ADV REFILOE MOLEFE:** And as at this point when you received this letter was Deloitte satisfied of all the concerns that they had raised in their earlier correspondence?

**MR CHETAN CHHAGAN VAGHELA:** No we were not. We – we would expect but more specifics around Homix – you know – the pointing of the finger, scope of the services and this was an – an update and note to the Board noting them on the conclusion of the contract and the timing of it was also after the event.

- 20 **ADV REFILOE MOLEFE:** And so did you engage Neotel any further in response to their letter?

**MR CHETAN CHHAGAN VAGHELA:** We did Chair. We issued a letter dated 27 May 2015 which is on page 82 – Annexure CV12.

**ADV REFILOE MOLEFE:** And what were you raising in that letter?

**MR CHETAN CHHAGAN VAGHELA:** In this letter we – we raised that

we were not convinced that:

10           “The conclusion of the mandate was a day to day –  
              was within the day to day management of – of  
              Neotel and the rationale behind that was that if – if  
              the CEO had the requirement to obtain approval for  
              the Transnet Master Services Agreement that was  
              the extent to the Homix mandate based on the  
              (indistinct) value. We then articulate that in terms  
              of the DOA expenditure outside of the annual  
              operating plan which cannot be wait for Board –  
              which cannot wait for Board approval. Has a limit  
              of R10 million and expenditure in line with the  
              annual operating plan which exceeds 40 million  
              requires Board approval.”

So it does – even if it is argued that the mandate is in line with the day  
to day management the amounts are exceeded by some R21 million if  
you take the R36 million and R25 million Homix fees.

20           **ADV REFILOE MOLEFE:** Yes and in respect of the mandate that was  
              referred to by Neotel in its letter you address yourself to saying from  
              paragraph 5 of your letter. Is that correct? It appears on page 83.

**MR CHETAN CHHAGAN VAGHELA:** Sorry Chair. Can you repeat the  
              question?

**ADV REFILOE MOLEFE:** At paragraph 5 of your letter which starts at  
              page 83 your reply to Neotel’s response in relation to the mandate. Is  
              that correct?

**MR CHETAN CHHAGAN VAGHELA:** Yes that is correct.

**ADV REFILOE MOLEFE:** And you make reference to the amount in question. Is that correct?

**MR CHETAN CHHAGAN VAGHELA:** Yes that is correct.

**ADV REFILOE MOLEFE:** Now at 5.3 to 5.5 that is where - to 5.6 rather - that is where you speak to the issue of the mandate relative to the amount. Can you please take the Chair through those paragraphs?

**MR CHETAN CHHAGAN VAGHELA:** Sure. 5.3 says:

10                   “However the mandate is clearly a standalone  
significant contract in its own right with a third  
party involving a very substantial payment  
obligation to that third party of R61 million. R36  
million of which has been paid and R25 million of  
which remains payable as at the date of this letter.  
Nowhere in the Board Resolution is the mandate  
referred to. Further the Board Resolution in  
questions deals with the subject matter in rather  
specific detail with specific items and amounts in  
connection with the Transnet agreement been  
20                   mentioned and approved. Example: the conditions  
that revenue of 900 million or more is reached over  
three years. Capex does not exceed 140 million  
over three years of which 120 million will be spent  
in year one. There will be a mobilisation fee of R50  
million for year one. This level of detail in its

entirety is inconsistent with the notion that the Board granted the CEO a wide and general power to conclude all and any agreements on the contrary. It suggests that the resolution would have specifically minuted and approved the mandate if that was indeed the Board's intention. Therefore in our view the Board Resolution quite simply cannot be interpreted as authorising the mandate even implicitly or indirectly."

10 **ADV REFILOE MOLEFE**: Yes and what was said in conclusion in that letter? You may paraphrase it. You do not need to read it.

**MR CHETAN CHHAGAN VAGHELA**: In conclusion I mean we – we disagreed with the – the Board in that the CEO had the authority to execute the Homix mandate and our – our RI remained – we report it as continue.

**ADV REFILOE MOLEFE**: Yes. Now following ...

**CHAIRPERSON**: I am sorry. Even at this stage they is still could not tell you what Homix had done. Is that correct?

**MR CHETAN CHHAGAN VAGHELA**: Yes Chair because their  
20 investigation was still in – in process.

**CHAIRPERSON**: *Ja* and it is quite strange this when even the Board cannot tell you what somebody that their company has paid a lot of money did. They have to get people from outside to just answer that simply question and did they answer the question what mandate was given to Homix to do? By this time had the question been answered ...

**MR CHETAN CHHAGAN VAGHELA:** Hm.

**CHAIRPERSON:** When given the mandate to Homix?

**MR CHETAN CHHAGAN VAGHELA:** At this stage no Chair.

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

**ADV REFILOE MOLEFE:** Now following all this correspondence that was exchanged with Neotel at paragraph 57 of your statement on page 15 you then speak about a meeting that took place. Is that correct?

**MR CHETAN CHHAGAN VAGHELA:** Yes Chair.

**ADV REFILOE MOLEFE:** When did this meeting take place?

10 **MR CHETAN CHHAGAN VAGHELA:** This meeting took on 26 May 2015.

**ADV REFILOE MOLEFE:** And who was in attendance at that meeting?

**MR CHETAN CHHAGAN VAGHELA:** I cannot recall all the parties but it was a meeting at Norton Rose Fulbright where we had the Audit Committee members and Mr Dennis and myself. *Ja*, but I cannot confirm all the parties in that meeting together with Neotel's attorneys.

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

**MR CHETAN CHHAGAN VAGHELA:** The purpose of this meeting was to – to discuss the information around the Werksmans – Werksmans investigation, being legally privileged and the lawyers and the Audit  
20 Committee were assessing what Deloitte would require in order to conclude on – on the audit.

**ADV REFILOE MOLEFE:** And you can just confirm who the law firm Norton Rose Fulbright was representing?

**MR CHETAN CHHAGAN VAGHELA:** Norton Rose Fulbright was representing Neotel. The investigators were Werksmans.



**ADV REFILOE MOLEFE:** And you say that the discussion was in respect of documents that you were seeking pursuant to the Werksmans investigation?

**MR CHETAN CHHAGAN VAGHELA:** Yes. As part of the Werksmans investigation there would be a report that would get issued which we would need to review and assess in order to conclude on this matter and at this point in time the – the issue that was being raised was this information is legally privileged.

**ADV REFILOE MOLEFE:** And when you say the issue being raised one  
10 would assume that it would be Norton Rose phrasing this issue?

**MR CHETAN CHHAGAN VAGHELA:** Norton or the company Neotel.

**ADV REFILOE MOLEFE:** Yes and was there any specific document which was said to be legally privileged or were – was it – were you to understand that all the documents that were used in the Werksmans investigation were legally privileged?

**MR CHETAN CHHAGAN VAGHELA:** In our view it would be all the documentation in the Werksmans investigation.

**ADV REFILOE MOLEFE:** And for what purpose did you require these documents?

20 **MR CHETAN CHHAGAN VAGHELA:** So Mr Dennis and I indicated that we required the results of the investigation that had been initiated by the Board in order to conclude on the Homix matter and – and if such information was not forthcoming our audit opinion would have been a disclaimer of opinion.

**ADV REFILOE MOLEFE:** Yes and you would have relayed this to

Norton Rose or Neotel?

**MR CHETAN CHHAGAN VAGHELA:** We communicated this to the Audit Committee of Neotel.

**ADV REFILOE MOLEFE:** And how did that meeting conclude?

**MR CHETAN CHHAGAN VAGHELA:** The meeting was just one of the – it – we did not have a conclusion because there was an – there was – between Neotel and Deloitte there were various correspondence that would engage on matters. So there is not a definite conclusion on it but we – we – what we – what we took away from that is that the  
10 information was being restricted and we potentially would not have access and so we – the impact of that would result in a disclaimer opinion and – and the Audit Committee of Neotel needed to consider the impact and how they would want to resolve that.

**ADV REFILOE MOLEFE:** Before moving on to what happened after this meeting can you just briefly explain what a disclaimer opinion would be in simple terms?

**MR CHETAN CHHAGAN VAGHELA:** A disclaimer opinion is one which does not give any assurance and the users of the financial statements would not be able to rely on those financial statements and you get to a  
20 disclaimer opinion where you have a material and a pervasive issue that impacts financial statements as a whole in getting to a disclaimer.

**ADV REFILOE MOLEFE:** Yes. Now at this meeting was – did it ever become clear or were you ever informed by Neotel or the attorneys Norton Rose what Homix had done to be paid the amount that they were paid?

**MR CHETAN CHHAGAN VAGHELA:** No we still do not have answers to that question.

**ADV REFILOE MOLEFE:** What happened after that meeting?

**MR CHETAN CHHAGAN VAGHELA:** After that meeting we reported the – the first RI as continuing in our – in the letter dated 28 May 2015 as required in terms of the Act.

**ADV REFILOE MOLEFE:** Can I then refer you to page 87 of the bundle which appears under Folder 13 in EXHIBIT BB9? Are you there?

**MR CHETAN CHHAGAN VAGHELA:** Yes Chair.

10 **ADV REFILOE MOLEFE:** What document appears at page 87?

**MR CHETAN CHHAGAN VAGHELA:** 87 is the second report on the – on the first RI dated 28 May 2015.

**ADV REFILOE MOLEFE:** And what is contained in that report?

**MR CHETAN CHHAGAN VAGHELA:** In that report we articulate that:

20 “The Board of Neotel and its commission investigation and that that investigation is ongoing. However the success fees of 26 million and further 25 million that – that needed to be accrued still remains unsupported and unclear and the commerciality of this transaction remains unclear and at that stage we had reason to believe that the RI is still continuing and that the agreement with the agent was not duly authorised in terms of the delegation of authority and nor was it subsequently ratified by the Board.”

**ADV REFILOE MOLEFE:** Yes. Now subsequent to the issuance of the second RI did Deloitte engage Neotel any further?

**MR CHETAN CHHAGAN VAGHELA:** Deloitte did not engage Neotel and Neotel responded on 5 June with further information.

**ADV REFILOE MOLEFE:** And what further information was provided?

**MR CHETAN CHHAGAN VAGHELA:** So Deloitte received a letter on 5 June which is on page 90 and it is CV14 which outlines Neotel's summary of findings of the Werksmans investigation and answering the questions that Deloitte had posed in CV4.

10 **ADV REFILOE MOLEFE:** Yes and what is then communicated to Deloitte in that letter?

**MR CHETAN CHHAGAN VAGHELA:** In that letter it is communicated that Mr Francois Van Der Merwe had engaged in a clandestine relationship with Homix and it articulates the responses to our questions raised on 17 April.

**ADV REFILOE MOLEFE:** And in this letter is this clandestine relationship described or the extent of that relationship?

**MR CHETAN CHHAGAN VAGHELA:** Chair if I can just – if I can quote from the letter.

20                   “By way of general background to the detail response set out in this document Neotel records the information has become available as a consequence of forensic analysis of data over the last two weeks. This provides prima facie evidence that Mr Francois Van Der Merwe General Manager

Strategic Customers has engaged in a clandestine relationship with Homix and person related to that entity for a period from at least February 2014 through to the time of the conclusion of the negotiations between Neotel and Transnet SOC Ltd and probably through to the present time. Francois has consistently maintained and continues to maintain his discussions with the investigators that these interactions with Homix or any representatives of the entity were limited to two periods. The first of these was in respect of a transaction for the sale of equipment by Neotel to Transnet in February/March 2014. He maintained that thereafter he had no further contact with Homix until he was requested by Sunil Joshi to reach out to Homix on the afternoon of Thursday 11 December. The purpose was to seek the assistance of Homix in resolving the impasse which had arisen between Neotel and Transnet in regard to the conclusion of the Master Services Agreement between Neotel and Transnet because of the breakdown in the negotiation process. The analysis of data however reveals ongoing contact between Francois and Homix representatives during the course of 2014. More particularly on the morning of

11 December 2014 Francois provided Homix with confidential internal emails of Neotel. These were briefing documents prepared by Neotel management for Joshi who had curtailed his trip to India and returned to South Africa early that morning.”

**ADV REFILOE MOLEFE:** Can I then refer you to page 91 of that letter where from the second paragraph from the top ...?

**MR CHETAN CHHAGAN VAGHELA:** Yes.

**ADV REFILOE MOLEFE:** Neotel is reporting what the full import of this  
10 clandestine relationship and dealings between Mr Van Der Merwe and Homix were. Can you briefly take the Chair through this aspect?

