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20

**PROCEEDINGS RESUME ON 4 DECEMBER 2019**

**CHAIRPERSON:** Good morning Ms Sello.

**ADV MAHLAPE SELLO:** Good morning.

**CHAIRPERSON:** Good morning everybody.

**ADV MAHLAPE SELLO:** Morning Chair.

**CHAIRPERSON:** I see that when we are going to have this technical evidence of Mr Chabi we do not have any journalists at the back. I think Mr Chabi chased them away with all the technical terms.

**ADV MAHLAPE SELLO:** Perhaps Chair it might be they prefer to follow  
10 it on TV.

**CHAIRPERSON:** Ja well maybe this is because we are starting early they will come later.

**ADV MAHLAPE SELLO:** Later.

**CHAIRPERSON:** Good morning Mr Chabi.

**MR CHABI:** Good morning Chair.

**CHAIRPERSON:** Let us – I think let us just redo the oath and – or affirmation? I think Ms Sello yesterday we were dealing with the types of evidence – you not listening to me.

**ADV MAHLAPE SELLO:** I apologise Chair. I got distracted. My  
20 apologies.

**CHAIRPERSON:** You – Ms Molefe is much more compelling too.

**ADV MAHLAPE SELLO:** She is a persuasive junior that I will admit. Chair I do apologise.

**CHAIRPERSON:** She is powerful. But it is not her fault.

**ADV MAHLAPE SELLO:** Not at – it is mine Chair.

**CHAIRPERSON:** Now I was saying that yesterday we were listening to evidence that is very non-technical.

**ADV MAHLAPE SELLO:** Very non-technical.

**CHAIRPERSON:** Very non-technical and after Mr Chabi we will listen to evidence that is very non-technical.

**ADV MAHLAPE SELLO:** Still.

**CHAIRPERSON:** Ja. Okay alright.

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

**MR CHABI:** My name is Alister Ouemakoua Chabi.

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

**MR CHABI:** I do not.

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

**MR CHABI:** I do.

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

**MR CHABI:** So help me God.

20 **CHAIRPERSON:** Thank you. I think to the extent that it is necessary – it may be necessary to refresh our memories just a little bit with what – on what Mr Chabi testified about last time. You may do so but I think if at all possible let us not stretch it. Let us do only insofar as it is really necessary.

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

**CHAIRPERSON:** I have got – we have got two other witnesses coming up today.

**ADV MAHLAPE SELLO:** Understood.

**CHAIRPERSON:** So we would like to – I would like us to finish as soon as possible without doing any injustice to Mr Chabi's evidence.

**ADV MAHLAPE SELLO:** Indeed Chair. In anticipation of that we have taken the liberty to prepare something that we call a working tool. It is a little document we are going to hand over to the Chair.

**CHAIRPERSON:** Yes.

10 **ADV MAHLAPE SELLO:** And basically it is to extract the salient issues coming out of Mr Chabi's evidence last Wednesday.

**CHAIRPERSON:** Last time.

**ADV MAHLAPE SELLO:** Yes.

**CHAIRPERSON:** Hm.

**ADV MAHLAPE SELLO:** And confine ourselves really to those aspects that are relevant to the issue he will be speaking to.

**CHAIRPERSON:** Yes, yes, yes.

**ADV MAHLAPE SELLO:** We all have a copy we can just – he will ...

**CHAIRPERSON:** Yes.

20 **ADV MAHLAPE SELLO:** Mr Chabi will lead us very briefly – quickly through it [indistinct] copy.

**CHAIRPERSON:** Yes.

**ADV MAHLAPE SELLO:** Document.

**CHAIRPERSON:** Okay.

**ADV MAHLAPE SELLO:** And then we get to the issue at hand for

today.

**CHAIRPERSON**: Okay.

**ADV MAHLAPE SELLO**: We have also prepared for you Chair a glossary of terms.

**CHAIRPERSON**: Oh yes that is...

**ADV MAHLAPE SELLO**: It is – the glossary of terms will in time form part of your file.

**CHAIRPERSON**: Oh it is...

**ADV MAHLAPE SELLO**: Yes the working document is just for today to  
10 help us work through the next part of the evidence.

**CHAIRPERSON**: Okay. Okay.

**ADV MAHLAPE SELLO**: It is the glossary of terms is not paginated yet because it is assumed it is not final.

**CHAIRPERSON**: Hml.

**ADV MAHLAPE SELLO**: As we go through his evidence today it might grow and we will update and then...

**CHAIRPERSON**: Ja.

**ADV MAHLAPE SELLO**: Update your file accordingly.

**CHAIRPERSON**: Okay.

20 **ADV MAHLAPE SELLO**: Thank you Chair. So the first document the landscaped document is what we call a summary of Mr Chabi's previous evidence.

**CHAIRPERSON**: Oh yes.

**ADV MAHLAPE SELLO**: Yes.

**CHAIRPERSON**: Huh-uh.

**ADV MAHLAPE SELLO:** And it is that which Mr Chabi will take us through very quickly now.

**CHAIRPERSON:** Ja.

**ADV MAHLAPE SELLO:** Just so we – we locate ourselves in his statement the Chair will recall that at paragraph 2.1 of Mr Chabi's statement he sets out the tasks that he had to undertake.

**CHAIRPERSON:** Ja.

**ADV MAHLAPE SELLO:** The first was to review the business case of 38.6 billion and the second was to assess the accuracy of the 38.6 billion. The third was to identify the reasons for the increase from 38.6 to 54 billion. And then to test the possibility of the reasons advanced for that increase. The first two is what we dealt with last week which is – and the conclusion was that he was happy with the review – with the business case itself and he considered that the ETC Estimated Total Cost of 38.6 billion fully validated. What we then are going to deal with today is the final aspect. Now Mr Chabi we have prepared this little table for ourselves to try and understand where you were at last week so that we are better able to follow your evidence today. If you could just quickly take us through the document – the work tool that we provided you with?

**MR CHABI:** Okay. Thank you Advocate. I can just starting off Chair with page 1 I think. What we looked at to start off with having read the mandate address what the mandate required of us was the review of the business case. We looked at the – how revenue was modelled in the business case. We looked at the sub-variables making up revenue

components, tariffs, volume, and distance. We also looked at how the costs components were modelled. And I think all of those were over a 36 year period. We then went on to look at where ETC fell within that. We were happy that their assumptions in relation to those variables were reasonable. And as [indistinct] which they were escalated over the period. And then just to highlight the components making up revenue as we looked at them. We looked at the total cost of ownership and those relate to the immediate costs of acquiring and operating the locomotive. We looked at the infrastructure costs. We  
 10 looked at the wagon costs. We looked at overhead and tax costs. We spoke a bit of how tax was modelled. We were happy with the way it was done because it was conservative.

**ADV MAHLAPE SELLO:** Just before – just before you go overleaf you – you have a point there and Chair this is – this being a working document sometimes it is corrected and amended by hand. We apologise. We – you indicate that the NPV was validated?

**MR CHABI:** Correct so we were happy with the final result of 2.7 billion.

**ADV MAHLAPE SELLO:** And that – as we said last week that is just  
 20 basically profit.

**MR CHABI:** It is.

**ADV MAHLAPE SELLO:** Over the life of the project.

**MR CHABI:** Over the life of the project. Correct.

**ADV MAHLAPE SELLO:** Over the life of the project yes.

**CHAIRPERSON:** Correct. We then went on to test the accuracy of the

38.6 billion delving into the components of the 38.6 billion and we looked at the forex costs – the forex hedging costs allowed for [indistinct] okay. We also looked at the inflation costs allowed for and we looked at inflation locally and inflation abroad. In this instance we used the US as an indicator of the inflation abroad. We were happy with the – the assumptions made around those variables and the inclusion of those variables. We found them to be reasonable, justifiable in the business case. Also to note that the 38.6 billion included continuance costs of about R2.2 billion. So we were happy  
 10 with that figure.

**ADV MAHLAPE SELLO:** Okay you then briefly deal with the question of profitability at 38.6 billion.

**MR CHABI:** Correct. So on the profitability end we looked at the present value of the revenue which sat about R109 billion. We had a slide on that. We also looked at the present value of a cost which sat at about R106 billion. In that R106 billion you had ETC costs of 38.6 billion but as mentioned the R106 billion is the present value of all costs. So the present value of the ETC and I think we touched it very high level on this was about R20 billion. That is when you bring back  
 20 the ETC costs of 38.6 billion to current terms. At that time it was 18 April 2013. We spoke about Transnet's hurdle rate at the time which was 18.56 %. And we also did some sensitivity analysis around that rate to give you Chair an indication of how that profit of 2.7 billion varied or changed with the change in the risk and in the hurdle rate. Sorry so the hurdle rate was also – was equal to the risk discount rate



in this instance. Apologies. I think we touched of this – the nett present value reflects the profitability of the project. In fact we used profitability and nett present value synonymously in last week's presentation. We also spoke about a lower of the hurdle rates in this case also the risk discount rate resulting in an increase in your profit position in this instance the nett present value.