**MR CHETAN CHHAGAN VAGHELA:** “So the full import of this  
clandestine relationship and the dealings between Francois and Homix remained unclear. In order to get clarity on that pending disciplinary proceedings were initiated by Neotel. However Francois had resigned with immediate effect on 4 June 2015 and Neotel sought advice in regard to this exercise of civil remedies against Homix and the nature of  
20 basis for any reporting obligations it may have under applicable legislation arising out of this matter.”

**ADV REFILOE MOLEFE:** Yes and the letter goes on to address the questions that were raised by Deloitte still on page 91. Paragraphs 1.1 and 1.2 of that letter sets out the background to the MSA contract. Is

that correct?

**MR CHETAN CHHAGAN VAGHELA:** Yes Chair.

**ADV REFILOE MOLEFE:** And at paragraph 1.3 that is where the letter starts to address the background of the involvement of Homix in relation to – to Neotel. Is that correct?

**MR CHETAN CHHAGAN VAGHELA:** Yes Chair.

**ADV REFILOE MOLEFE:** Can you take the Chair through paragraph 1.3 of that letter?

**MR CHETAN CHHAGAN VAGHELA:** So:

10                   “On 5 December Harris Nupen Attorneys who were part of the Transnet Negotiation Team advised that Transnet were not prepared to negotiate any further and that Neotel either sign ...”

**CHAIRPERSON:** I am sorry. I missed where you – what page you said?

**ADV REFILOE MOLEFE:** Pardon me Chair. We are at page 91.

**CHAIRPERSON:** 91.

**ADV REFILOE MOLEFE:** Paragraph 1.3 on that page.

**CHAIRPERSON:** Okay, thank you.

20   **MR CHETAN CHHAGAN VAGHELA:** The ...

**CHAIRPERSON:** You may proceed.

**ADV REFILOE MOLEFE:** You may – you can start from the beginning – paragraph 1.3.

**MR CHETAN CHHAGAN VAGHELA:** “On 5 December Harris Nupen Attorneys who were part of the Transnet

Negotiation Team advised that Transnet were not prepared to negotiate any further and that either Neotel sign the agreement in its present format or the negotiations would be at an end. Whilst negotiating fatigue was acknowledged to be present the reasons for Transnet in transience was not apparent to the Neotel team or management. The fact that Gerrie Van Der Westhuizen the leading technical member of the Transnet Negotiation Team had resigned but remained on after he was due to have left Transnet's employ on 30 November was an added concern. Tensions were further escalated by the unintended consequences of the rendition by Neotel to Transnet of an invoice for services which produced an irate response from Transnet on 8 December. At this junction Mr Joshi was away overseas and due to return on 12 December arranged to cut short his trip to return in the early morning of 11 December. Francois had travelled to Durban on 8 December to meet Anoj Singh in Durban to deal with the fallout in regard to the December invoicing and to endeavour get the negotiations to recommence. Thereafter a meeting was set up for Singh to meet with Joshi on Thursday 11 December in the early afternoon."



**ADV REFILOE MOLEFE:** Yes. It then continues on the following page – page 92. Chair it is now 1 o’ clock. I do not know if we can take the long adjournment now or conclude on this letter first.

**CHAIRPERSON:** Let us take the lunch adjournment now and we will resume at two. We adjourn.

**ADV REFILOE MOLEFE:** Thank you Chair.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

10 **CHAIRPERSON:** Okay let’s proceed.

**ADV REFILOE MOLEFE:** Thank you Chair. Mr Vaghela before the long adjournment you were still taking the Chair through Neotel’s response to the reportable irregularity letter which you had issued and you were referring to paragraph 1.3 of Neotel’s response which appears at page 91 of the bundle. Overleaf at page 92, paragraph 1.4 there is a discussion about a meeting with Mr Singh please take the Chair through paragraph 1.4.

**MR CHETA CHHAGAN VAGHELA:** Chair paragraph 1.4 indicates that Joshi met – Mr Joshi met with Mr Singh on the 11<sup>th</sup> of December,

20 “the meeting left him concerned in a contemptuous report to his management team he stated that Singh seemed distracted and also changed his tune from the phone conversation I had with him on Saturday and I’m not sure why. I mentioned to him that if we can not reach resolution when the LOI will expire and then what. He said we will see over the next day or two

and then figure out what needs to be done. It was a strange meeting but without an outcome, a meeting agreeing to meet again in short, not sure what to make of it. At the same time Joshi received a report from a (indistinct) who has led the negotiating team to the effect that Transnet was engaged in parallel discussion with Dimension Data which have been the third and unsuccessful bidder in the original MSA bid process”.

**ADV REFILOE MOLEFE:** And the paragraph that follows paragraph 1.6 details a discussion that Mr Joshi had subsequent to his meeting  
10 with Mr Singh, please take the Chair through that paragraph.

**MR CHETA CHHAGAN VAGHELA:** “When Joshi returned to the office after the meeting with Sigh, he discussed the position with Stephen Whiley the CFO, he had formed the view that Neotel required assistance in getting the negotiations back on track and recollected that Homix had successfully introduced Neotel to Transnet in regard to the transaction for provision of Cisco equipment at the beginning of 2014. He could not remember the name of the intermediary and Whiley reminded him that it was Homix. He then called a meeting with Abid and Francois,  
20 according to his contemptuous note to his management team he reported that, I’ve been rattling my brains on how to overcome this stalemate we may think the issues are trivial but Transnet may think they are big. We can make out how sensitive they are with Gerrie’s last email on the December invoice. As we discussed it could be deal fatigue or just

inertia or both. Reality is we need some help to now broker an outcome, so I've separately spoken to Francois and Abid just now, I've asked them to explore the route of the consultant we used who brokered the Cisco deal at Transnet and see if he is willing to help and at what cost. We don't have a lot of time, so time is of the essence".

**ADV REFILOE MOLEFE:** Yes and one of the concerns or questions you had raised with Neotel was whether other services – service providers were considered by Neotel and that is addressed in  
10 paragraph 2.1 of that letter where Neotel sets out their answer to that question.

**MR CHETA CHHAGAN VAGHELA:** Chair in the letter they articulate that they are not aware of any other service provider that could be contacted given the severe time constraint with the imminent expiry.

**ADV REFILOE MOLEFE:** And one of the other issues that you had raised with the credentials and expertise which Homix possessed and that is addressed at paragraph 3.1 on page 93 of that letter.

**MR CHETA CHHAGAN VAGHELA:** Chair they indicate that  
20 management were aware of a successful engagement with Homix during the Cisco transaction, the fact that this opportunity was brought to Neotel and the obvious inference that Homix had a business relationship with Transnet which rendered such a transaction possible, led to the conclusion that in the absence of alternative and with the time constraint Homix should be invited to indicate whether they were able to undertake the assignment.

**ADV REFILOE MOLEFE:** Now with reference to that, paragraph 3.1, were you aware of the background of the interaction between Homix and Transnet in relation to the Cisco transaction?

**MR CHETA CHHAGAN VAGHELA:** Chair at this stage of the inquiries we were aware that the Cisco deal was a finder's fee arrangement in that Homix brought the Cisco deal to Neotel and that's how the transaction was explained to us. However, when we go through – further to the Werksmans investigation we then come to understand that the Cisco transaction was actually awarded to Neotel prior to any  
10 involvement of Homix in that Mr van der Merwe actually interjected and put Homix into the picture and made it out to be a finder's fee. So in the company's reporting – PRICA reporting the company alluded that Mr van der Merwe had defrauded the company.

**ADV REFILOE MOLEFE:** And did you pick this up during your audit process, maybe let me clarify, did you pick up the payment to Homix in relation to the Cisco equipment deal in our audit process.

**MR CHETA CHHAGAN VAGHELA:** Chair the payment was one of the transactions however the first one we picked up was during the MSA period, through our inquiries management made us aware of the Cisco  
20 transaction which was still within the reporting period 1 April 2014 to 31 March 2015 so it was one of the payments that was subject to further investigation and inquiry and it does flow through in our reporting irregularities in the further reporting – in the subsequent reporting.

**ADV REFILOE MOLEFE:** Yes one of the issues that you had also raised with Neotel's management or the Board was what exactly Homix

had done, undertaken and/or implemented in carrying out its mandate in connection with the negotiation and/or conclusion of the MSA, that response is set out in paragraph 4.1 of Neotel's letter, please take the Chair through the response in this regard.

**MR CHETA CHHAGAN VAGHELA:** Chair the response from the company indicated that,

10 "Francois was the only party who communicated directly with Homix at the time of the appointment. Management had characterised the understanding of the assignment for Homix as requiring them to engage relevant executives at the CPO offices and the CFO offices at Transnet present the value proposition of Neotel RFP, assist with the resolution of unresolved issues with Transnet causing the impasse resulting in the conclusion of the MSA and the asset sale operational agreements respectively. The services are described in the consultancy agreement signed by Neotel and Homix described the activities as, Homix to analyse the requirements of both Neotel and Transnet SOC to find a workable solution to the impasse in negotiations between Neotel and Transnet SOC. In  
20 regard to their Master Services Agreement and the related asset sale".

**ADV REFILOE MOLEFE:** Yes now this letter goes on to say that – at paragraph 5.1 that the written response from Homix dated the 12<sup>th</sup> of December 2014 is annexed, did you receive this letter?

**MR CHETA CHHAGAN VAGHELA:** Yes we did Chair.

**ADV REFILOE MOLEFE:** And in this letter are the objectives of this agreement between Homix and Neotel set out.

**MR CHETA CHHAGAN VAGHELA:** Chair the letter is very simple in nature and it really outlines the fees to be paid. Chair the document you are referring to is on page 96, that letter doesn't contain the specifics that one would require and talks to resolving an impasse and finding a workable solution and then outlines the fees to be charged. So in our review of this documentation there isn't sufficient detail around what activities they are actually doing.

10 **ADV REFILOE MOLEFE:** And this letter is at page 96.

**MR CHETA CHHAGAN VAGHELA:** Yes.

**ADV REFILOE MOLEFE:** Of the bundle and it is dated the 12<sup>th</sup> of December 2014.

**MR CHETA CHHAGAN VAGHELA:** Yes.

**ADV REFILOE MOLEFE:** And in the opening paragraph of that letter it speaks of today's engagement is that correct?

**MR CHETA CHHAGAN VAGHELA:** Yes that's correct Chair.

**ADV REFILOE MOLEFE:** And the engagement is with Neotel pertaining to the MSA?

20 **MR CHETA CHHAGAN VAGHELA:** That's correct Chair.

**ADV REFILOE MOLEFE:** And it further says, as well as the related asset sale negotiation with Transnet?

**MR CHETA CHHAGAN VAGHELA:** Yes.

**ADV REFILOE MOLEFE:** At the second sentence of that first paragraph states that,

“The talks have reached an impasse and Neotel wishes to engage the services of Homix to analyse both entities’ requirements to find a workable solution’,

Is that correct?

**MR CHETA CHHAGAN VAGHELA:** Yes that is correct Chair.

**ADV REFILOE MOLEFE:** The letter then goes on to say,

“The work is to be carried out on a pure risk basis and Homix shall not bill for any time and material nor any out-of-pocket expense”,

10 Is this correct?

**MR CHETA CHHAGAN VAGHELA:** That’s correct Chair.

**ADV REFILOE MOLEFE:** It further goes on to say,

“if successful Neotel shall pay Homix and (indistinct)for the asset sale a full and final once-off fee of 25million payable 30 days after signature’,

Is that correct?

**MR CHETA CHHAGAN VAGHELA:** That’s correct Chair.

**ADV REFILOE MOLEFE:** It goes,

“Secondly for the Masters Services Agreement a fee of 2% of the value of the contract (currently at 1.8billion)”,

20

Is that correct?

**MR CHETA CHHAGAN VAGHELA:** Yes Chair.

**ADV REFILOE MOLEFE:** Thirdly it says,

“These fees are excluding VAT”,

Is that correct?

**MR CHETA CHHAGAN VAGHELA:** Yes Chair.

**ADV REFILOE MOLEFE:** The letter then goes on to say,

“These fees are success fee commissions payable because of the assistance and expertise provided by Homix enabling Neotel to close these two deals that are currently agreed to be lost business as confirmed by both Neotel and Transnet”,  
Is that correct?

**MR CHETA CHHAGAN VAGHELA:** That’s correct Chair.

**ADV REFILOE MOLEFE:** In conclusion the letter says,

10 “please concur the above together with the success fee structure where the latter shall become binding on Neotel”,  
Is this correct?