**ADV MAHLAPE SELLO:** So – so the hurdle rate at 18.56 gives an NPV of 2.7 billion?

**MR CHABI:** Correct.

- 10 **ADV MAHLAPE SELLO:** But is that NPV were to reduce – no if that hurdle rate were to reduce say to 14 we expect a higher NPV.

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** Because the higher profit.

**MR CHABI:** Correct. In fact the 12.56 which was the weighted average cost of capital. Essentially which just collectively what your capital providers are levying on you to give you the capital. And I say collective because we are looking at debt and equity in this instance. Okay. The weight average cost of capital at the time was 12.56%. At 12.56% the profitability of the project was around R34.1 billion. Okay.

- 20 It is an indication that that profitability increases as you lower your discounts or hurdle rate.

**ADV MAHLAPE SELLO:** So would we be correct then in drawing the conclusion that the hurdle rate is – is one of the tools that in this case Transnet used to determine whether the project is profitable or not an to enable Transnet to take the appropriate decision about that going

forward with the project or not?

**MR CHABI:** It is was a key parameter in determining the profitability of the project.

**ADV MAHLAPE SELLO:** Okay. Thank you, you may continue.

**MR CHABI:** We move onto ...

**ADV MAHLAPE SELLO:** We move onto forex and escalation now.

**MR CHABI:** Okay. We also looked at forex hedging and that was a – well it was a discussion to be had considering that the mandate required asked to determine whether 3.6 billion allowed for forex  
10 hedging costs and inflation. So we discussed that at length and went as far as validating [indistinct] that is inflation as opposed to. Okay. It is [indistinct].

**ADV MAHLAPE SELLO:** Yes.

**MR CHABI:** Okay so forex hedging escalation cost were considered amongst other variables. So we looked at other variables outside of ETC as mentioned to be able to speak the 2.7 you had to look at the project in its entirety and not just the ETC which made up a – a tiny proportion of the total cost. In this instance 20% of the total project costs and about 47% of the total cost of ownership. Okay. So we were  
20 happy with those variables.

**ADV MAHLAPE SELLO:** Yes.

**MR CHABI:** I think the next page just speaks to the definition of what hedging is.

**ADV MAHLAPE SELLO:** Then you deal specifically – you told – you just us that you considered two factors which the forex hedging.

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** On the one hand and inflation on the other.

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** And your mandate required you to determine whether they were included in the 38.6 billion ETC. So from your page 4 at – under 4 you first deal with forex hedging and if one looks overleaf you deal with inflation.

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** So just so we understand the concepts and  
10 how they apply just briefly take us through page 4 as regards forex and then you move over to the inflation overleaf.

**MR CHABI:** Okay. So hedging as I explained the last session was – is simply a transaction that you enter into to eliminate risk. We spoke about forex hedging in this instance. So to protect – Transnet to protect itself against the changes in values resulting from fluctuations in the foreign currency in the future would have entered or would have had its suppliers enter into a hedging so that the cost is not passed on to them. Okay. At the very least would have entered into those transactions itself if it found that the OEM' s costs were excessive.

20 **ADV MAHLAPE SELLO:** Okay.

**MR CHABI:** Yes by the policy requirements. I mean you can hedge almost anything. I see you have highlighted there some of the elements you could hedge. You can hedge almost anything. In this day and age you can price almost anything, you can hedge almost anything. I think some of the things you can hedge are commodities, maize, oil.

So anything that you can price essentially can be hedged.

**ADV MAHLAPE SELLO:** And that would be the price going forward?

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** So you are hedging what is yet to happen.

**MR CHABI:** What is yet to come.

**ADV MAHLAPE SELLO:** Ja.

**MR CHABI:** That is correct. Yes. In this instance we were largely concerned with the hedging of foreign exchange risk. And to a certain extent inflation but I think we will touch on that. And the idea was to  
10 pass the inflation costs onto the OEM's but then there were alternatives that Transnet could have looked at.

**ADV MAHLAPE SELLO:** Yes.

**CHAIRPERSON:** Where inflation costs were concerned.

**ADV MAHLAPE SELLO:** So if – if you enter into a long term seven year contract of which are component the price thereof is reflected in foreign currency you would – it make – it is prudent to hedge that currency going forward?

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** Is that what ...

20 **MR CHABI:** The policy required Transnet to do so. So you would actually hedge the escalated price.

**ADV MAHLAPE SELLO:** Okay. And the effect of that would be if the fluctuation – if the fluctuation is adverse to the rand going forward you are locked into a lower rate of exchange as at the date of concluding the hedging agreement.

**MR CHABI:** That is correct. So with hedging you give up any upside.

**ADV MAHLAPE SELLO:** Ja.

**MR CHABI:** And you also give up – you also protect yourself against the downside. In this instance because as mentioned Transnet did not want – wanted to eliminate the risk not take advantage of upside and protect the downside. That is partial hedging.

**ADV MAHLAPE SELLO:** Okay.

**MR CHABI:** So in this instance it was full hedge giving up the upside. So if the rand did well Transnet will not benefit from it. If the rand did  
10 poorly Transnet will not suffer from it.

**ADV MAHLAPE SELLO:** Okay. Thank you. Then I think we can deal with the inflation issue.

**MR CHABI:** We also looked at the inclusion of inflation which is synonymous with escalation costs in the case of 3.6 billion. We looked at the assumptions around inflation on the local side. The assumptions around inflation on the foreign side. We were happy with those assumptions.

**ADV MAHLAPE SELLO:** Now let us remind ourselves why do we look at both local and foreign.

20 **MR CHABI:** Because the locomotive had a foreign component and a local component. It would have acquired the foreign component abroad. So that would have been subjected to foreign economic conditions. In this instance the United States.

**ADV MAHLAPE SELLO:** And the local component would then be South – subjected to South African conditions?

**MR CHABI:** Economic – correct.

**ADV MAHLAPE SELLO:** Okay.

**MR CHABI:** Correct. So you had to look at both economies and allow for the variations in those economies on the price of the locomotive.

**ADV MAHLAPE SELLO:** And – and – we have heard from previous witnesses such as Mr Callard and MNS who conducted an investigation into this transaction that the production of the locomotives was on average split as to 60% foreign component and 40% local component. But each OEM manufacturer had provided their own split between  
10 foreign and local components.

**MR CHABI:** Okay so the requirement on diesel locomotives was 55 as per the Department of Trade and Industry requirements – sorry – 55 local components.

**ADV MAHLAPE SELLO:** Yes.

**MR CHABI:** For diesel locomotives and 40% minimum 55% had to be acquired locally.

**ADV MAHLAPE SELLO:** Okay.

**MR CHABI:** Sourced locally – manufactured locally. That is on the diesel end. On the electric end a minimum of 60% had to be  
20 manufactured locally.

**ADV MAHLAPE SELLO:** Now on those percentages for electric and diesel that is where we will apply the South African economic conditions?

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** Yes.

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** The remainder then would then be sourced from abroad?

**MR CHABI:** It would be subjected to foreign economic conditions.

**ADV MAHLAPE SELLO:** Okay.

**MR CHABI:** Yes.

**ADV MAHLAPE SELLO:** So then would we be correct in concluding that in calculating inflation going forward you must be mindful of that local foreign split?

10 **MR CHABI:** You must be.

**ADV MAHLAPE SELLO:** And apply the inflation of – on the local component – you apply to the local component the South African inflation rates and you apply to the foreign component the foreign rate?

**MR CHABI:** That is correct.

**ADV MAHLAPE SELLO:** Okay.

**MR CHABI:** And each OEM would have provided their foreign components at the time of the negotiation but I suppose we will deal with that a bit later.

20 **ADV MAHLAPE SELLO:** Okay. So we are happy with the variables using the R38.6 billion validation exercise when we analysed the financial model. PPI which is a producer price index – producer price inflation okay was applied locally. On the foreign the United States CPI was applied. I ideally would have preferred as mentioned last week PPI to have been applied on that component – on the foreign component however having analysed the differences between CPI and

PPI we found them to be very highly correlated and positively so. The difference has been very marginal to the tune of about 0.3%. The impact on the 38.6 billion was also negligible so we were happy with the assumptions.

**ADV MAHLAPE SELLO:** Okay. So then it is on – on this basis inter alia that you make your conclusion at page 6.

**MR CHABI:** Correct. So in concluding the 38.6 billion as per the recommendations of the mandate included forex hedging costs. So they allowed for foreign currency hedging costs. They included  
10 escalation costs locally and abroad. And the 38.6 billion was an acceptable estimated total cost for the 1064 locomotives.

**ADV MAHLAPE SELLO:** Just briefly talk to us about the rates to – for inflation to be applied where accepting that inflation is a forward looking calculation of inflation. It is a forward looking exercise where – we just do not dream up numbers they come from somewhere.

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** So in order to validate firstly whether inflation was applied and whether it was applied at a correct rate, what do we have regard to?

20 **MR CHABI:** Okay so ideally you want to look at what inflation has been historically.

**ADV MAHLAPE SELLO:** Yes.

**MR CHABI:** And that is on the PPI end. If my recollection serves me right. It was about – on the PPI end it was about 3.6% I think over ten years and about 5.4% over five years. I will have to check that again.