**MR CHETA CHHAGAN VAGHELA:** Yes that’s correct Chair.

**ADV REFILOE MOLEFE:** From the reading of this letter do you have any understanding of the specific service that Homix would have provided to Neotel?

**MR CHETA CHHAGAN VAGHELA:** Chair we don’t have any understanding of what Neotel is providing, specifically we would want to know the assistance and expertise provided by Homix and that’s not  
20 clear from this letter.

**ADV REFILOE MOLEFE:** And so the commerciality of this agreement is not clear to you?

**MR CHETA CHHAGAN VAGHELA:** Yes Chair it continues to remain unclear despite receiving this letter.

**CHAIRPERSON:** If you look at how Homix defines their role namely



that the success fee would be payable because of their assistance and expertise provided by Homix enabling Neotel to close these two deals that are currently agreed to be lost business, does that help you in any way to say whether if that is true that would or wouldn't be a facilitation fee, that success fee?

**MR CHETA CHHAGAN VAGHELA:** Chair a facilitation fee would probably be a legal determination, however, the circumstances would indicate...(intervention).

**CHAIRPERSON:** What do you mean it would have to be a legal  
10 determination?

**MR CHETA CHHAGAN VAGHELA:** Chair because one would need to prove – in our engagement and through our engagement with lawyers and lenders to get to a facilitation fee one needed – one needs it to be proven, so for us to conclude...(intervention).

**CHAIRPERSON:** Ja but there is something that, if you are told you would be able to say, that's a facilitation fee, if you are told something else you would be able to say that's not a facilitation fee.

**MR CHETA CHHAGAN VAGHELA:** Chair I would put it differently, we had a payment without substance, whether we call it a success fee, a  
20 facilitation fee...(intervention).

**CHAIRPERSON:** But you wanted, at one of the meetings, to find out is this a facilitation fee, so that's why I keep on going back to it and partly because facilitation – so-called facilitation fees have a certain – have acquired a certain meaning on the market. So I'm saying if you asked you could be told a certain answer and that answer could enable

to say that's a facilitation fee or that's not a facilitation fee. So here they purport, that is Homix to say what they would give in order to be paid this so-called success fee, so I thought you might be able to say, well, with this paragraph of what they say they will be doing, yes that would be a facilitation fee or not it will not be because of A, B, C, D.

**MR CHETA CHHAGAN VAGHELA:** Chair I would look at all the facts in it's totality and if we look at this letter and where one cannot articulate what they were – what Homix did do and if we look at the timeline of the impasse and in resolving the MSA it would appear so.

10 **CHAIRPERSON:** Well they say they provided assistance in order to make sure that Neotel and Transnet reached an agreement. Now assistance, I can imagine would be talking to both parties and getting them to resume negotiations and being able then to reach agreement.

**MR CHETA CHHAGAN VAGHELA:** Agreed Chair but in that instance, you know, I guess both parties will be able to say that they met with X, Y and Z from Homix, they assisted us with the following clauses, they did this, they have specifics...(intervention).

**CHAIRPERSON:** Yes but on their version they say what they were going to do is give assistance and use their expertise to help the  
20 parties to reach agreement, does that fall within a facilitation fee?

**MR CHETA CHHAGAN VAGHELA:** Chair if they cannot articulate the activities that they perform then I would say yes.

**CHAIRPERSON:** You may proceed.

**ADV REFILOE MOLEFE:** Thank you Chair. Mr Vaghela at paragraph 62 of your statement you deal with the letter addressed by Homix to

Neotel and that details the work that they had allegedly done but before we go to that paragraph at the preceding paragraph, paragraph 60 you deal with Deloitte's response to Neotel's letter of the 5<sup>th</sup> of June 2015, what, in essence, was Deloitte's response to Neotel?

**MR CHETA CHHAGAN VAGHELA:** Chair our letter of the 9<sup>th</sup> of June indicated that we had no further clarity on the commerciality of the transactions. If I can draw the Chair's attention to page 100 Annexure CV15.

**CHAIRPERSON:** What Annexure?

10 **MR CHETA CHHAGAN VAGHELA:** Annexure CV15 on page 100.

**CHAIRPERSON:** Page 100.

**ADV REFILOE MOLEFE:** Yes what document appears at page 100?

**MR CHETA CHHAGAN VAGHELA:** It is a letter from Deloitte dated 9<sup>th</sup> of June addressed to the Chairman of Neotel.

**ADV REFILOE MOLEFE:** And what are you communicating to Neotel in that letter?

**MR CHETA CHHAGAN VAGHELA:** We are communicating our response to the information they provided to our inquiries of a letter dated 17<sup>th</sup> April.

20 **ADV REFILOE MOLEFE:** Yes and you – can you just take the Chair through your conclusion in that letter which starts with, "as pointed out". You don't need to read it you can just paraphrase what the conclusion was in that respect.

**MR CHETA CHHAGAN VAGHELA:** Chair – counsel can I just make the Chair aware to the – some elements in the first paragraph?

**ADV REFILOE MOLEFE:** Yes please go ahead.

**MR CHETA CHHAGAN VAGHELA:** I think just – in the first paragraph it says,

“furthermore the clear reluctance of Homix to disclose information around the presentations made and/or who the relevant individuals at Transnet are whom they met with leaves us with more questions around whether there is, in fact, any commercial substance behind these transactions. The response further does not clarify why the prescribed officers at Neotel did not question who Homix is, what Homix would do or did to convince Transnet to conclude the deals with Neotel and what the payments would be used for. We must question why these inquiries were not made at the time, despite the implications or risks to the company that might arise from such payments. It seems to us that persons in authority at Neotel ought, reasonably to at least suspect that the payment may have been a facilitation payment and/or to have considered their obligation to report such suspicion to the authorities under the Prevention and Combating of Corrupt Activities Act Section 34. Failure to do so may not only be an offence under the Act but would in itself constitute a reportable irregularity in terms of the Auditing Profession Act. Given the lack of specific and detailed information, you have not convinced us that there should not at least be a suspicion in this regard.

Your Messrs. Fam and Ophner have offered us to meet with Werksmans as a next step, however we are of the opinion that Neotel and the Board have to address the matter as described above. We will then consider the evidence and the appropriateness of the Board's actions in our consideration of the matter and perform procedures as considered necessary in the conclusion of the matter and our audit. As pointed out to you previously the potential impact of payments to Homix is pervasive to the company's business. Based on your response and the lack of information we are in no better position than we were before in relation to the commercial substance of the transactions. For this reason, we cannot issue an audit opinion that is any different to the one included in the Audit Committee documentation submitted to you on the 25<sup>th</sup> of May".

**ADV REFILOE MOLEFE:** Yes and at paragraph 61 you set out what then happened after the exchange of the letters of 5 June and 6 June 2015 respectively, please take the Chair through what then transpired.

**MR CHETA CHHAGAN VAGHELA:** Chair subsequent to that letter we were invited to meet with Werksmans where, Werksmans then took us through their findings and no report was issued other than the two-page document include – under Annexure CV16.

**ADV REFILOE MOLEFE:** And that would appear at page 102 Chair.

**MR CHETA CHHAGAN VAGHELA:** We were advised that Neotel reported suspicions to the relevant authorities in terms of PRICA and

we were provided with a summary of this report, this report is on page 102.

**ADV REFILOE MOLEFE:** You don't need to read that report but you can paraphrase for the Chair what, in essence, were the findings of this report.

**MR CHETA CHHAGAN VAGHELA:** Chair the report in its essence concludes that Mr van der Merwe, the former General Manager Strategic Customers committed fraud against Neotel potentially exceeding them – an amount in excess of the statutory minimum, he  
10 had a relationship with Homix and he misled the company which resulted in these payments to Homix prejudicing Neotel and its negotiations with Homix and the MSA. So if I draw the Chair to the second page, paragraph 17 it summarises the conduct of Mr van der Merwe.

**ADV REFILOE MOLEFE:** Yes then at paragraph 62 therein you deal with a letter addressed by Homix to Neotel, is this correct?

**MR CHETA CHHAGAN VAGHELA:** Yes it is Chair.

**ADV REFILOE MOLEFE:** Can I refer you to page 105 which appears under CV17. Is this the letter that was addressed by Homix to Neotel?

20 **MR CHETA CHHAGAN VAGHELA:** Yes it is Chair.

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

**MR CHETA CHHAGAN VAGHELA:** The letter is the 2<sup>nd</sup> of July 2015.

**ADV REFILOE MOLEFE:** Now if you start at page 105 of this letter at the outset the letter refers to two letters date June 25 of the year 2015 regarding the agreement between Homix and Neotel pertaining to the

asset sale and MSA between Neotel and Transnet is that correct?

**MR CHETA CHHAGAN VAGHELA:** That's what the letter indicates yes.

**ADV REFILOE MOLEFE:** And it then goes on to discuss these two agreements in the paragraph that follows, is that correct?

**MR CHETA CHHAGAN VAGHELA:** Yes that's correct.

**ADV REFILOE MOLEFE:** Can you paraphrase what is stated in that paragraph.

**MR CHETA CHHAGAN VAGHELA:** "At the outset we wish to advise  
you that both the asset sale and MSA were covered under a  
10 single agreement between Homix and Neotel and we're  
responding to both your letters which are identical in content  
through this letter".

**ADV REFILOE MOLEFE:** The letter then goes on to respond to several queries that were raised by Neotel and it states there that Mr van der Merwe was the single point of contact in Neotel, is that correct?

**MR CHETA CHHAGAN VAGHELA:** Yes.

**ADV REFILOE MOLEFE:** And that they have routed all research related findings and recommendations that led to the successful conclusion of both agreements through Mr van der Merwe, is that  
20 correct?

**MR CHETA CHHAGAN VAGHELA:** That is correct.

**ADV REFILOE MOLEFE:** If we turn over to page 106, from the outset on that page, Homix provides a timeline of what they did in relation to these contracts, is that correct?

**MR CHETA CHHAGAN VAGHELA:** Yes that's correct.

**ADV REFILOE MOLEFE:** And it starts off with the 11<sup>th</sup> of December 2014, is that correct?

**MR CHETA CHHAGAN VAGHELA:** Yes that's correct.

**ADV REFILOE MOLEFE:** The timeline provides that on the 11<sup>th</sup> of December 2014 Mr van der Merwe met with the Homix representative being Mr Mandla at JB's corner to advise of the status quo at Transnet and requested consulting assistance with a fresh perspective to help Neotel close the deal, is that correct?

**MR CHETA CHHAGAN VAGHELA:** That's what the letter says yes.

10 **ADV REFILOE MOLEFE:** It says that thereafter both agreed to meet the next morning being Friday the 12<sup>th</sup> of December 2014, is that correct?

**MR CHETA CHHAGAN VAGHELA:** Yes Chair that's correct

**ADV REFILOE MOLEFE:** And this was dependent on Homix being able to assist, is that correct?

**MR CHETA CHHAGAN VAGHELA:** Yes that's correct.

**ADV REFILOE MOLEFE:** The following item on the timeline is December 12<sup>th</sup> 2014, is that correct?

**MR CHETA CHHAGAN VAGHELA:** That's correct Chair.

20 **ADV REFILOE MOLEFE:** It states there that Mr van der Merwe met with Mr Mandla as agreed at approximately 7 o'clock in the morning.

**MR CHETA CHHAGAN VAGHELA:** That's correct Chair.

**ADV REFILOE MOLEFE:** And it says that Mandla informed van der Merwe that they might be able to assist and the fee would be the same as before, namely 10% of transaction value, is that correct?



**MR CHETA CHHAGAN VAGHELA:** That is correct Chair.

**ADV REFILOE MOLEFE:** And Mr van der Merwe then said that he would return later that morning to confirm if this was acceptable to Neotel.

**MR CHETA CHHAGAN VAGHELA:** That's correct Chair.

**ADV REFILOE MOLEFE:** Still on December 12<sup>th</sup> 2014 being a Friday, it states there that they both met again, this would be Mr van der Merwe and Mandla, as I understand it, is that correct?

**MR CHETA CHHAGAN VAGHELA:** That's correct.

10 **ADV REFILOE MOLEFE:** And it says there that Mr van der Merwe said that they could only agree to 2% on MSA and a fixed fee on the assets sale, both done on full risk to Homix, is that correct?

**MR CHETA CHHAGAN VAGHELA:** That's correct.

**ADV REFILOE MOLEFE:** And it said that – which meant that if the contract did not materialise Neotel would be under no obligation to pay, is that correct?