I do not have the facts at hand. What was applied in the business case was a figure ranging from 5.7 to about 5.9. You also want to look at what the market implies in going forward and you often get that from instruments on the market. Floating rate – sorry floating rate notes versus nominal bonds. At the time what the market had implied going forward was about 5.7%. What you would have gotten at the time on a ten year government bond was about 8%. It was between 8 and 9%. I think what you would have gotten on a floating rate note at the time was about 2% thereabouts. I think looking at the average over that  
 10 month in April what was implied was about 5.7%.

**ADV MAHLAPE SELLO:** You do – you do at page 5 indicate that both indices can be measured and compared locally and to do so we obtain our information from Stats SA.

**MR CHABI:** On inflation correct. You also obtain information from Stats SA and Stats SA will give you the historical inflation rates.

**ADV MAHLAPE SELLO:** Yes.

**MR CHABI:** And hence my comment on the history what it has been in the past but BOSS is not always a good indication of what you can expect going forward. So you have got to look at in addition to what  
 20 the market [indistinct] imply policies very key. We have got our own monetary policy committee here which – of which has one of its targets to limit inflation between 3 and 6%.

**ADV MAHLAPE SELLO:** Okay.

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** And insofar as an international component is

concerned.

**MR CHABI:** You adopt the same approach. You look at those.

**ADV MAHLAPE SELLO:** And what organisations do we look for for – to obtain that information so in planning a project we can apply the correct inflation rates going forward.

**MR CHABI:** Well wherever you can obtain inflation data from – on the United States the EU. You have got the OECD. OECD produces inflation information, inflation both PPI and CPI. I am going back historic data. Provides historic data on those two variables. You have  
10 got the Federal Reserve Bank of San Louis, Fred also does the same. Trade Economics. So all of these various sites provide you with historical information. We looked at the vast majority of them just to ensure that what we were getting was consistent and it was consistent.

**ADV MAHLAPE SELLO:** So if – if – would I be correct then in concluding that if two people worked on the same project and each was to independently provide for inflation going forward both locally and on the foreign component they should in all probability arrive at the same figures as to what the inflation will be because they are working off the same base information.

20 **MR CHABI:** Well not necessarily the same figures going forward okay but they should not be too far apart. You would not expect their projection of the inflation going forward to be too far apart.

**ADV MAHLAPE SELLO:** What is an acceptable margin of the difference between the two?

**MR CHABI:** I would say about 0.5%.

**ADV MAHLAPE SELLO:** .5%.

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** So the – what I arrive at and what you arrive – no not I because I could not never but if another accountant or actuary were to arrive at a figure for inflation going forward and you did the same exercise you would expect a margin of 0.5% difference?

**MR CHABI:** Difference between the two ja.

**ADV MAHLAPE SELLO:** Okay. Thank you. So Chair that is where we parted last week Wednesday.

10 **CHAIRPERSON:** Well I must just say that I mean last time we struggled for some time.

**ADV MAHLAPE SELLO:** Yes.

**CHAIRPERSON:** With me hearing his evidence and at some stage I would hear him quite well and I think that is when he would sit a little bit distance from the microphone and so on. But then of course he would raise his voice then it would be audible, then it would go down.

**ADV MAHLAPE SELLO:** Yes.

**CHAIRPERSON:** But I saw a clip on television where he was giving evidence and listening on TV his evidence was very audible, very clear.

20 So I do not know whether there is something with the technical stuff we are using that those who are watching on TV will hear him very well and certainly I sometimes do not and sometimes I do. But it is okay we will – we will just continue and at least the transcript will be there.

**ADV MAHLAPE SELLO:** Yes but in listening to his sum-up Chair I was of the view that the audio had improved even on the – in the room not

much?

**CHAIRPERSON**: Well it is not as bad as ...

**ADV MAHLAPE SELLO**: As it was then.

**CHAIRPERSON**: It was at some stage last time. Because it was not bad throughout. There were times when it was okay. There were times when it was not so okay. So it is not as bad as it was at some stage so – so it is fine I can hear sometimes, sometimes I can hear but it is okay. We are two – we have gone – we have advanced too far to try anything new.

10 **ADV MAHLAPE SELLO**: Anything new.

**CHAIRPERSON**: Ja let us just continue and try the tricks that we were trying last time.

**ADV MAHLAPE SELLO**: Then –

**CHAIRPERSON**: Okay.

**ADV MAHLAPE SELLO**: Then Mr Chabi is to bear in mind that perhaps – you – watch out that your voice does not dip.

**MR CHABI**: Okay.

**ADV MAHLAPE SELLO**: Because then I think that is when you become most inaudible.

20 **CHAIRPERSON**: Ja.

**ADV MAHLAPE SELLO**: And if you do sometimes and I hear it I will step in and remind you to raise your voice.

**CHAIRPERSON**: No that – if it becomes too bad I will tell you also then we will see but ...

**ADV MAHLAPE SELLO**: Hopefully it does not get bad Chair.

**CHAIRPERSON:** Ja let us hope it does not get bad. Okay alright.

**ADV MAHLAPE SELLO:** So Chair then – with that summary of the evidence coming out of last week we are technically now at page 36 of Mr Chabi's statement.

**CHAIRPERSON:** 36?

**ADV MAHLAPE SELLO:** 36 Chair.

**CHAIRPERSON:** Ja. Okay. I wonder why you say technically.

**ADV MAHLAPE SELLO:** Chair?

**CHAIRPERSON:** I wonder why you say technically. I thought you say –  
10 you said we are technically at page 36.

**ADV MAHLAPE SELLO:** I say technically because we had started it but I am restarting it.

**CHAIRPERSON:** Oh okay.

**ADV MAHLAPE SELLO:** Yes. In order for the remainder to make sense it is necessary again to retrace our steps.

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

**ADV MAHLAPE SELLO:** Thank you.

**CHAIRPERSON:** Thank you.

**ADV MAHLAPE SELLO:** You have got your statement with you Mr  
20 Chabi? BB8B1. Oh you used it as a -

**MR CHABI:** As a pedestal.

**ADV MAHLAPE SELLO:** Okay. Then if you could just turn to page 36 of that file. From you paragraph 9.47 you in part deal with the original ETC of 38.6 billion right. You introduce a memorandum – no before I say that let me retrace my steps. Just remind us when was the 38.6

billion ETC approved?

**MR CHABI:** To my recollection it was sometime in April.

**ADV MAHLAPE SELLO:** Of which year?

**MR CHABI:** 2013 sorry.

**ADV MAHLAPE SELLO:** So the 36 – 38.6 billion is approved April 2013. We are now according to your paragraph in 2014 because you refer us to a memorandum dated 23 May 2014.

**CHAIRPERSON:** I am sorry. According to which paragraph?

**ADV MAHLAPE SELLO:** 9.4-7 Chair.

10 **CHAIRPERSON:** Oh. Okay.

**ADV MAHLAPE SELLO:** And then that memorandum is - is annexed as AC5. You confirm that? Mr Chabi.

**MR CHABI:** Just checking. Confirm.

**ADV MAHLAPE SELLO:** Okay.

**MR CHABI:** It is.

**ADV MAHLAPE SELLO:** Now your - your AC5 as at page 165 of your file is a document running into some 20 pages and it appears at the last page at page 182 to have been signed and/or recommended by the Group Chief Financial Officer of Transnet. TFR Chief Executive and  
20 that is Transnet Freight.

**CHAIRPERSON:** Do you say that document ends at page 1-2-2?

**ADV MAHLAPE SELLO:** 1-8-2 Chair.

**CHAIRPERSON:** 182?

**ADV MAHLAPE SELLO:** 1-8-2.

**CHAIRPERSON:** Oh.

**ADV MAHLAPE SELLO:** It runs from ...

**CHAIRPERSON:** On the same page where his statement is? On the same bundle?

**ADV MAHLAPE SELLO:** In the same bundle.

**CHAIRPERSON:** Ja. One ...

**ADV MAHLAPE SELLO:** It starts at 1-6-5. It is AC5.

**CHAIRPERSON:** It starts at 165?

**ADV MAHLAPE SELLO:** 165 ...

**CHAIRPERSON:** Oh.

10 **ADV MAHLAPE SELLO:** And it is Annexure AC5.

**CHAIRPERSON:** Oh.

**ADV MAHLAPE SELLO:** It is before the divider Chair.

**CHAIRPERSON:** Why did I think I was hearing page 85? A memorandum at page 85.

**ADV MAHLAPE SELLO:** I apologise. I - I ...

**CHAIRPERSON:** Okay. 165 going up to ...

**ADV MAHLAPE SELLO:** The Chair confirms that that is the memorandum. It is - it is on a Transnet letterhead.

**CHAIRPERSON:** Yes.

20 **ADV MAHLAPE SELLO:** That document runs up to page 1-8-2.

**CHAIRPERSON:** Okay. Thank you.

**ADV MAHLAPE SELLO:** Thank you and I am just pointing out that at page 1-0-2 that it is signed by the Group - the then Group Chief Financial Officer of Transnet. It is recommended by him. Followed by the TFR Chief Executive and TFR would be Transnet Freight and the

Group Chief Executive and it is signed by the three of them between the period 21 May and the last signature is 23 May 2014.