**MR CHETA CHHAGAN VAGHELA:** That's correct.

**ADV REFILOE MOLEFE:** And it further says that after due deliberation of the pros and cons we took the decision to agree to these terms and  
20 instructed Mandla to accept on behalf of Homix, is that correct?

**MR CHETA CHHAGAN VAGHELA:** That's correct.

**ADV REFILOE MOLEFE:** Then just below that date of the 12<sup>th</sup> of December 2014 it stated there – and this is directed to Neotel as I've earlier stated,

“I wish to inform you here that I made a judgement call based

on the possibility of the deal materialising immediately when I heard about it and put my team on the job from December 11<sup>th</sup> itself”,

Is that correct?

**MR CHETA CHHAGAN VAGHELA:** That’s what the letter says.

**ADV REFILOE MOLEFE:** And it says here, please find below a chronological sequence of the actions undertaken by our team to assist Neotel in securing the deal. December the 11<sup>th</sup>, in the year 2014 would have been on a Thursday, it then goes...(intervention).

10 **MR CHETA CHHAGAN VAGHELA:** Sorry Chair just on accepting the instruction on behalf of Homix that Mandla accepting the – on behalf of Homix is contrary to the person that signed the letter, just to note.

**ADV REFILOE MOLEFE:** Yes when – the letter goes on further with this timeline it says, December 11, 2014 which would be on a Thursday, it says there that Homix did...(intervention).

**CHAIRPERSON:** Hang on one second, there’s a technical problem – oh okay let’s continue.

**ADV REFILOE MOLEFE:** Thank you Chair. Just under actions taken at what seems to be at a high level it says there,

20 “on December 11<sup>th</sup>, 2014 which would be on a Thursday Homix deputed senior consultants with a high level of telecom expertise to quickly deconstruct the deal with a view to understand both parties’ view of the transaction. After the team reported back it became evident to Homix that the conceptual understanding from the Transnet negotiation team

(senior manager) was not the same as the view given by Neotel. This Homix immediately realised that they could add value by finding a lever that could possibly help Neotel to negotiate an agreed position”,

Is this correct?

**MR CHETA CHHAGAN VAGHELA:** That’s what the letter says yes.

**ADV REFILOE MOLEFE:** Yes. And it then goes on to set out events of December 12<sup>th</sup>, 2014 being the following day on a Friday. It says there:

10 “Subsequent to receiving verbal confirmation from Francois Van Der Merwe we immediately assigned our senior consultants who were on standby to work around the clock and conduct intensive research from various sources with a view to find the lever that would Neotel get back to the negotiating table with Transnet and bring all on the same page on the real issues. Fortunately our team was successful in coming up with a tangible solution which pinpointed several key factors and a principle lever [as detailed below] that Francois Van Der Merwe could use.”

20 It further goes on to say:

“Francois Van Der Merwe subsequently used the material provided to interact with Transnet. We also advised Francois Van Der Merwe to adopt an urgent approach with Transnet citing the grounds that Transnet executives were scheduled to go on leave

and if this matter was not urgently resolved the extension provision would kick in and Transnet would immediately be liable for wasteful expenditure which would be reported to Parliament.”

Is that correct?

**MR CHETAN CHHAGAN VAGHELA:** That is correct per the letter.

**ADV REFILOE MOLEFE:** Yes. As per the letter on page 107 the letter goes on to say:

10 “Using this approach Francois Van Der Merwe was able to convince the Transnet negotiation team and executives to agree on a course of action and minimum terms with deadlines no later than Monday the next week. This was Homix first step to get both parties back to the negotiating table.”

Now just at this juncture of the 12 December 2014 on a Friday do you have any understanding or comment on the work that Homix states to have undertaken as up until this date?

20 **MR CHETAN CHHAGAN VAGHELA:** Chair the – to us you know this is a letter, it is a one sided letter from Homix. We could not corroborate this with the individuals mentioned. I mean for example Francois – Mr Francois Van Der Merwe did not articulate these elements that he did or allegedly did. So it is a one sided recommendation on what happened but if we had to validate this or seek evidence to prove these facts we could not do it.

**ADV REFILOE MOLEFE:** The letter then goes on to say:

**MR CHETAN CHHAGAN VAGHELA:** Sorry and secondly we received this letter in July which is after the period where Neotel has reported that Mr Van Der Merwe has defrauded the company so we would not take any reliance on what Mr Van Der Merwe did.

**ADV REFILOE MOLEFE:** Yes. Lastly in this timeline still cited as December 12, 2014 which is on a Friday it states there that:

10                   “Homix advised Francois Van Der Merwe to facilitate  
a meeting between Transnet’s CFO and the Neotel  
CEO which he did. The meeting took place and both  
stakeholders agreed that their respective teams  
would meet on December 13, 2014 and not leave  
until they address all issues outstanding in this  
context Homix strongly advised Francois Van Der  
Merwe to ensure that the Neotel executive decision  
makers be present in the meeting to ensure  
immediate decisions could be taken. Finally due to  
Homix interventions both parties understood each  
other’s positions and now that the executives were  
on the same page agreement was reached on the  
20                   outstanding points of dissention.”

Do you understand what then happened on December 13, 2014 being a Saturday?

**MR CHETAN CHHAGAN VAGHELA:** We understand that the team are said to have met through the Werksmans investigation report and the matters were resolved and Neotel had signed the contract on the 14

December.

**ADV REFILOE MOLEFE:** And according to this timeline Homix intervention was from the 11 December 2014 which was on a Thursday and according to this letter by Saturday December 13, 2014 they had performed some of other duties as they set out which they have stated to be the basis upon which an agreement was entered into with Neotel and payment made to Homix?

**MR CHETAN CHHAGAN VAGHELA:** Chair we still remain – we still remain unconvinced because no one could articulate what – what  
10 changed in the agreement? Which aspects of the MSA did they engage on? What were the fundamental issues? And who at Homix engaged with the Neotel team and the Transnet team? You know we will not be – we were not offered the opportunity to – well no information around who assisted them in the deal was forthcoming. So whilst a fact pattern is articulated to give evidence to some activity we could not verify that against credible evidence.

**ADV REFILOE MOLEFE:** And having gone through this timeline from the 11 December 2014 to the 13 December 2014 do you have any view on the commerciality of the agreement between Neotel and Homix?

20 **MR CHETAN CHHAGAN VAGHELA:** We currently do not have any view on the commerciality between Neotel and Homix and it remained unsupported until the finalisation of the financial statements.

**ADV REFILOE MOLEFE:** From paragraph 65 of your statement at page 17 you then set out what Deloitte did following receipt of this correspondence from Neotel. Please take the Chair through these

events?

**MR CHETAN CHHAGAN VAGHELA:** Chair following receiving this information in Deloitte’s view the information did not address our concerns around the commerciality of the fees paid to Homix. Therefore post the investigation and our opportunity to make enquiries we raised an RI in respect of the – sorry. So neither – so if I refer the Chair to paragraph 64 where we say:

10 “Neither the CEO nor the CFO of Neotel conducted any due diligence investigation into Homix prior to Homix being engaged nor did they ask any questions about what actions Homix intended to take in order to resolve the impasse between Neotel and Transnet. In Deloitte’s view this conduct was not in the best interest of Neotel and caused the company to sustain a considerable financial loss.”

Chair in this instance we raised a RI on the 14 July as –

20 “If the CEO and the CFO considered all this information that was made available to them subsequent to the enquiries the dismissing of Francois, the clandestine relationships they did not exercise due care, skill or diligence in authorising the consultancy arrangement. They did not make adequate – due or adequate enquiries with respect to the actual activity to be performed by the agent having regard to the nature of the consultancy

arrangement and the magnitude of the payments committed thereunder or adequately interrogate and or question the fees payable for the required activity. The officers having nevertheless proceeded to approve an implement the consultancy agreement without adequate information as to what exactly the agent would do pursuant thereto must in our view have reconciled themselves with the improper conduct of the agent and the ramifications and consequences thereof.”

10

Chair I think that in this instance we considered that management could not be wilfully blind in considering what Homix was about.

**ADV REFILOE MOLEFE:** And the RI that you have referred to issued on the 14 July 2015 is that what appears at page 117?

**MR CHETAN CHHAGAN VAGHELA:** Yes that...

**ADV REFILOE MOLEFE:** Under CV18?

**MR CHETAN CHHAGAN VAGHELA:** Yes that is correct Chair.

**ADV REFILOE MOLEFE:** What then happened after Deloitte issued this report?

20 **MR CHETAN CHHAGAN VAGHELA:** After the issuance of the report we were engaging with Neotel at the time and in respect of the opinion that Deloitte had on the March 2015 audit of Neotel.

“Neotel sought a means to move away from the disclaimer that Deloitte had indicated it would issue based on what Deloitte considered to be pervasive



effect of issues created by the Homix transaction on Neotel's financial statements.”

**ADV REFILOE MOLEFE:** And can we turn to page 121 of the bundle? Annexure CV19. Is that the letter that Deloitte received from Neotel?

**MR CHETAN CHHAGAN VAGHELA:** Chair that is a letter that Deloitte received from Neotel.

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

**MR CHETAN CHHAGAN VAGHELA:** The letter is the 7 August 2015.

**ADV REFILOE MOLEFE:** And this letter is it in response to the  
10 reportable irregularity reported by Deloitte?

**MR CHETAN CHHAGAN VAGHELA:** They do acknowledge the letter – the reportable irregularity letter and they go on to various actions that the company has been taking in the engagement between Deloitte and Neotel. Chair this letter is also issued subsequent to the suspension of the CEO and CFO on the 31 July 2015 after an article broke the press relating to the Homix transactions.

**ADV REFILOE MOLEFE:** If you turn to page 122 of the bundle. The paragraph – the fourth paragraph from the top speaks to the investigations that were conducted by Neotel, is that correct?

20 **MR CHETAN CHHAGAN VAGHELA:** Yes.

**ADV REFILOE MOLEFE:** And it also replies to the report that was issued by Deloitte relative to the dishonesty of officers of the board, is that correct?

**MR CHETAN CHHAGAN VAGHELA:** No Chair it – we have not issued a letter around dishonesty. It says that their investigations have not

found dishonesty on the part of the officers.

**ADV REFILOE MOLEFE:** Yes.

**MR CHETAN CHHAGAN VAGHELA:** And the board is unable to conclude that there is appropriate evidence to support your conclusion of deliberate or reckless conduct on the part of the officers. That is in response to the RI where we said they did not make sufficient enquiry exercise due care skill in engaging with Homix.

**ADV REFILOE MOLEFE:** And in the paragraph that follows Neotel makes comments on the board's recognition of noncompliance with  
10 internal procedures, is that correct?

**MR CHETAN CHHAGAN VAGHELA:** Yes they do highlight sort of breakdown internal controls and that improvements would need to be actioned in that regard.

**ADV REFILOE MOLEFE:** The letter then goes on to the following page, page 123. And at the bottom of page 122 is the conclusion in Neotel's letter can you just summarise the conclusion made by Neotel in this letter?

**MR CHETAN CHHAGAN VAGHELA:** Sorry Chair on what page are you referring to?

20 **ADV REFILOE MOLEFE:** At the bottom of page 122.

**MR CHETAN CHHAGAN VAGHELA:** Yes at the bottom of that letter Chair the board effectively had ratified the CEO's authority but however it did not endorse or – it had limitations to it – its authority but it seek to ratify the Homix mandate. If I read:

“With limited exception of the ratification of authority

as described in point 2 the confirmation and ratification will not detract from the board's continuing review of the circumstances surrounding the Homix engagement and matters and salary thereto. Including but not limited to any failure on the part of any party or person to comply with the applicable law and without any restriction in respect of any of the company's rights or remedies concerning the Homix engagement."

10 **ADV REFILOE MOLEFE:** Yes. Can we then return to your statement at paragraph 67 on page 18 of the bundle? At paragraph 67 you introduce the Vodacom transaction, is that correct?

**MR CHETAN CHHAGAN VAGHELA:** Yes Chair at the time during the 2015 audit Neotel was subject to a – to an acquisition by Vodacom and that – that deal process was in play.

**ADV REFILOE MOLEFE:** And for what purpose do you introduce this transaction at this point?

**MR CHETAN CHHAGAN VAGHELA:** At this point it becomes relevant because in terms of the order process we required Neotel to disclose  
20 the matter to a number of stakeholders. Those would have included Transnet to actually formerly disclose it and obtain a waiver. To the lenders as well as to Vodacom in terms of the sale and purchase agreement.

**ADV REFILOE MOLEFE:** Then in paragraph 68 all the way to paragraph 76 you introduce a topic you have entitled "Waivers and

Disclaimers”, is that correct?

**MR CHETAN CHHAGAN VAGHELA:** Yes that is correct Chair.

**ADV REFILOE MOLEFE:** And what is the nature of these waivers and disclaimers to which you refer?

**MR CHETAN CHHAGAN VAGHELA:** So currently the – based on the evidence that we had our – the – our audit opinion on the Neotel financial statements was a disclaimer opinion. Neotel sought a means to move away from the disclaimer opinion and asked Deloitte what was required to – in order to move away from the disclaimer. So in order to  
10 move away from the disclaimer we required a waiver from Transnet to withdraw of its right to withdraw the MSA so that they will not cancel the contract as that had a material impact on the financial statements. We also required in terms of the long term funding common terms agreement which is a lending agreement with the banks we required a waiver from the Neotel’s lenders around the Homix transactions as the engagement of agents or potential – maybe a potential sanctionable practice and it may breach the lending agreement and as a result we said we required a waiver from the lenders and furthermore we required a waiver from Vodacom as there was a potential sale transaction and  
20 the matter needed to be disclosed in terms of the sale and purchase warranties.

**ADV REFILOE MOLEFE:** Just so that we clarify in respect of the MSA between Neotel and Transnet can you just clarify how the contractual matters or issues would arise in your audit process?

**MR CHETAN CHHAGAN VAGHELA:** So currently the contract was

concluded between Transnet and MSA – and Neotel and that MSA gave rise to revenue that was recorded in the financial statements of Neotel. If the contract was cancellable and there was found to be any wrongdoing of Neotel they then may – needed to be a refund of the revenue recognised the cancellable contract had a significant impact on the future viability of the business and it pervasively impact and there was a cash element that would have impacted the going concern. So these elements around the Transnet contract were quite significant and the resolution of that was quite a critical matter to resolve in  
10 concluding the 2015 financial statements.

**ADV REFILOE MOLEFE:** And at paragraph 69.2 of your statement on page 19 you then set out the discussion between the Neotel’s audit committee and Deloitte. Can you take the Chair through this please?

**MR CHETAN CHHAGAN VAGHELA:** Chair we communicated to the audit committee that to move away from a disclaimer opinion a waiver from Transnet was required – a waiver from Transnet of its right to withdraw from the MSA based on Neotel’s breach of the MSA by using an agent. The waiver from Neotel’s lenders around the Homix transaction and a waiver from Vodacom in respect of the Homix  
20 transaction. The Neotel audit committee had advised us that the lenders had been briefed and they were managing a waiver process. They – the audit committee advised us that they were seeking a waiver from Transnet however it was unlikely that a waiver from Transnet would be received. And therefore Neotel was seeking legal counsel – a legal counsel opinion on the validity of the contract as a result of the

breach of the terms of agreement. Following the legal advice Neotel was advised that the matter had been fully disclosed to Transnet. Transnet continued to – Neotel continued to trade with Transnet under the contract and vice versa and they had to wait 90 days from notification to Transnet for any action or termination from Transnet. If these three activities had happened then the contract would – and there was no action from Transnet the contract would remain valid. The matter required full disclosure in the accounts in the absence of a waiver which was complied with.

- 10 **ADV REFILOE MOLEFE:** If I might just take you back to paragraph 69.2 where the audit committee is asking Deloitte for their view and the disclaimer opinion could be resolved and Deloitte's view is set out at paragraph 69.2.1 until 69.2. and you have given evidence on this opinion.

**MR CHETAN CHHAGAN VAGHELA:** Yes.

**ADV REFILOE MOLEFE:** Would this be an audit opinion or a legal opinion because you had earlier – sorry let me just complete. Earlier you had said that you had engaged CDH attorneys to assist you in this audit.

- 20 **MR CHETAN CHHAGAN VAGHELA:** The opinion we talking to in paragraph 69.2 refers to an audit opinion. The opinion referred to in paragraph 71 refers to a legal opinion around the rights of Transnet and Neotel.

**ADV REFILOE MOLEFE:** Yes. From paragraph 72 on the page that follows page 20 you then speak to the waiver relative to Vodacom.

Please take the Chair through this?

**MR CHETAN CHHAGAN VAGHELA:** Chair at the time we requested a waiver from Vodacom however we were in discussion as to the impact of not receiving a waiver from Vodacom and so the audit committee asked us to consider what would that do to our opinion. And so we – it was an open item. The matter effectively went away because a Vodacom transaction was abandoned and therefore there was no further need for a waiver.

**ADV REFILOE MOLEFE:** And can you just confirm who Neotel's  
10 lenders were from whom waivers would have been required?

**MR CHETAN CHHAGAN VAGHELA:** Chair I do not have the list of all the lenders. The lenders agents were represented by Nedbank and Investec.

**ADV REFILOE MOLEFE:** Yes and you deal with that at paragraph 76.

**MR CHETAN CHHAGAN VAGHELA:** 76.

**ADV REFILOE MOLEFE:** Were these waivers eventually received from Nedbank by Neotel?

**ADV REFILOE MOLEFE:** Yes Chair they were received. The initial waiver was received on the 14 December 2015. It is included in pack  
20 CV20 Annexure CV20.

**ADV REFILOE MOLEFE:** And what in essence is – does the waiver contain?

**MR CHETAN CHHAGAN VAGHELA:** So Chair....

**ADV REFILOE MOLEFE:** The first – pardon me – the first waiver of 14 December 2015?

**MR CHETAN CHHAGAN VAGHELA:** Chair if I draw your attention to CV128 and CV129 the waiver letter has a response to various clauses that are in the lender's agreement and effectively what we asking is based on the knowledge around the Homix transactions either the lender waives their rights around that there is a sanctionable practice early termination of the Transnet MSA, breach of representations under the Transnet MSA, invalidity of the MSA, illegality or invalidity of the MSA, compliance with laws, compliance with the Transnet MSA, termination of the Transnet MSA. All these matters were requested in  
10 the waiver. Some of these were granted and some of these were – the lenders believed that there was no breach yet that needed to be waived.

**ADV REFILOE MOLEFE:** And can you be specific as to still on the first waiver by Nedbank which aspects did they say did not amount to any breach?

**MR CHETAN CHHAGAN VAGHELA:** Chair is I can draw your attention to page 22 of my statement.

**ADV REFILOE MOLEFE:** Page 22.

**MR CHETAN CHHAGAN VAGHELA:** Or let us go to page 21 and I can  
20 read what is actually disclosed in the financial statements. At the bottom of page 21 we say:

“The lenders have acceded to certain waiver of certain rights which the lenders may now – may have now or in the future under the LFCTA in connection with the payments to Homix. The waivers were



requested because the present facts together with the facts as may possibly emerge in future could indicate a breach of certain warranties by the company under the LFCTA and also have an impact on the enforceability and or possible rescission of the Transnet MSA which in turn may trigger certain rights of the lenders under the LFCTA. The company requested the lenders to waive their rights under clauses 1.190A, 1.190A3, 1.190A5, 30.16.5, 30.18, 10 35.4 and 36.63 of the LFCTA. The lenders have indicated that they did not think it is appropriate to grant waives for the potential breaches of these clauses of the LFCTA as it appears to them based on the information provided that no default has occurred and or is continuing in respect of these clauses. Thus it remains within the lenders rights under the LFCTA to call an event of default should further adverse information come to the fore in relation to these matters in addition to those that existed as at 20 the date of approving these accounts.”

**ADV REFILOE MOLEFE:** And just for completion sake at page 128 through to 130 of the Nedbank’s waiver letter the matters that you have spoken to which the lender did not find to constitute a breach – a breach rather the first would be at 9.1 is that correct?

**MR CHETAN CHHAGAN VAGHELA:** Yes.

**ADV REFILOE MOLEFE:** And it is stated there it relates to sactionable practices?

**MR CHETAN CHHAGAN VAGHELA:** Yes.

**ADV REFILOE MOLEFE:** The second would be early termination of the Transnet MSA/

**MR CHETAN CHHAGAN VAGHELA:** Yes.

**ADV REFILOE MOLEFE:** The third would be breach of representations under the Transnet MSA?

**MR CHETAN CHHAGAN VAGHELA:** Yes.

10 **ADV REFILOE MOLEFE:** The fourth would be the invalidity of the MSA?

**MR CHETAN CHHAGAN VAGHELA:** Yes.

**ADV REFILOE MOLEFE:** The fifth would be the illegality or invalidity of the MSA?

**MR CHETAN CHHAGAN VAGHELA:** Yes that is correct.

**MR CHETAN CHHAGAN VAGHELA:** The sixth would be compliance with laws?

**MR CHETAN CHHAGAN VAGHELA:** Yes.

20 **ADV REFILOE MOLEFE:** And the seventh would be compliance with the Transnet MSA?

**MR CHETAN CHHAGAN VAGHELA:** Yes and the eighth is...

**ADV REFILOE MOLEFE:** And the eighth would be termination of the Transnet MSA?

**MR CHETAN CHHAGAN VAGHELA:** That is correct.

**ADV REFILOE MOLEFE:** You have made reference to two letters of

waivers that Nedbank issued. The second one.

**MR CHETAN CHHAGAN VAGHELA:** The second one was...

**ADV REFILOE MOLEFE:** Appears at – pardon me – under Annexure 21 as you have earlier stated.

**MR CHETAN CHHAGAN VAGHELA:** That is correct.

**ADV REFILOE MOLEFE:** And why was there a second letter of waiver issued?

**MR CHETAN CHHAGAN VAGHELA:** Due to the timing of the matter rolling we requested an update letter in June 2016.

10 **ADV REFILOE MOLEFE:** Yes. And this letter appears from page 132?

**MR CHETAN CHHAGAN VAGHELA:** To 135.

**ADV REFILOE MOLEFE:** Yes. Was there any significant difference between this letter and that which was issued earlier by Nedbank pardon me?

**MR CHETAN CHHAGAN VAGHELA:** No they just continued to say that there has been no breach of two clauses and that we do not think it is appropriate to provide the waivers requested in paragraph 9.2. So it is on page 134.

20 **ADV REFILOE MOLEFE:** Yes. And is there anything of material significance in respect of the waiver letters that you wish to bring to the Chair's attention?

**MR CHETAN CHHAGAN VAGHELA:** There is no other fact other than that you know the lenders were aware of the matter and until the matter was proven the view that there was no breach and therefore we took the lenders letter – the waiver plus disclosure in the accounts would

inform the user on the matter.

**ADV REFILOE MOLEFE:** Yes. And then from paragraphs 77 or your statement at page 22 you deal with the events that unfolded following the receipt of the waiver letters from the lenders. Please take the Chair through these events?

**MR CHETAN CHHAGAN VAGHELA:** Chair during the – following the receipt of the lenders waiver and the disclosure of the validity of the Transnet MSA as outlined in paragraph 77 we were busy with the closure of the accounts being finalised in December 2017. Deloitte had  
10 requested that each of the Neotel directors sign a management representation letter in their individual capacity.

Chair it is important to note that ordinarily we would request a management representation letter from the CEO and the CFO. However given the circumstances and the nature of the matter that we – we are dealing with we extended that – that representation to each of the Directors to – to provide that representation to us and the reason we did that is because we – we did not know if some Directors knew and some Directors did not and if there was full disclosure of information from – from the Directors. So each Director was requested individually  
20 to provide a representation letter – a management representation letter.

“The letter was provided to the Board on 11 November 2015 for the Directors to review. A meeting was called by Mr Memani on 23 December to discuss this representation letter. In attendance at that meeting were Memani and myself at the

Neotel offices and Mr Pham, Mr Reynolds, Mr (indistinct), Mr (indistinct) and Mr Dennis via conference call. We also at the time discussed the Vodacom transaction as well as the representation letter. A line by line review of the representation letter took place during the meeting. Amendments to the letter were agreed upon except for the disclosure of information. Mr Reynolds indicated that the Directors were unable to sign the letter as there was apparently privileged information which they were unable to share with Dennis and me. I indicated in the response that if the information related to Neotel the company then we as auditors would require sight of the information. Failing that Dennis and I would need to consider the impact of this on our audit opinion. The matter was left on that basis and that Deloitte would consult on this matter.”

**ADV REFILOE MOLEFE:** Now at paragraph 80 you speak about the discussion that took place relevant – relevant to Vodacom. Is that correct?