**CHAIRPERSON:** I was wondering why all the people who signed on page 182 were recommending and there was nobody approving, but that is because it was addressed to the Board to approve.

**ADV MAHLAPE SELLO:** Indeed Chair.

**CHAIRPERSON:** *Ja.*

**ADV MAHLAPE SELLO:** Yes. Indeed.

**CHAIRPERSON:** Okay.

- 10 **ADV MAHLAPE SELLO:** We have encountered this memorandum before in - with other witnesses Chair, but we did not deal with the figures set out therein and just to - to remind ourselves as - as Mr Chabi has pointed out the 38.6 billion was approved by the Transnet Board in April 2013. From then there were bids and there were the evaluations and you know all the necessary steps that go with public procurement and in May 2014 this memorandum is generated and presented to the Board.

- 20 The purpose of which was to seek Board approval to increase the 38.6 billion ETC to 54.9 billion. Mr Chabi - 50 - 54.5. I always get the figures wrong. Thank you Mr Chabi. Mr Chabi's task here was to test the validity of that increase and as his statement indicates he does so with reference to the same memorandum, because the memorandum sets out the basis on which that - that increase is justified.

He then looks at the various factors advanced in support of that increase and then expresses a view on them and the basis for why



his view is different where it is different. So that is what we will be dealing with. Am I correctly summarising what you are about to do?

**MR CHABI:** That is correct.

**ADV MAHLAPE SELLO:** Thank you.

**CHAIRPERSON:** And of course what would be important is to see whether the information and motivation that was placed before the Board is correct information and the motivation whether it is sound and there was no misleading information placed before the Board. That - that would also be important quite apart from any information or  
10 motivation that might be wrong but bona fide.

So one would look for wrong information that might be placed before the Board which is not *bona fide*, but maybe placed before the Board to achieve an approval in circumstances where there should be no approval. Okay.

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

**CHAIRPERSON:** Hm.

**ADV MAHLAPE SELLO:** I - I seem to recall that previously last Wednesday you had that summary - the table 1 - the executive summary as appears at page 1 of that memorandum on - on a screen.  
20 Do - was I - was I correct? Am I correct or I have looked at it so often that I - sometimes I assume that it is on your screen. When in fact it is only in hard copy.

**MR CHABI:** Is that what you are referring to?

**ADV MAHLAPE SELLO:** Yes. Yes. Your slide 24. Correct.

**MR CHABI:** Okay.

**ADV MAHLAPE SELLO:** Thank you.

**MR CHABI:** Okay.

**ADV MAHLAPE SELLO:** And - and we did touch on this last week Wednesday and you said what we have on - on slide 24 is basically directly extracted from page 165 of the memorandum under executive summary.

**MR CHABI:** Correct. Thanks advocate.

**ADV MAHLAPE SELLO:** If you may then take us through it.

**MR CHABI:** Okay. I think before I jump into the table which is on page  
10 1 of the memorandum.

**ADV MAHLAPE SELLO:** Yes.

**MR CHABI:** The recommendation to the Board to increase the ETC from 38.6 billion to 54.5 billion is on the basis and in this instance I quote directly from page 1-8-2 of the memorandum that:

“The cost of 38.6 billion - 0.6 billion - presented to the Board excluded the cost of hedging for foreign exchange movements. The cost of future inflation escalation for foreign exchange.”

Oh sorry.

20 “On price. The cost of additional scope for Transnet Engineering. The cost of changes in economic conditions and in this instance forex and inflation between the approval of the business case and award of the contract.”  
Approval of the business case in this instance being

April 2013 and award of the contract being March 2014. The point of the exercise done initially was to show that the 38.6 billion allowed for all of those factors except for the cost of additional TE scope. When we broke the 38.6 billion. Nowhere in there did we speak about additional TE scope.

We spoke about a local - localisation (indistinct) of two percent. However we were informed that that did not relate to the Transnet Engineering scope.

**ADV MAHLAPE SELLO:** (Indistinct).

10 **MR CHABI:** So - sorry.

**ADV MAHLAPE SELLO:** Sorry. Before we go into that - sorry. My apologies. Before we go into that detail let us take it a step at a time. Sorry. You - you summarise what the memorandum puts forward as to the rationale for the increase and you - you point out that one of the rationale put forward is that the 38.6 billion did not - did not provide for forex hedging?

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** Okay. Now before we move on. Can you express a view on that?

20 **MR CHABI:** It - it allowed for foreign currency.

**ADV MAHLAPE SELLO:** The 38.6?

**MR CHABI:** The hedging costs.

**ADV MAHLAPE SELLO:** Okay.

**CHAIRPERSON:** Now are you able to say how they could say it did not allow for forex when it actually - it did? How much room is there that

they were just genuinely mistaken in saying that? How much room is there that this was deliberate misleading of the Board?

**MR CHABI:** Okay. So I cannot say why that reason was advanced or that view was advanced. However I can put forward a view and I think we touched on this in the presentation last week. It is reasonable to question whether what was allowed for in terms of forex was foreign exchange hedging costs or just a view on the exchange rate going forward.

In other words forecasted rates. I think any reasonable  
 10 person would have said well maybe what you saw in the business case was not in relation to hedging costs, but it was just a view on the exchange rate going forward. In the submission last week - the statement last week we show that the curve that was used in modelling the ETC was actually a forward exchange curve.

How do we verify that? We took the cash flows over the seven year period. Approached market players and asked them to provide us with a curve as at 18 April 2013 going forward seven years. That was done allowing for two of the major banks - two major - well two of the major banks South Africa's costs to facilitate the transaction.

20 So the curve that we showed in relation to what was applied within the business case were pretty much in line. I think there were slight differences of about 0.03 percent there, but you would expect that based on the provider of the contract.

**ADV MAHLAPE SELLO:** And that Chair what Mr - Mr Chabi has just explained to us is reflected at slide 14 when last week he did a

comparison between the rates used by Transnet and the business case for 38.6 billion and to test whether those were actual foreign currency forward rates.

He obtained the same rates for that period from Bloomberg and - and he - he compares them at page 14 - at - at slide 14 which currently is on your screen and the Chair will see that there is not much difference, but I guess most importantly to the Chair's question if I may now seek Mr Chabi's confirmation.

10 Would I be correct Mr Chabi and - and concluding from your evidence or if the - the Chair were to pose that question to me. I say I know that they are - the 38.6 billion included forex hedging, because the financial model tells me so. Would I be correct in saying that?

**MR CHABI:** Correct. Yes.

**ADV MAHLAPE SELLO:** The financial model on which the business case is predicated. It tells me so.

**MR CHABI:** It - it tells you it includes some sort - some form of foreign exchange allowance, but it does not tell you directly whether it was a hedging cost or not.

**ADV MAHLAPE SELLO:** Oh.

20 **MR CHABI:** Hence the comparison.

**ADV MAHLAPE SELLO:** It is the - it is the exercise thereafter that leads us to the conclusion that it is actual hedging costs?

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** And - and ...

**CHAIRPERSON:** But just before that. That exercise that you do in

order to arrive at that conclusion that it is included. Would it be expected - would it not be expected that anybody with the right knowledge of these things would do that exercise before arriving at a - at - at any conclusion that it was not included?

**MR CHABI:** It would be expected.

**CHAIRPERSON:** It would be expected?

**MR CHABI:** It would be.

**CHAIRPERSON:** And if such a person did not do that exercise. What would that say to you about that person either in terms of competence -  
10 incompetence or lack of diligence or pursuing a certain agenda? You see. I - I do not have the knowledge that you have, but you have. If you - if a lawyer gives an opinion - a legal opinion and I look at the opinion.

I am able sometime to say no, but this person particularly if you know about his or her experience in practice or the field - relevant field and so on. You say, but there is no way he could have believed that this opinion is correct. There must be some other agenda about this opinion and then somebody else could give you the same opinion, but because of maybe limited experience and practice.

Maybe because of his or her unfamiliarity with the branch of  
20 the law you might say no. It is just - he or she is wrong, but there is no agenda. It is *bona fide*. You know. So I am just making these examples to give you an idea of what I am looking for. Is it a situation where one could say it is just incompetence? Is it a situation where you say no, but this cannot be incompetence?

When it is done by so and so with so much experience in

these type of things, but of course you might not know certain information about the people who gave that opinion. So that - that might be nothing, but I just want to give you an idea of what I am looking for.

**MR CHABI:** Okay.

**CHAIRPERSON:** So if - if the person did not do that exercise what - what would it tell you about that person?

**MR CHABI:** Okay. So I would not want to speak to the character of individuals I suppose, because I do not know these individuals.

10 **CHAIRPERSON:** Yes.

**MR CHABI:** I guess you would require a lot more than just this financial investigation ...

**CHAIRPERSON:** Yes.

**MR CHABI:** And I think it would have to fall into what MNS ...

**CHAIRPERSON:** Yes.

**MR CHABI:** Has unearthed.

**CHAIRPERSON:** Yes.

**MR CHABI:** Found out who come at a ...

**CHAIRPERSON:** Hm.

20 **MR CHABI:** A reasonable view about the individuals, but any of the reasons you have advanced are quite possible. So it could be negligence.

**CHAIRPERSON:** Ja.

**MR CHABI:** It could be lack of competence ...

**CHAIRPERSON:** Ja. Okay. You ...

**MR CHABI:** Or it could be ...

**CHAIRPERSON:** Hm.

**MR CHABI:** Wilful desire to mislead ...

**CHAIRPERSON:** Hm. Okay.

**ADV MAHLAPE SELLO:**

**MR CHABI:** But which of the three it is.

**CHAIRPERSON:** Yes.

**MR CHABI:** I cannot with ...

**CHAIRPERSON:** You might not have enough information to ...

10 **MR CHABI:** I do not.

**CHAIRPERSON:** Go beyond that. *Ja*. Okay.

**ADV MAHLAPE SELLO:** If I may complicate your life further Mr Chabi. In your file you have Annexure AC4 at page 1-6-3 which is a worksheet from the - the business - from the financial model titled proposed locos purchase price - purchase price. Now if - if one were to appreciate that the business case is predicated on the financial model. Then in - in sort of testing the accuracy of 38.6 billion you go to the financial model. Correct?

**MR CHABI:** Correct.

20 **ADV MAHLAPE SELLO:** And if you go to the financial model you come across this worksheet at page 163.

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** Point one to be precise. 1-6-3.1 for the record and when I look at that excel spreadsheet and I read from the extreme left at entry - entry three it has got forex shift and if I work -



work my way across the entire document over to 2023. There are certain rates appearing there per annum which if I understood your evidence correctly last week reflected the foreign exchange rates going forward. Was I correct?

**MR CHABI:** That is correct. Global insight role.

**ADV MAHLAPE SELLO:** Yes.

**MR CHABI:** The role titled global insight.

**ADV MAHLAPE SELLO:** Yes. Titled global insight.

**MR CHABI:** Correct.

- 10 **ADV MAHLAPE SELLO:** So there is - well I am not saying for a lawyer, but would it be reasonable to expect it to be a simple exercise for an accountant - the most junior accountant? Okay. For an accountant period.

**MR CHABI:** I would say it is.

**ADV MAHLAPE SELLO:** Okay.

**CHAIRPERSON:** Does - does the view that - it is the foreign - foreign exchange hedging - what was - that was not - that the opinion was that it was not include ... (intervenes).

**MR CHABI:** It is foreign hedging costs.

- 20 **CHAIRPERSON:** *Ja*. When you see - when you saw that view having regard to what was placed before the Board and maybe what the person had access to in forming that view. What they would have had to look at in forming that view. Does - was your reaction this is shocking? How could they say that or was it - it is wrong, but okay or none of the above?

**MR CHABI:** I guess - not a guess. The (indistinct) was a bit shocking.

**CHAIRPERSON:** It was shocking.

**MR CHABI:** I would suggest it was.

**CHAIRPERSON:** Yes. Okay. That helps me. Thank you.

**ADV MAHLAPE SELLO:** Okay. Then if - if we - so now you - you have expressed an opinion on whether or not the forex hedging was included. Going back which is a few minutes back. You also said to the Chair that the memorandum suggested that inflation was also not catered for in 38.6 billion?

10 **MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** Okay. Now what - what - can you express a view on that claim in the memorandum?

**MR CHABI:** Well the verifications are in my view very simple exercises. For financial people it is not a very complex thing to do. Excel is a very basic platform for modelling.

**ADV MAHLAPE SELLO:** Yes.

**MR CHABI:** You will not expect it to pose any challenge to anybody in the financial services industry. So it was equally shocking to see the note about escalation not having been included especially given that we  
20 have a policy in place that requires you to appropriately allow for these costs before budgeting.

**ADV MAHLAPE SELLO:** And - and again I am having regard to your - the excel spreadsheet - the worksheet. At page 1-6-3.1 which is the - the spreadsheet we looked at just a short while ago when trying to determine whether or not forex hedging costs were taken into

consideration and the last entry on that very same page tells me about SAPPI and US inflation.

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** Is that not the escalation rates?

**MR CHABI:** That is - those are the escalation rates.

**ADV MAHLAPE SELLO:** So the one document would have told me about forex and told me about inflation. Whether or not it was part of the 38.6 billion?

**MR CHABI:** Correct.

- 10 **ADV MAHLAPE SELLO:** Okay. Then if - if you could take us then to - to your table on the screen. That we had on the screen previously before we dealt with this detail. Yes. This one. Now that table just summarises the globular figures that have been introduced and which figures it is claimed are responsible for the increase of 15.9 billion in ETC. Correct?

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** Can you quickly take us through them? So we understand what is happening there. Let us deal with the first.

- MR CHABI:** Okay. So the reasons advanced for the increase in ETC  
20 from 38.6 billion to 54 billion how it is shown overhead. Starting off with an update of business case for updated economic factors. These are essentially backward looking adjustment costs. So because the price is provided as at April 2013 by these OEMs and the negotiations were taking place - place as at March 2014.

There was a need to adjust those prices to reflect the value

as at the negotiation stage. So you had to escalate by inflation. You had to allow for exchange rate fluctuations over the same period just to bring the value to present terms and present in this instance being March 2014. So those are the factors referred to there as an update.

**ADV MAHLAPE SELLO:** So basically where - 38.6 billion was as at April 2018? Ag - 2013?

**MR CHABI:** 2013. Correct.

**ADV MAHLAPE SELLO:** My apologies. I do not know where I get 18. The memorandum there dated May 2014 says:

10                    “You cannot look at the economic factors as they  
                         were in April 2013. We must bring them forward  
                         today.”

And that 38.6 billion ought to be amended to take into consideration the changed economic circumstances. Am I correct?

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** So basically it is - it is economic circumstances over a period of one year?

**MR CHABI:** That is correct.

**ADV MAHLAPE SELLO:** Thank you. You may proceed.

20   **MR CHABI:** Okay. So that cost amounted to 5.4 billion as per the memorandum. The ... (intervenes).

**ADV MAHLAPE SELLO:** Before you go further what - what would - what goes into the economic factors?

**MR CHABI:** So you have ...

**ADV MAHLAPE SELLO:** That we should consider here.

**MR CHABI:** Basically it is just exchange rate fluctuations.

**ADV MAHLAPE SELLO:** Exchange rate fluctuations and what?

**MR CHABI:** And escalation - price escalation/inflation.

**ADV MAHLAPE SELLO:** Then would I be correct when I look at your update of business case for updated economic factors at 5.4 billion to interpret that to mean since April 2013 to May 2014 there are certain factors we should take into consideration. That the 38.6 billion did not and the - the cost of that is 5.4 billion?

**MR CHABI:** That is correct.

10 **ADV MAHLAPE SELLO:** So the cost for forex hedging in fact was or the - then would be the change in forex fluctuation and the escalation have added a cost of 5.4 billion. Would that be a correct summation?

**MR CHABI:** Sorry. I think I just missed the point advocate.

**ADV MAHLAPE SELLO:** The point is I read that - would I - would we be correct in interpreting that to mean the memorandum suggests that since April 2013 to date being May 2014 ...

**MR CHABI:** March 2014.

**ADV MAHLAPE SELLO:** March 2014.

**MR CHABI:** April 2013 to March 2014.

20 **ADV MAHLAPE SELLO:** March 2014. Okay.

**MR CHABI:** 17 March 2014 there about.

**ADV MAHLAPE SELLO:** But the memorandum as in May 2014 suggest ...

**MR CHABI:** Okay.

**ADV MAHLAPE SELLO:** This is what had happened over that period of

time which is that there was certain - I will call them certain - currency fluctuations ...

**MR CHABI:** *Ja.*

**ADV MAHLAPE SELLO:** Which you must add to the - and there was escalation ...

**MR CHABI:** That is correct. Yes.

**ADV MAHLAPE SELLO:** Costs.

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** And those costs combined over a period of a  
10 year are 5.4 billion?

**MR CHABI:** That is correct.

**ADV MAHLAPE SELLO:** Okay. We - we understand you.

**MR CHABI:** And the memorandum then advances a cost for risk mitigation. It is basically the same variables. You look at escalation costs going forward from March 2014 to the end of the delivery schedule. It is important to note that the delivery schedule in this instance changed from seven years to three to four years. Okay. With the last delivery I think expected in February 2018. At the time.

**ADV MAHLAPE SELLO:** Okay.

20 **MR CHABI:** So it was a maximum delivery period of four years. So the delivery schedule was shrunk. So those costs - so then you would have hedging costs from March 2014 all the way to the last delivery - of locomotive delivery and you would also have inflation costs all the way to that last locomotive delivery. Those costs as per the memorandum amounted to 9.5 - 9.5 billion. 9.45 to be exact. *Ja.*

**ADV MAHLAPE SELLO:** So it would be 9.5 billion over a four year period?

**MR CHABI:** That is correct.

**ADV MAHLAPE SELLO:** Okay. Whereas the forex and escalation cost in the 38.6 billion was over a seven year period?

**MR CHABI:** That is correct.

**ADV MAHLAPE SELLO:** Right. Then there is a next factor which is TE scope.

**MR CHABI:** That came in at 2.6 billion and that included the original  
10 TE scope and the additional TE scope. I think we will look at that breakdown when we get to table two where the build up to 4.5 billion is laid out.