**MR CHETAN CHHAGAN VAGHELA:** Yes Chair.

**ADV REFILOE MOLEFE:** And you also speak of another meeting that took place on 15 January 2016. Is that correct?

**MR CHETAN CHHAGAN VAGHELA:** Yes that is correct Chair.

**ADV REFILOE MOLEFE:** And as you have testified it related to the Vodacom transaction?

**MR CHETAN CHHAGAN VAGHELA:** That is correct Chair. At – Chair at that meeting we were debating some accounting issues around the Vodacom transaction and at the same time we raised the privilege information with Mr Memani and in that instance Mr Memani instructed Mr Michael Hart from Norton Rose Fulbright to make the information available to Deloitte for the purposes of the audit. The privilege information that was made available included files and reports arising  
10 out of the Werksmans investigation that was not previously provided to Deloitte.

**ADV REFILOE MOLEFE:** And this information that was provided to you – you have set out at paragraphs 83.1 to 83.7 of your statement. Is that correct?

**MR CHETAN CHHAGAN VAGHELA:** That is correct.

**ADV REFILOE MOLEFE:** Now given where in the state of the audit process you were as Deloitte did you find this information to be useful?

**MR CHETAN CHHAGAN VAGHELA:** Chair yes the – the information was useful to us in that one it was – it was – on it was withheld.  
20 However the information was concluded around 31 July and the information – on reviewing that information it further confirmed the suspicions that we had around the Homix fees paid.

**ADV REFILOE MOLEFE:** And did you act upon your suspicions?

**MR CHETAN CHHAGAN VAGHELA:** We did Chair. On reviewing the information we then reported a further five additional reportable

irregularities which are outlined in Annexure C22 to C26.

**ADV REFILOE MOLEFE:** And what was the date on which these five further reports were issued?

**MR CHETAN CHHAGAN VAGHELA:** These reports were issued on 8 February 2016.

**ADV REFILOE MOLEFE:** If we turn to page 138 of the bundle would that be one of the reports that were subsequently issued by Deloitte?

**MR CHETAN CHHAGAN VAGHELA:** That is correct Chair.

10 **ADV REFILOE MOLEFE:** And what is the basis on which this report was issued?

**MR CHETAN CHHAGAN VAGHELA:** Chair so in this report we – we articulate the success fees of R61 million as well as the Homix fee of R30.3 million relating to the Cisco agreement. That is R91.3 million of which the commerciality and business lawful purpose remained unclear. We then indicate that:

20 “The Chairman of the company mandated Werksmans Attorneys to conduct an independent investigation into the facts and circumstances relating to the transactions with Homix. From our inspection which was completed on 5 February 2016 of the second preliminary report from Werksmans dated 30 July 2015 and other supporting information and specialist reports obtained by Werksmans Attorneys we concluded that the Directors and/or prescribed officers after

themselves having considered the report and such information ought reasonably to have known or suspected that the payments to Homix had no business or lawful purpose as referred to in Section 29 of the Financial Intelligence Centre Act and that the Directors had failed to report this fact to the Financial Intelligence Centre within 15 business days as required in terms of Section 29 of FICA.”

10 So our duty was to report that the Directors had failed to report their suspicion.

**ADV REFILOE MOLEFE:** Yes and if we can then turn to Annexure CV24.

**MR CHETAN CHHAGAN VAGHELA:** 23.

**ADV REFILOE MOLEFE:** 23 – thank you, pardon me. That appears on page 141 of that bundle.

**MR CHETAN CHHAGAN VAGHELA:** Chair and this RI relates to the same fees in question.

20 **ADV REFILOE MOLEFE:** When you say the same fees are you referring to the consultancy arrangement being the success fee of 61 million and the second payment of 30.3 million in relation of the Cisco fee arrangement?

**MR CHETAN CHHAGAN VAGHELA:** That is correct Chair.

**ADV REFILOE MOLEFE:** So what is the difference between this report and the second report that Deloitte issued?

**MR CHETAN CHHAGAN VAGHELA:** So this RI relates to another – a



breach of another Act. So we would – we would report each RI in its own instance and this one we concluded that:

10                   “The Directors and/or prescribed officers after themselves having considered the report and such information ought reasonably to have known or suspected that the offence of corruption as defined in Part 1 Section 3 of the Prevention and Combatting of Corrupt Activities was committed and failed to report this offence to any police official in terms of Section 34 of PCCA.”

**ADV REFILOE MOLEFE:** So as I understand it the first report related to a breach in terms of FICA and the second report related to a breach in terms of PCCA?

**MR CHETAN CHHAGAN VAGHELA:** That is correct Chair.

**ADV REFILOE MOLEFE:** Can we then turn to page 145 of the bundle please?

**MR CHETAN CHHAGAN VAGHELA:** Chair this report relates to further transactions that we introduce. In this letter we introduce:

20                   “The company entered into back to back transactions albeit with margin and with their customer in this instance Transnet and a supplier regarding CCTV transactions. A success fee of R45 million relating to the CCV transactions was made by Homix to the supplier of Neotel. The commerciality and business lawful purpose of the

fees to Homix and other transactions relating to the same customer brings into question the CCTV transactions and the related success fees proposed and/or paid.”

**ADV REFILOE MOLEFE:** Yes and it goes on further to speak about the relevant legislative prescripts which you say Neotel acted in breach of. Please carry on at the following paragraph.

**MR CHETAN CHHAGAN VAGHELA:** Chair yes so we – we then continue that we concluded that ...

10 **CHAIRPERSON:** I am sorry. That sentence a success fee of R45 million relating to CCTV transactions was made by Homix to the supplier of Neotel. Which supply of Neotel was that?

**MR CHETAN CHHAGAN VAGHELA:** The supplier in question was Techpro.

**CHAIRPERSON:** Was?

**MR CHETAN CHHAGAN VAGHELA:** Was Techpro?

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

**ADV REFILOE MOLEFE:** Thank you Chair. Please proceed with the paragraph that follows.

20 **MR CHETAN CHHAGAN VAGHELA:** So we in – in this instance we concluded that:

“The Directors and/or prescribed officers ought to have reasonably known or suspected that the offence of corruption was committed and failed to report this offence to any police official in terms of

Section 34 of PCCA.”

**ADV REFILOE MOLEFE:** Yes. Can we then turn to page 149 of the bundle?

**MR CHETAN CHHAGAN VAGHELA:** Yes Chair. This RI relates to the same R45 million referred to previously around the CCTV transactions and we concluded that:

10 “The Directors ought reasonably to have known or suspected that the transactions entered into between the company and the customer may have arisen due to a fee proposed or paid by the supplier to Homix and that no business or lawful purpose as referred to in Section 29 of the Financial Intelligence Centre Act and failed to report this fact to the Financial Intelligence Centre within the 15 business day period.”

**ADV REFILOE MOLEFE:** Yes. So again the two reports that you have just referred to differ only insofar as the violation of the applicable legislation. The first being in terms of PCCA and the second being in terms of FICA?

20 **MR CHETAN CHHAGAN VAGHELA:** Yes and – and the violation is in – in the Directors or prescribed officers failure to report.

**ADV REFILOE MOLEFE:** Yes. Can we then turn to page 152 please?

**MR CHETAN CHHAGAN VAGHELA:** Chair the reportable irregularity under page 152 results in the – in the financial statements for the year ended 31 March 2015 which had not been prepared and approved within

six months of the financial year as required in terms of the Companies Act.

**ADV REFILOE MOLEFE:** Yes and after – can you just confirm the dates on which all these reports were issued.

**MR CHETAN CHHAGAN VAGHELA:** All the RIs – there were five RIs – were all issued on 8 February 2016.

**ADV REFILOE MOLEFE:** And were these RIs brought to the attention of Neotel?

**MR CHETAN CHHAGAN VAGHELA:** We would have first issued the RIs  
10 to the – the Board and then we would have issued it to the Board of Neotel.

**ADV REFILOE MOLEFE:** And was there any response received from Neotel?

**MR CHETAN CHHAGAN VAGHELA:** We received a response ...

**ADV REFILOE MOLEFE:** Can I refer you please to paragraph 92 of your statement on page 27?

**MR CHETAN CHHAGAN VAGHELA:** Yes. There were responses received on 9 March.

**ADV REFILOE MOLEFE:** Of which year?

20 **MR CHETAN CHHAGAN VAGHELA:** Oh sorry - 9 March 2016.

**ADV REFILOE MOLEFE:** And did you receive individual responses to each of the RIs or did you receive a comprehensive response in relation to all the RIs that were issued?

**MR CHETAN CHHAGAN VAGHELA:** There was – the responses was not – there was a response but it was combined. So we received on

CCV27.

**ADV REFILOE MOLEFE**: That would be at page 155.

**MR CHETAN CHHAGAN VAGHELA**: 155.

**ADV REFILOE MOLEFE**: Yes.

**MR CHETAN CHHAGAN VAGHELA**: We received a response in respect of the CCTV transactions.

**ADV REFILOE MOLEFE**: And if I can refer you to the third paragraph of that letter starting with:

“It appears ...”

10 Can you please take the Chair through that paragraph?

**MR CHETAN CHHAGAN VAGHELA**: “It appears to be a common cause following such discussion that there is no direct evidence in the Werksmans report establishing agreement between Homix and Techpro for the success fee in the amount of R45 million or any other amount relating to the CCTV transaction. They refer to differences in profit margins between the two versions of the quotations directed by Neotel to Transnet in respect of the CCTV2 transactions in March/April 2015 as reflecting as a possible source of funds which might be used to make a payment to Homix. This information does not emanate from 30 July Werksmans report and there remains no evidence of any direct payment to Homix.”

20

**ADV REFILOE MOLEFE:** Yes and can you then read the two paragraphs that follow after the paragraph you have just read?

**MR CHETAN CHHAGAN VAGHELA:** “Following our discussions which were conducted in terms of Section 45(3)(A) and (B) of the APA we were advised that the company would out of an abundance of caution make a report in respect of the CCTV transaction based upon the suspicion of an offence corruption under Section 34(1)(A) of PCCA and a copy of such report will be provided under a separate cover. The absence of any evidence of an unidentifiable payment of the parties making and receiving such payment or of an actual contract between such parties means the difficulties exist in populating a report to be made under Section 29 of FICA particularly upon the basis of information set out in your letter dated 8 February address to (indistinct). Out of an abundance of caution the company will report to FICA in terms of Section 29 and a copy of the report will be provided under separate cover.”

**ADV REFILOE MOLEFE:** Yes please continue.

**MR CHETAN CHHAGAN VAGHELA:** “The company will instruct its legal advisors to consider and advise whether there is any recoverable loss arising out of

the matter set out in this letter and will take adequate steps to act in accordance with such advice. We therefore respectfully request your confirmation that you were advised that the suspected reportable irregularities relating to the CCTV transactions are no longer taking place.”

**ADV REFILOE MOLEFE:** Now this from Neotel it would appear that Neotel only addresses itself to the success fee of 45 million that was paid by Homix to Techpro. Is that correct?

10 **MR CHETAN CHHAGAN VAGHELA:** Chair we had not – we had not seen a payment but we suspected that there was a – a payment arising out of the relationship between Homix and Techpro.

**ADV REFILOE MOLEFE:** On what basis did you suspect?

**MR CHETAN CHHAGAN VAGHELA:** Based on evidence where we saw in the Werksmans investigation that there was a letter that Francois had on forwarded to - I stand to be corrected – but I think Techpro at the time. There was some evidence inferring and a – an arrangement to – for Homix.

**ADV REFILOE MOLEFE:** Yes.

20 **MR CHETAN CHHAGAN VAGHELA:** And based on that information we raised the suspicion around a fee payable on the CCTV transactions.

**ADV REFILOE MOLEFE:** And that fee (intervenes).

**MR CHETAN CHHAGAN VAGHELA:** The – the other – the other concern for us was that every transaction with Transnet had a Homix element. You had the Cisco deal. You had the AMSA. You had the

asset sale and we had two significant CCTV transactions that did not have a Homix element. We just had not found it.

**ADV REFILOE MOLEFE:** Yes and in relation to Homix and Techpro the success fee concerned there would be or was R45 million?

**MR CHETAN CHHAGAN VAGHELA:** That is correct.

**ADV REFILOE MOLEFE:** Now in respect of the other reports that you had issues did Neotel respond to those? Can I refer you to page 164 which appears as Annexure CV28?

**MR CHETAN CHHAGAN VAGHELA:** They responded on 7 March.

10 **ADV REFILOE MOLEFE:** Who is they?