**ADV MAHLAPE SELLO:** So this extra TE scope is as further cost of 2.59 billion or is that the cost of the TE scope itself?

**MR CHABI:** I missed the question advocate.

**ADV MAHLAPE SELLO:** I said they TE scope costed there at two ...

**MR CHABI:** 2.6 billion.

**ADV MAHLAPE SELLO:** 2.6 billion. Is that additional TE scope nor generally all the TE scope?

20 **MR CHABI:** It is the combination of the original TE scope and ...

**ADV MAHLAPE SELLO:** The additional.

**MR CHABI:** The additional TE scope.

**ADV MAHLAPE SELLO:** Alright. Then we get to contingencies ...

**MR CHABI:** Correct and ...

**ADV MAHLAPE SELLO:** And that as we understand it is just a - an

arithmetic exercise?

**MR CHABI:** Correct. It was 10 percent of the overall costs of 49.5 billion.

**ADV MAHLAPE SELLO:** We then have a negative figure of 6.5 billion on that table.

**MR CHABI:** And that is ...

**ADV MAHLAPE SELLO:** Can you explain to the Chair what - what that is supposed to be?

**MR CHABI:** Well ...

10 **ADV MAHLAPE SELLO:** Let us first read what it says ...

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** On the table.

**MR CHABI:** So the memorandum attributes a R6.5 billion saving to lower capital acquisition costs of the locomotive obtained through a competitive tender and negotiation process. It actually says less the bench pricing adjustment of 2.7 billion.

**ADV MAHLAPE SELLO:** Hm.

20 **CHAIRPERSON:** I am sorry. Is that line supposed to say the fact that there was a tender process involving different leaders and the negotiation process that came after that resulted in Transnet saving that amount? Is that what that line is supposed to say? Is that what it means?

**MR CHABI:** That is how we interpret it.

**CHAIRPERSON:** Yes. Okay.

**ADV MAHLAPE SELLO:** It seems to be written in a fairly complex way



and I'm going to try and interpret it, at least for myself and I want to test whether you get the same result. It would appear to suggest that there was an over R9billion savings achieved to which must then be deducted, the new cost called batch pricing of R2.7billion, is that a correct interpretation?

**MR CHABI:** I would say it is yes.

**ADV MAHLAPE SELLO:** So the net effect of the saving becomes R6.5billion?

**MR CHABI:** Correct.

10 **ADV MAHLAPE SELLO:** Which would suggest had it not been necessary to add the batch pricing at R2.7billion the actual saving would be over R9billion?

**MR CHABI:** Well if you account for batch pricing the actual saving is R9.2billion.

**ADV MAHLAPE SELLO:** R9.2billion?

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** Okay, alright.

**CHAIRPERSON:** So I may have missed something and it's been – we have been listening to this in piecemeal, if you say there was a saving  
20 of R6.5billion that suggests that there had previously been a determination or estimation that was higher for the project or for the particular item but something has happened and as a result of that the amount has gone low so you're no longer going to spend as much as you had anticipated, is my understanding correct?

**MR CHABI:** That is correct Chair.

**CHAIRPERSON:** But how would that initial determination or estimation be made for it to result in saying a saving because of the competitive tender process. Maybe the negotiations, I can understand because the competitive tender process would involve just different bidders putting in their bids not knowing what the other one's prices are, do you understand that part?

**MR CHABI:** I do not Chair.

**CHAIRPERSON:** Ja, I mean if – with regard to negotiation, if you had made a certain determination or estimation and you negotiated, you  
10 bring the people down that part I can I can [indistinct] tender effect – process effect that I'm not sure if I understand, are you able to assist.

**MR CHABI:** Yes, I say yes Chair and I'll do so in part with reference to the evidence that has already been deduced and then I asked Mr Chabi, based on the work he's done to comment.

**CHAIRPERSON:** Mmm.

**ADV MAHLAPE SELLO:** We know that the bids were submitted and each bid had a price – had a locomotive price and last week they Chair, I think, enquired of Mr Chabi if they were on the shelves, these locomotives and where to be bought that day what would the price be  
20 and that's what, you know, we'd call the price as at that day. So each of the did indicating the locomotive price separate from all other adjustments that must be effected. So that was on the bids and the first quarter of 2014, negotiations began with successful bidders and in the course of – before the negotiations they were requested – because we're almost a year later to submit their respective best and final

offers. So let's say when the bids came in they came at a certain figure of 30 and their best and final offer then it might be 29. Then the negotiation starts and there's haggling over the price and then eventually Transnet and each party reach an agreement as to price and maybe that's 25. So that's the evidence that we've understood to have been led. Compared to that would be what the business case anticipated the locomotive price to be, so for budgeting purposes and determining whether or not we are undertaken this project, what do we expect that price to be and I just want to check that I am correct with,

10 you know, Mr Chabi.

**MR CHABI:** I agree.

**ADV MAHLAPE SELLO:** Then if you could take us to your slide 21 because the slide 21 is going to help us understand, hopefully, where exactly it is we obtained the saving of R6.5billion, go on still, yes this one. The Chair will see at the top row of that slide its locomotive price it indicates what the business case price was which is just slightly over R30billion and it says the memo pointed to at R29.355billion and the assessed value, assessed value being what Mr Chabi assessed.

**MR CHABI:** Correct it was originally R29.53billion based on the

20 January 2014 [indistinct].

**ADV MAHLAPE SELLO:** So we take the R30billion, that is what the business case told us to expect or the basis on which we are going to go into this project, between that and May 2014 we should put in the best and final offer, we have a better slide that shows that and that tells us what their best and final offers were and then followed by the

negotiated 23 I'm told. Now that's the best and final offer I'm sorry, we will find where the comparison is made but the take out Chair is – the business case anticipated R34.6billion, the contracted for price was R29.335billion, those are the two extremes. In between the best and final offers came to around R29.5billion. Now we know that the memo tells us that a lower capital acquisition cost of the locomotive obtained is R6.5billion. Now I'm going to test this with Mr Chabi, if I read that statement that the lower capital acquisition cost of the locomotives obtained is R6.5billion, would I be correct in expecting a price  
 10 difference in the actual locomotive price. There should be some price, I know we contracted at R29.3billion, there must be some price that adds R6.5billion which would have been the original price because that is what I should have negotiated away, would I be correct?

**MR CHABI:** Yes so you would have expected the price of about R35.9billion.

**ADV MAHLAPE SELLO:** We should have expected a R35.9billion?

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** But we know we never got to R35.9billion, not in the business case, not in the best and final offer?

20 **MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** So where would that R35billion you call it, where would it come from?

**MR CHABI:** I suppose my guess is as good as yours Advocate.

**ADV MAHLAPE SELLO:** Okay.

**CHAIRPERSON:** I'm sorry what was that answer?

**MR CHABI:** I have no idea.

**CHAIRPERSON:** Hmm.

**ADV MAHLAPE SELLO:** So to take this forward, in your statement you deal with table two of that very memo, okay and that is at page 169. Chair last week we gave you a legible copy of 169 and you suggested it be numbered 169.1.

**CHAIRPERSON:** 169.1 okay – well there's a 169.1 that I see, it must be the one.

**ADV MAHLAPE SELLO:** Yes it's a much better copy than what  
10 appears at 169.

**CHAIRPERSON:** Ja okay I've got 169.1.

**ADV MAHLAPE SELLO:** Okay, now firstly Mr Chabi, just briefly explain what is this document, what is this table about?

**MR CHABI:** So the table, basically is a build up of the costs leading up to the R54.5billion starting with the base price of the locomotive of R29.36billion so it looks at your backward looking escalation, it looks at your backward looking Forex, it looks at your TE, your batch price adjustment and your forward risk mitigation factors and your contingencies and it arrives at R54.5billion.

20 **ADV MAHLAPE SELLO:** So – because we have worked through this memo it would not be misleading to the Chair if we suggested the summary at paragraph two of the memo giving the globular figures of the increases, the detail of that is to be found in table two?

**MR CHABI:** That's correct.

**ADV MAHLAPE SELLO:** So table two is a more, you know, granular

calculation.

**MR CHABI:** Correct, should I provide...[intervenes].

**ADV MAHLAPE SELLO:** Yes just, like for instance give us R5.4billion and relate that to table two and see how exactly it's arrived at.

**MR CHABI:** Okay so the R5.4billion looks at that – it's an update of economic conditions, so it's backward looking and if you look at table two that's item A and item C. The sum of item A at R2.362 billion and item C at R3.03billion gives you R5.4billion. The R9.5billion is essentially a forward looking, your risk mitigation costs and that would  
10 be item E and F, item E being your escalation costs at R6.725billion and your Forex hedging costs at R2.729billion, so the combination of those gives the R9.5billion.

**ADV MAHLAPE SELLO:** And you have captured then all this in your slide 21 and at the same time you express a view on each one of those items?

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** The slides that precede this one would explain, there are some items in red and some items in black, just explain to the Chair why that is?

20 **MR CHABI:** Okay so the items in red are the line items we took issue with and the items in blue are the line items we accepted, although it's some justification around why we accepted them.

**ADV MAHLAPE SELLO:** Alright then going back to slide 21 and following on the discussion we had we know the business case anticipated R30billion for the locomotive price the memo indicated the

negotiated end price was R29.3billion.

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** And what you have under assessed value is Chabi's work, right?

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** And as far as the locomotive price is concerned you agreed to a price of R29.3billion, that is what was negotiated, that is what was offered.

**MR CHABI:** It wasn't higher than what we saw at the best and final  
10 offer stages so we had reason to believe that the negotiation in this instance worked to Transnet's advantage.

**ADV MAHLAPE SELLO:** So there – and it wasn't higher than the business case you still came in less at the business case.

**MR CHABI:** That is correct.

**ADV MAHLAPE SELLO:** My very dangerous mathematics would give me a difference of about R700million.

**MR CHABI:** You mean from the business case or from the...[intervenes].

**ADV MAHLAPE SELLO:** From the business case.

20 **MR CHABI:** Correct, roughly R700million.

**ADV MAHLAPE SELLO:** Now if it is R700million, with reference to the business case that's the best I can say the saving amounted to. If I say to the Board you anticipated to spend R30billion but I've negotiated a price for R23.3billion.

**MR CHABI:** R29.4.

**ADV MAHLAPE SELLO:** Ja R29.4 so that is a saving with reference to the business case of R700million.

**MR CHABI:** That's correct.

**ADV MAHLAPE SELLO:** But to tell you that their best and final offer was R29.5billion during negotiation I squeeze them further to R29.3billion that would be a saving of R177million?

**MR CHABI:** That's correct.

**ADV MAHLAPE SELLO:** That's a far cry from R6.5billion.

**MR CHABI:** Sorry?

10 **ADV MAHLAPE SELLO:** That's a far cry in that figure from R6.5billion.

**MR CHABI:** It is.

**ADV MAHLAPE SELLO:** Okay you then deal with backward escalation, now just briefly remind us what that involves and why it is you take issue with it?

**MR CHABI:** Okay so backwards escalation essentially looks at the change in price over the year, April 2013 to March 2014 a good indicator in this instance would have been the PPI index, we saw that in the business case, locally and abroad. The number comes up to a  
20 figure of 2.362 based on what was observed over the period in terms of inflation we come to a figure of 1.392.

**ADV MAHLAPE SELLO:** Now how would you do that, we know that there was a projected figure in April 2013 for inflation, our model, the business case had projected a particular inflation?

**MR CHABI:** Correct.



**ADV MAHLAPE SELLO:** And that [indistinct] a specific amount to it.

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** So now we are in March or May 2014, what was a one-year projection in 2013 for escalation has now become today's reality?

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** So what then would happen is, I take the price as it was in 2013 and I apply what the inflation actually became, is that correct?

10 **MR CHABI:** What you experienced yes.

**ADV MAHLAPE SELLO:** Yes, and that is the exercise you conducted to arrive at R1.3billion?

**MR CHABI:** That's correct.

**ADV MAHLAPE SELLO:** They arrived at R2.6billion, do you have an idea, an understanding of how – that's almost double of your calculation do you know how they arrived at that?

**MR CHABI:** Well looking at table two that is an 8% increase over the period, the average rate we came up to was about four odd and just to explain, looking at what local inflation was over the period, April 2013  
20 to March 2014 I think it was a move from about 104 to 112, that was about 7.7% on the local hand, so inflation over that period PPI [indistinct] indices changed by 7.74% over that period and that's the overall Producer Price Index. Digging deeper into the index trying to find the more appropriate index, in this instance relating to metals, machinery and what not, something that relates pretty close because

remember the overall index includes a variety of producer goods, foods, textiles, chemicals and so forth, looking purely at the transport index that went up by about 7.3% over the period, we however chose to apply the 7.4% the overall index as apposed to 7.33% giving the memo the benefit of the doubt but that's just on the local and it's important to highlight again here that the locomotive had a foreign component and had a local component. It would have been unjust, incorrect to apply local inflation indices on both the local component and the foreign component. We went on to look at what foreign inflation was over the

10 period in the EU it was extremely low I think it was below 1% over the period, the one-year period. In the United States it was 1 – most of the prices were quoted in US Dollars hence the reference to the United States in Dollars in this instance, it was 1.65% on the PPI and in the United States, it was 1.83% on the CPI and in the United States, we just applied 2% over the period, we still ...[intervenes].

**ADV MAHLAPE SELLO:** If I may then – and we have dealt with this concept that the production of the locomotive was split locally and foreign so if we are going to adjust the price to reflect escalation I must do that split again. I must understand which component is foreign and

20 which component is local.

**MR CHABI:** That's correct.

**ADV MAHLAPE SELLO:** And the component that is local will be subjected to the inflation rate as applicable in South Africa at that time?

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** And you say, officially it was 7.74%.

**MR CHABI:** The overall index yes.

**ADV MAHLAPE SELLO:** The overall index and is that the rate I would apply to the South African component?

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** The other foreign component I then would have to use the US PPI or CPI because their business case was based on CPI but having said that, the two were – there was not much difference between the two, nothing much turns on that.

10 **MR CHABI:** In the business case yes.

**ADV MAHLAPE SELLO:** And now you're telling the Chair that when one has regard to the US PPI around that time and CPI they were somewhere in the range of 1.68%.

**MR CHABI:** 1.6 to 1.8% yes.

**ADV MAHLAPE SELLO:** So what ought to have happened is you inflate the South African 60% component.

**MR CHABI:** If it is 60.

**ADV MAHLAPE SELLO:** If it is 60 of course by the applicable rate and you inflate the foreign by the applicable US PPI rate?

20 **MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** You said that at R2.3billion it would appear that the full locomotive price was inflated by the higher South African inflation rate?

**MR CHABI:** Eight percent.

**ADV MAHLAPE SELLO:** Eight percent?

**MR CHABI:** Yes.

**ADV MAHLAPE SELLO:** Okay, now when you do the mathematic exercise you take that price you inflate it by 8% and you come to R2.262.

**MR CHABI:** Billion correct.

**ADV MAHLAPE SELLO:** Was it a correct approach to calculating the backward escalation?

**MR CHABI:** Well it's not to say that they actually applied eight locally and eight abroad, I think there are infinitely many solutions to the ratios, to the rates applied there and the rates applied here that you could come up with given the weightings, I mean, looking at CNR, their foreign component was about – sorry their local component was about 37 to 38% I think at the time only GE matched the local content requirement of 55, all the other three fell below the DTI requirements of local content. It was 46 for Bombardier it was 49.6% for CSR so applying those relative splits to the indices I've just mentioned 7.74 and 2% the figure is much lower. It could have been a 10, 2% case there was applied 10 locally 2% abroad, nobody knows what rate was applied locally and what it was applied abroad, however the weighed average of those rates comes to 8% which is equivalent to applying 8% locally and 8% abroad.

**ADV MAHLAPE SELLO:** And if that's your theory when you test the theory and apply the 8% to both you come to 2.362?

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** You then deal on the table with original TE

scope, just very briefly Chair, this involved – perhaps you explain it because you don't take issue with it, what did you understand the TE scope to be and why don't you take issue with it?

**MR CHABI:** Okay so at the time of producing the report and I suppose writing this statement because no additional work was carried on TE scope between the writing of the report and the production of the statement we were not too sure what TE scope related to. The numerous interviews with MNS and Transnet officials did not shed any light on what that TE scope was. Some questions we contended with  
10 was if TE had a role, a part to play in the production of the locomotives should we not have seen a reduction in the base price of locomotive, given that they producing a part of it, if not then maybe it's just a premium to reflect that TE is involved in the locomotive manufacturing process and because we're using a local entity, again like the localisation premium in the business case there's a premium to be added on to the price...[intervenes].

**ADV MAHLAPE SELLO:** Just sorry to remind ourselves, TE stands for Transnet Engineering a division of Transnet?

**MR CHABI:** Correct.

20 **ADV MAHLAPE SELLO:** So this is a provision for the scope of work anticipated to be done by Transnet Engineering?

**MR CHABI:** Correct and that included things like assembling the bogie – basically assembly of the locomotive.

**ADV MAHLAPE SELLO:** So you are saying you were never able to determine whether or not the project anticipated the TE scope as

defined?

**MR CHABI:** When you say the project, you're referring to the...[intervenes].

**ADV MAHLAPE SELLO:** The business case.

**MR CHABI:** No we could not tie the 2% localisation to TE.

**ADV MAHLAPE SELLO:** Yes.

**MR CHABI:** Yes, our understanding was they did not relate to TE.

**ADV MAHLAPE SELLO:** And when we look at the original R36.8billion ETC, is there any reference to TE scope in that R38.6billion?

10 **MR CHABI:** No it is just referred to as a localisation premium.