**MR CHETAN CHHAGAN VAGHELA:** Neotel.

**ADV REFILOE MOLEFE:** Yes.

**MR CHETAN CHHAGAN VAGHELA:** Relating to the Cisco fee arrangement.

**ADV REFILOE MOLEFE:** And what in essence is Neotel's response in relation to the Cisco fee arrangement?

**MR CHETAN CHHAGAN VAGHELA:** Chair can I just have some time to go through the letter?

20 **ADV REFILOE MOLEFE:** Might I refer you to the third paragraph of that letter which starts with:

“The Directors ...”

Please take the Chair through that paragraph and those that follow.

**MR CHETAN CHHAGAN VAGHELA:** “The Directors were advised that the circumstances referred to in your letter relating to the consultancy arrangement and



the Cisco fee arrangement were not reportable on a proper interpretation of Section 29 of FICA. Payments made to Homix arising from these transactions are devoid of any element of money laundering or transfer of proceeds of unlawful activities. The FICAs own guidance note records that Section 29 of FICA refers to reports being made in connection with the proceeds of unlawful activities and money laundering or terror financing offences as opposed to criminal activity in general. FICA does not require reports to be made on suspected crimes or unlawful conduct by a person apart from money laundering and terror financing activities. On receipt of your letter the Directors sought legal advice which confirmed the view set out above but recommended that senior counsel be consulted in regard to this matter. After detail consultation in regard to the interpretation of Section 29(1)(B)(ii) senior counsel agreed that the section is ambiguous in its terms and maybe interpreted in the manner set out above or on a literal basis which will require a report such as you suggest which would involve reporting in regard to every transaction involving unlawful activity or having no apparent business regardless of the

absence of any element of money laundering or the transfer of proceeds of unlawful activities. Having regard to this uncertainty counsel expressed a view that the company should file a Section 29 report in regard to these arrangements indicating that the report is made out of an abundance of caution. The Directors have accordingly resolved to file a report with FICA which is required to be undertaken by electronic means and you will be provided with confirmation of the filing of such report. The Directors have acted prudently in seeking advice upon what you acknowledge to be a complex legal issue and have acted in accordance with such advice. They respectfully suggest that there is no basis for assertion. They have acted in breach of their fiduciary duties and this view is consistent with the advice of external legal counsel and senior counsel. The company has already directed a demand for an accounting of the funds paid to Homix. We draw your attention to the fact that the success fee paid in respect of the consultancy agreement arrangement amounts to 36 million and not 61 million. No payment was made in respect of the assets. So no accounting or any payment has been received in response to the demand. The

company has now formally instructed its attorneys to initiate proceedings for the recovery of the amounts disbursed by it.”

**ADV REFILOE MOLEFE:** Now just on the last paragraph that you have read where Neotel insists that the success fee relevant to the consultancy agreement was 36 million and not 61 million. What was Deloitte’s view in that respect?

**MR CHETAN CHHAGAN VAGHELA:** Well it is – it still is 61 million it is just that they had not paid the 25 million.

10 **ADV REFILOE MOLEFE:** The 25 million which would add up to 61 million?

**MR CHETAN CHHAGAN VAGHELA:** Yes.

**ADV REFILOE MOLEFE:** And was there any other further response by Neotel to the reports that were issued by Deloitte?

**MR CHETAN CHHAGAN VAGHELA:** There is a further letter on CV29 - Annexure CV29.

**ADV REFILOE MOLEFE:** And that would appear on page 167?

**MR CHETAN CHHAGAN VAGHELA:** That is correct.

20 **ADV REFILOE MOLEFE:** And what is Neotel’s response to the – one of the reports?

**MR CHETAN CHHAGAN VAGHELA:** Can I – they also in substance they – they resolve to file such a report however they worked through the – the legal aspects of it and I will take the Chair through it.

“Your letter records your conclusions following an inspection of a report received by this company

from its attorneys dated 30 July 2015 together with supporting information and specialist reports obtained by the attorneys. The inspection took place during the period 26 January to 5 February 2016. The inspection was for a specific and limited purpose of enabling you to perform your audit of this company's financial statements and you acknowledged that the disclosure and making available to you of the privileged, private and confidential documents did not constitute a waiver of the legal professional privilege which inheres in the report. We confirm these terms for the record that the Directors upon legal advice filed the existing report in regard to fraudulent conduct in relation to the consultancy arrangement and the Cisco fee arrangement in June 2015 under Section 34(1)(B) of the Prevention and Combatting of Corrupt Activities Act. They were not advised to file any further report following the receipt of the supplementary report dated 30 July 2015 which confirmed that the matter had been so reported. On receipt of your letter and the reply they sought advice from the attorneys in regard to the matter. In view of the complexity of the legal issues they were advised to consult senior counsel. The advice

received was that an additional report should be made on the basis of reasonable suspicion in terms of Section 34(1)(A) of PCCA in relation to the offence of corruption as defined in Section 3 of that Act.”

**ADV REFILOE MOLEFE:** You do not need the paragraphs that follow but do you confirm that the last two paragraphs are the same as what was contained in the previous response relative to the Directors resolving to file a report and secondly relative to the company having  
10 directed a demand for an accounting of the funds?

**MR CHETAN CHHAGAN VAGHELA:** Yes that is correct Chair.

**ADV REFILOE MOLEFE:** Can we then turn to Annexure CV30 on page 170? This is the second last response by Neotel to the reports made by Deloitte. Is that correct?

**MR CHETAN CHHAGAN VAGHELA:** Yes that is correct Chair.

**ADV REFILOE MOLEFE:** And to which report is this letter addressing itself?

**MR CHETAN CHHAGAN VAGHELA:** It is in response to the CCTV transactions in respect of PCCA and FICA.

20 **ADV REFILOE MOLEFE:** Yes. Can you please take the Chair through paragraph 2 of that letter?

**MR CHETAN CHHAGAN VAGHELA:** “In response to the management’s discussions with you and the inquiry as to the evidence upon which you base your belief that the relevant officers ought reasonably to have

known or suspected the offence of corruption you  
advice that your belief was based upon the content  
of paragraph 25 of the first preliminary report from  
the attorneys dated 19 May 2015. The paragraph in  
question deals with the discovery as part of the  
analysis of electronic communications of  
Francois Van Der Merwe of a draft letter apparently  
prepared by Van Der Merwe which appears to be an  
adaption of the original letter dated 6 January 2014  
10 alleged to have been addressed by Homix to Neotel  
in relation to the Cisco transaction. The adaptation  
of the draft is to change the addressee to Techpro  
and to change the subject matter to the  
replacement of CCTV equipment and the value of  
the project is estimated to be between 100 million  
and 200 million excluding VAT. The fee amount has  
changed to R45 million. Minutes later the same  
mail was sent by Van Der Merwe to another Homix  
related email address with the invitation to please  
20 adjust and paste.”

**ADV REFILOE MOLEFE:** Yes. It then goes further to discuss  
Werksmans report.

**MR CHETAN CHHAGAN VAGHELA:** Yes.

“There is however no evidence in the Werksmans  
report the draft letter or any revision thereof was

ever forwarded by Homix to Techpro nor is there any basis for the conclusion reached by you in your letter that a success fee arrangement of R45 million related to the CCTV transaction was made by Homix to the supplier of Neotel. The Board of the company has no knowledge of any such arrangement and enquiries made on its behalf with Techpro produced a denial of the existence of any such arrangement or the payment by Techpro of any amount by that company to Homix. The company itself has not paid any such amount to Homix or to Techpro.”

**ADV REFILOE MOLEFE:** Yes. Then the letter addresses itself to commerciality aspect from page 171. At the second paragraph on that page speaks to the company having – having been advised in relation to the reporting obligation. Is that correct?

**MR CHETAN CHHAGAN VAGHELA:** Yes.

**ADV REFILOE MOLEFE:** Please take the Chair through that aspect and the paragraph that follows.

20 **MR CHETAN CHHAGAN VAGHELA:** “The company has been advised and accepts that a reporting obligation based upon reasonable suspicion requires a critical analysis and assessment of the information and evidence upon which the suspicion is to be based. In the absence of any evidence that any letter was

in fact addressed by Homix to Techpro or that any agreement was entered into between Homix and Techpro or that any payments past between those entities there is no reasonable basis for your proposition that the commerciality and business lawful purpose of fees to Homix in either transactions relating to the same customer brings into question the CCTV transactions and related success fees proposed and or paid.”

10 **ADV REFILOE MOLEFE:** Next.

**MR CHETAN CHHAGAN VAGHELA:** “We respectfully suggested in the absence of any evidence in the records of the company of any payment of a fee in respect of either of the CCTV transactions the absence of any evidence that any contract was in fact entered into between Homix and Techpro and the outright denial by Techpro of any knowledge of or payment to Homix reflect that your assumption does not meet the requirements of reasonable suspicion in a manner which justifies the report under Section 34(1)(A) of PCCA.”

20

**ADV REFILOE MOLEFE:** Yes. Now all these responses that Neotel wrote to Deloitte in response to the reports ...

**MR CHETAN CHHAGAN VAGHELA:** Yes.

**CHAIRPERSON:**



**ADV REFILOE MOLEFE:** Did Deloitte take the matter any further with Neotel?

**MR CHETAN CHHAGAN VAGHELA:** We did Chair. However the letter of – the letter of 7 March where they dispute they CCTV transactions they subsequently agree to on 9 March out of abundance of caution and so we – we had suspicion around the transactions and - and it was a matter to report them and to investigate them. Not to – not to negate a fact that we are raising – you know – that there's this information. The onus on the company is to go and further investigate in a bit more  
10 detail given the circumstances that arose, and therefore in our opinion Neotel had failed to report those transactions timeously by the 9<sup>th</sup> of March, and as a result Deloitte had reported all RI's as continuing.

**ADV REFILOE MOLEFE:** And what was the repercussion in that respect?

**MR CHETA CHHAGAN VAGHELA:** The repercussion is that the matter is disclosed in the financial statements as continuing and then IRBA has the ability to act and inform the relevant authorities that they believe need to be informed based on the second RI.

**ADV REFILOE MOLEFE:** Yes, can we then ...(intervention)

20 **CHAIRPERSON:** It would change your view on whether the matter was reportable?

**MR CHETA CHHAGAN VAGHELA:** Chair we didn't change our view, we believed it was reportable and the correspondence from the company does tend to agree with that view because there were differing legal views in the correspondence and so we didn't change our view,

and the company actually did report it but late, so it didn't help resolving the RI.

**CHAIRPERSON:** So didn't the company seek to persuade you to change your view on that?

**MR CHETA CHHAGAN VAGHELA:** They did but they wrote to us on the 7<sup>th</sup> of March seeking to change our view.

**CHAIRPERSON:** Yes.

**MR CHETA CHHAGAN VAGHELA:** We remained firm in our view, and they sought legal advice again and the legal advice concurred with our  
10 view and therefore they decided to report out of abundant caution, however they reported late, we received the reports late and therefore the IR's remained continuing.

**CHAIRPERSON:** Oh I thought you were saying something to the effect that in regard to the CCTV matter you changed your view or something.

**MR CHETA CHHAGAN VAGHELA:** No Chair we didn't change our view there was – the 7<sup>th</sup> of March correspondence was disputing that and then the 9<sup>th</sup> of March correspondence conceded with us and therefore we remained firm that ...(intervention)

**CHAIRPERSON:** You stood your ground on all of the matters?

20 **MR CHETA CHHAGAN VAGHELA:** Yes on all RI's yes.

**CHAIRPERSON:** Ja, okay.

**ADV REFILOE MOLEFE:** Thank you Chair. Can we then return to your statement at paragraph 94 on page 27. In that paragraph you speak to events that took place during the period 9 March 2016 to the 30<sup>th</sup> of June 2016.

**MR CHETA CHHAGAN VAGHELA:** So during this period we were busy with the 2016 audit and a significant outstanding matter that was required was the funding of approximately 1.5 to 2.1 billion to conclude on the going concern of the company. In the absence of further funding from the shareholders or the lenders this delayed the finalisation of the financial statements for 2015/2016, so the company required further funding in order to continue.

At the same time the company was subject to an acquisition by Liquid Telecoms and that acquisition was concluded on the 26<sup>th</sup> of June  
10 2016.

**ADV REFILOE MOLEFE:** Yes and then at paragraph 96 you then speak to events that took place on the 15<sup>th</sup> of September 2016.

**MR CHETA CHHAGAN VAGHELA:** Yes on the 15<sup>th</sup> of September I received approval from the audit committee of Neotel to engage with Kay Tennessee the Group Financial Director of Liquid Telecommunication. In order to consider the impact of the sale transaction and the new shareholder funding on the going concern basis of conclusion. The resolution of the funding shortfall was considered through the sale transaction and this would require the sale  
20 of the company to the new shareholders to be effective and all conditions precedents in the agreement to be met in order to sign the financial statements on a going concern basis.

The sale of the company to Liquid Telecom was completed on the 10<sup>th</sup> of February 2017, with the conditions precedent to the sale and purchase agreement being complete and on this date the financial

statements for the 2015 and 2016 were signed by the auditors.

**ADV REFILOE MOLEFE:** Yes, and what was the status of the audit of the financial statements?

**MR CHETA CHHAGAN VAGHELA:** The audit was completed, however the audited financials remained qualified in respect of the commerciality of the Homix transaction, and disclosure of this matter is noted in the financial statements as well as in the audit report.

**ADV REFILOE MOLEFE:** Yes, then you last deal with what transpired after the financial statements for them to be qualified by Deloitte?

10 **MR CHETA CHHAGAN VAGHELA:** Chair there I mean at that stage the audit is effectively complete, so on the 10<sup>th</sup> of February we had concluded the 2015 and 2016 audits, but the commerciality of the fees paid to Homix remained unanswered and supported.

**ADV REFILOE MOLEFE:** Yes, can I refer you back to page 155 of the bundle, which is Annexure CV 27. Earlier you referred the Chair to a letter by Neotel which you state had been dated the 9<sup>th</sup> of March 2016, is that correct?

**MR CHETA CHHAGAN VAGHELA:** Yes.

20 **ADV REFILOE MOLEFE:** Would that be the letter that appears at page 155?

**MR CHETA CHHAGAN VAGHELA:** Yes.

**ADV REFILOE MOLEFE:** And where in the letter does Neotel appear to have changed its stance in comparison to its previous letter?

**MR CHETA CHHAGAN VAGHELA:** So following our discussions which were conducted in terms of Section 45 it's the fourth paragraph.

**ADV REFILOE MOLEFE:** Yes.

**MR CHETA CHHAGAN VAGHELA:** “Following our discussions which were conducted in terms of Section 45(3) (a) and (b) of the APA you were advised that the company would out of an abundance of caution make a report in respect of the CCTV transaction, based upon the suspicion of offensive corruption under Section 34(1)(a) of FICA. A copy of such report will be provided under separate cover.

**ADV REFILOE MOLEFE:** Yes and you have taken the Chair through this earlier?

10 **MR CHETA CHHAGAN VAGHELA:** Yes.

**ADV REFILOE MOLEFE:** You then conclude your statement in relation to the copy of the contracts that Homix entered into, is that correct?

**MR CHETA CHHAGAN VAGHELA:** Sorry Chair if you just go further on to page 156 in the first paragraph it also then says at the end of that paragraph:

“Out of an abundance of caution the company will report to FICA in terms of Section 29 and a copy of the report will be provided under separate cover.”

20 **ADV REFILOE MOLEFE:** Yes thank you. And the last paragraph, it's stated there that the letter supplements the earlier letter of 7 March 2016, is that correct?

**MR CHETA CHHAGAN VAGHELA:** Yes.

**ADV REFILOE MOLEFE:** And it further says that it replaces the conclusions set out therein, is that correct?

**MR CHETA CHHAGAN VAGHELA:** Yes that's correct.

**ADV REFILOE MOLEFE:** At paragraph 99 of your statement you make reference to the contracts that Homix was, had entered into, is that correct?

**MR CHETA CHHAGAN VAGHELA:** That is correct Chair.

**ADV REFILOE MOLEFE:** You made reference to Annexure CV32 and 33, is that correct?

**MR CHETA CHHAGAN VAGHELA:** That is correct Chair.

**CHAIRPERSON:** If you go back to page 156 the second paragraph from the end of the letter, from Neotel, where it says we therefore  
10 respectfully request your confirmation that you will advise the regulatory body that the suspected reported irregularities relating to the CCTV transactions are no longer taking place, what does that mean?

**MR CHETA CHHAGAN VAGHELA:** It means the company was asking us that they – they were going to report the transactions and therefore in our second report we should report them as the IR not continuing. The issue that we had was that we received the – they reported late, so they had provided the information past our deadline and we had a deadline of the 9<sup>th</sup> of March, so we had got the information subsequent  
20 to us reporting it.

**CHAIRPERSON:** The irregularity that they were saying you must advise the regulatory body that it was no longer continuing was the failure to report?

**MR CHETA CHHAGAN VAGHELA:** That's correct Chair.

**CHAIRPERSON:** So once they have reported even though late they

were saying just confirm that there is no longer a continuing irregularity.

**MR CHETA CHHAGAN VAGHELA:** So Chair had they reported on the 8<sup>th</sup> of March then we would have been able to accede to that but they hadn't at the time of us providing our second report we had not received evidence that they had reported.

**CHAIRPERSON:** Yes.

**MR CHETA CHHAGAN VAGHELA:** And therefore we could not report that it was not continuing, we had to report that it is continuing.

10 **CHAIRPERSON:** Oh, okay.

**ADV REFILOE MOLEFE:** Thank you. The copies of the Homix contracts you have attached as CV32 and 33, and those annexures appear from page 175 of the bundle, is that correct?

**MR CHETA CHHAGAN VAGHELA:** That is correct.

**ADV REFILOE MOLEFE:** Is there anything in particular you wish to draw the Chair's attention to in respect of those agreements.

**MR CHETA CHHAGAN VAGHELA:** Chair the only aspect to draw here is that the agreements were separated to split the 36million and the 25million to be under the threshold of 40million, the agreements were  
20 dated 19 February, if we contracted we contracted in December so it's after the event and the person signing these contracts is not mentioned in any engagement with Homix.

**ADV REFILOE MOLEFE:** And in the first agreement at page 178 of the bundle, paragraph 4 thereof, sets out the consultancy services, is that correct?

**MR CHETA CHHAGAN VAGHELA:** That is correct.

**ADV REFILOE MOLEFE:** And it says there that the consultant agrees to undertake to analyse the requirements of both Neotel and Transnet SOC to find a workable solution to the impasse in negotiations between Neotel and Transnet SOC in regard to the Master Services Agreement, is that correct?

**MR CHETA CHHAGAN VAGHELA:** That's correct.

**ADV REFILOE MOLEFE:** And with regard to the second agreement you have attached if you go to page 190 at paragraph 4 from 4.1, well  
10 paragraph 4 is entitled consultancy services and 4.1 states there that:

“the consultant undertakes to facilitate the successful conclusion of the asset CL referred to in the Master Services Agreement concluded between Neotel and Transnet SOC Limited (Transnet)”

Is that correct?

**MR CHETA CHHAGAN VAGHELA:** That's correct Chair.

**ADV REFILOE MOLEFE:** It then goes on further at 4.2 it says:

“For the purposes of this agreement a customer means Transnet SOC Limited”

20 And it says there:

“(b) that project means the successful conclusion and signature of the assets forming part of MSA concluded between Neotel and Transnet SOC Limited.”

**MR CHETA CHHAGAN VAGHELA:** That's correct.

**ADV REFILOE MOLEFE:** And on the following page, page 191 (c) it



states there that Neotel representative means Francois van der Merwe, is that correct?

**MR CHETA CHHAGAN VAGHELA:** That's correct Chair.

**ADV REFILOE MOLEFE:** And if you go further down to paragraph 6 of that agreement on page 191 it states there at 6.1:

“that for satisfactory performance of the consultancy services in accordance with the terms and conditions of the agreement Neotel shall pay to the consultant the fees as follows:

10 6.1.1 For the successful implementation and finalisation of an operational agreement relating to the future maintenance, insurance, and operating of the assets bought by Transnet ....”

And there's a correction from “for” to “from” and it therefore reads:

“of the assets bought by Transnet from Neotel a full and final once off fee of R25million payable 30 days after signature of the operational agreement between Neotel and Transnet SOC Limited currently anticipated for 18 March 2015 or any other later date agreed by the Neotel and Transnet SOC Limited.”

Is that correct.

**MR CHETA CHHAGAN VAGHELA:** That's correct.

20 **ADV REFILOE MOLEFE:** It then further goes on to say at 6.1.2 that the fees contemplated in 6.1 above are excluding VAT, is that correct?

**MR CHETA CHHAGAN VAGHELA:** That is correct.

**ADV REFILOE MOLEFE:** And if I may just revert back to the first agreement which starts at page 177 under Annexure ...(intervention)

**MR CHETA CHHAGAN VAGHELA:** Chair if you – what you've just read

is in contradiction of the original Homix letter which talked about the asset cell.

**ADV REFILOE MOLEFE:** Yes, now on page 180 of the first agreement paragraph 6 which speaks to fees states in 6.1 that for satisfactory performance of the consultancy services in accordance with the terms and conditions of the agreement Neotel shall pay to the consultant a fee as follows and it says there 6.1.1 for the successful conclusion and signature of the Master Services Agreement, a fee of 2% of the value of the contract, and in brackets it says there (currently at R1.8billion). At  
10 611.2 it says that the fees contemplated in 6.1 above are excluding VAT.

**MR CHETA CHHAGAN VAGHELA:** That's correct.

**ADV REFILOE MOLEFE:** Then at paragraph 7 of that agreement it states there payment of fees ...(intervention)

**MR CHETA CHHAGAN VAGHELA:** Chair it would be if I refer you to 6.3 and that clause comes out of the Homix submission back to us.

**ADV REFILOE MOLEFE:** Yes, which is the letter that you took the Chair through earlier?

**MR CHETA CHHAGAN VAGHELA:** Yes, which the Chair, the wording is  
20 very similar.

**ADV REFILOE MOLEFE:** Yes, and at paragraph 7 where it speaks of payment of fees 7.1 states:

”there that the consultant will invoice Neotel for consultancy services rendered on completion of the above set out in Clause 6. 7.2 states for the avoidance of doubt all amounts

due and payable under this agreement will be paid in respect of the Master Service's agreement after signature of the Master Services agreement and after mobilisation fee has been received by Neotel from Transnet SOC Limited."

And lastly at 7.3 it says that:

10 "payment to the consultant of the fee shall constitute the entire and sole liability of Neotel for performance under this agreement. The consultant shall not be entitled to any additional fee or other compensation for any Neotel business facilitated through the services of the consultant unless expressly agreed in writing to the contrary. Neotel shall not be liability for any expenses or costs incorrect incidental to the performance of this agreement."

Do you have any comment on the consultancy services as set out in the agreements and the fee arrangements that are also set out in these agreements?

20 **MR CHETA CHHAGAN VAGHELA:** The only comment I would have is that the 7.2 paragraph implies that a payment would have been received from Transnet first and then subsequently Neotel would make a payment.

**ADV REFILOE MOLEFE:** And in respect of the other agreement?

**MR CHETA CHHAGAN VAGHELA:** I mean the agreements were – this is part of our concern around these agreements, it's that they are quite inconsistent to the fact that – so when you talk to the CEO he talks about an asset cell and when you look at the letter you have an asset

cell, when you look at the agreement you talk about an operational agreement, the CFO refers to that, so you have various inconsistencies in the agreement. This is also a Neotel agreement whereas – and the supplier or the vendor is actually Homix, but it's not a Homix agreement to us. So there are various elements that do raise questions around the agreements and – but this was I think you know the our view you initially had the 12<sup>th</sup> of December letter, and then these were put together in February to address any risk.

**ADV REFILOE MOLEFE:** Yes, and in respect of the commerciality of these – of the Homix transactions, is there anything further you wish to bring to the Chair's attention?

**MR CHETA CHHAGAN VAGHELA:** Chair I think as auditors we are required to be highly sceptical and the more inconsistencies we get the more evidence we require, and therefore when we look at the evidence there was back and forth, however the more questions we had we did not more evidence and we never – that was never resolved and that's resulted in the commerciality remaining qualified in the nature of financial statements.

**ADV REFILOE MOLEFE:** Thank you. Chair we have no further questions for Mr Vaghela.

**CHAIRPERSON:** Thank you very much, you are excused. Do you know anything about tomorrow's arrangement, how many witnesses are scheduled for tomorrow is it one only?

**ADV REFILOE MOLEFE:** Chair as far as I know it is only one witness who is coming tomorrow.

**CHAIRPERSON:** Okay, then we will adjourn and start at ten tomorrow.

**ADV REFILOE MOLEFE:** Thank you Chair.

**CHAIRPERSON:** We adjourn.

**INQUIRY ADJOURNS TO 12 JUNE 2019**