**ADV MAHLAPE SELLO:** Of 2%?

**MR CHABI:** Of 2%.

**ADV MAHLAPE SELLO:** And mathematically R1.7billion does not reflect 2%?

**MR CHABI:** Well I think if you take the combined value of – just a second, of 2.5 which is the original and the added I think you're looking at about nine.

20 **ADV MAHLAPE SELLO:** So what you're saying to the Chair is that could be the 2% - that could have, as part of it, the 2% localisation premium plus something else but you are not in a position to say exactly what goes into the TE scope?

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** Now you reflected as an accepted figure of 1.7 you have starred that, it doesn't – you have put an asterix against that number it doesn't appear in the slide, can you just explain to the

Chair it's – you indicate in your statement that it's almost like a conditional acceptance of that figure, what is the basis – what is the condition and the basis thereof?

**MR CHABI:** So we had no basis to refute the cost of R17billin for the original TE scope so we just accepted it as it was there. Again the whole exercise is to determine the reasonability of the ETC, increasing ETC not so much the accuracy of the increase but he reasonability and in doing that we did as much as possible to give the memo the benefit of the doubt.

10 **ADV MAHLAPE SELLO:** So in your – it's apparent from your statement that MNS is still involved in further investigation of this TE, Transnet Engineering involvement and if it were determined that there was no extra cost attaching to TE's involvement then you will – that R1.707billion you have accepted, you will reject?

**MR CHABI:** If there's no extra cost or if the locomotive price comes down to reflect TE's involvement yes we will adjust accordingly.

**ADV MAHLAPE SELLO:** You then deal with Forex adjustment.

**MR CHABI:** Correct so.

**ADV MAHLAPE SELLO:** And the memo suggests R3billion you assess  
20 the value also at R3billion, so you don't take issue?

**MR CHABI:** We came to a slightly higher figure but of course all we had to work with was the baffle price which is about R177million higher so you would expect us to come to a higher figure in this instance. We accepted the 3.03, we came to about R3.1billion so we took the 3.03 to be a reasonable number in that instance. Had it been too far off let's

say 5% off then we would have questioned...[intervenes].

**ADV MAHLAPE SELLO:** This is red now is the batch price adjustment just to remind ourselves and to give you a heads up, both Mr Callard and Mr Sedumedi testified at length regarding the batch pricing. Mr Sedumedi's legal view, being a lawyer was that an adjustment, a batch price adjustment was not justifiable on the basis of the RFP it was not a course that was anticipated in the RFP it has got no basis in the bid as a concept that seems to have arisen during the course of negotiation, that is the background.

10 **MR CHABI:** Okay.

**ADV MAHLAPE SELLO:** Now I see you've got batch pricing in red, what are you trying to express with that?

**MR CHABI:** So we accept the view that batch pricing was not – the batch pricing cost was not a cost anticipated in the request for proposals by Transnet, we tried to compute this R2.7billion derive it and the only schedule that gave us a cost of R2.7billion was the break point pricing schedule which was anticipated in the request for proposal. It was the only table with costs, lack for a better word, that allowed us to arrive at R2.7billion. When you look at what the OEM's  
20 provided in the RFP, in the break pricing schedule, considering that there was a 50/50 split on the diesel and 233 diesels to GE, 232 to CNR and a 60/40 on the electric and 359 to CSR and 240 to Bombardier, we come to a cost of about R2.7billion. We then concluded that, okay this must have been computed using the break pricing, break point pricing schedule, that of course can not be proven



on our hand, however like I say when you take the table and you do the computation you get to R2.7billion. The RFP in section 2.3.1 if I recall right clearly states that Transnet requires the option to change quantities and does not expect to pay a price premium for it. Now when we look at the negotiation sheets I think presented by Mr Sedumedi I think even in the negotiation stages it was pretty clear that that pricing was not anticipated – the negotiation in the RFP sorry and should not have been a cost that would be affected. And our understanding of break point pricing is it is a premature termination of the contract but it

10 occurs in contract. It assumes loss of economies of scale in addition to that set up costs. So there are costs you would have incurred in setting yourself up for a certain number of locomotives to be manufactured to have that then subsequently cut means that you cannot recoup those costs because they are sunk costs. And that Transnet was prepared to pay a penalty for.

**ADV MAHLAPE SELLO:** Just if I may? So you what you suggesting is whatever I understand – understanding of what of batch pricing is it should not be conflated with break point pricing? These are two different concepts.

20 **MR CHABI:** They are two different concepts and I think just to add a further note and hopefully not to confuse in this instance. Even if and this is not say it was batch pricing was contemplated it should not have been to the tune of 2.7 billion because break point pricing allows for cost that would not have incurred prior to the contract being signed. It is understandable on a loss of economies scale basis but not on a

setup of production lines and all of those other factors raised in the memorandum. No contract was agreed upon none of the OEM's had reason to go and setup production lines on the basis that they have already been awarded the contract so such costs should not have been levied onto Transnet. However just to reiterate batch pricing was not contemplated for in the RFP. And instances like that do arise where as a supplier you are told you – it is uncertain how much after contract you are going to be given price the premium into your price, allow for it in your price and give us a price but do not charge us a penalty if what  
 10 you get is not what you expected. It is not unimaginable to think that the temptation is quite high to price at 465 because it makes you competitive. So there might have been a temptation to price at the highest possible number just to be able to get in it is just a view.

**ADV MAHLAPE SELLO:** So what you are suggesting to us as regard batch pricing as you rejected it because the RFP did not provide for batch pricing.

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** And if you were to be kind and read that as a break point pricing you would still reject the cost of 2.7 billion?

20 **MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** Okay. You then deal with additional TE scope and am I correct to interpret that to mean it relates to what we call the original TE scope above and it is all about the participation of Transnet Engineering in the delivery of the locomotives?

**MR CHABI:** That is correct.

**ADV MAHLAPE SELLO:** And I see with that one you do not take issue?

**MR CHABI:** We take it as is because we got no reason to refute the numbers put forward.

**ADV MAHLAPE SELLO:** Yes. We then get to the biggest increase which is the forward escalation. The business case had worked on an escalation of 2.53 billion but reminding ourselves that was as at April 2013. You I will jump your assessed value as at May 20 – April 2014 is that inflation – forward escalation should have been provided for – costs should have been provided for 3.4 billion. Correct.

10 **MR CHABI:** 3.4 billion yes we thought was a reasonable figure.

**ADV MAHLAPE SELLO:** But the memorandum indicates that forward escalation is 6.7 billion. Why such a big difference between your calculation and the memorandum.

**CHAIRPERSON:** Well there is a big difference between the calculation in the business case compared to the May 2014 memorandum and a big difference between the calculation on the May 2014 memorandum and the assessed version. They are all quite – the gaps are quite big.

**MR CHABI:** Material correct yes.

**ADV MAHLAPE SELLO:** Yes Hm ja.

20 **CHAIRPERSON:** Why is that?

**MR CHABI:** Okay so – I will first address the difference between the memorandum and the reassessed value and then touch onto that in the business case.

**ADV MAHLAPE SELLO:** May I suggest this? Can you explain to the Chair how you get to the figure of 3.4 billion?

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** Then perhaps once we understand that we will try and understand perhaps how they got to their figure of 6.

**CHAIRPERSON:** Ys.

**ADV MAHLAPE SELLO:** If you can explain.

**CHAIRPERSON:** I think that is the best way. You explain your own assessment.

**MR CHABI:** Assessment.

**CHAIRPERSON:** And then maybe you might then be able to say what  
10 you think the others did wrong that led them to the figures that do not agree with your figure.

**ADV MAHLAPE SELLO:** Yes Chair.

**MR CHABI:** Okay.

**ADV MAHLAPE SELLO:** You do not have to be very harsh on the percentages and – just we need the concept to apply.

**MR CHABI:** Alright. Okay so what is the approach used to arrive at the 3.4 billion. I think just to give you the assumptions upfront. We took a flat 6% locally and 2% abroad.

**ADV MAHLAPE SELLO:** And then just to remind – sorry ourselves that  
20 you – why specifically 6 and 2?

**MR CHABI:** Okay so again in keeping with the basis in the memorandum that is one aspect and secondly assessing that base to see if it was reasonable. The memorandum speaks about 6% being a reasonable number to compare the inflation figure to. Do we agree with that? Yes we do. Why do we agree with it? Again for the reasons

outlined before if you look at history inflation rates were below 6%. If you look at rates implied by the market going forward over a ten year period we are looking at about 6.3% that is the average picked up or between – over the period of March.

**ADV MAHLAPE SELLO:** Yes.

**MR CHABI:** And if we average that from March 1 to March 31 it is about 65 thereabout. That is what the market focussed inflation to be going forward over a ten year period. Again most importantly is what our own monetary policy committee targets. The job of the monetary  
 10 policy committee is to ensure price stability. Keep inflation as low as possible and also stable. That is one of the targets amidst ensuring high and stable economic growth and low unemployment and so forth. It is their role to be sure and how do they do that? They change the policy rates – interest rates up or down to influence inflation. So over the long term you can expect the inflation you experience to be that envisaged by the monetary policy committee. Customised back to March 2014 the Reserve Bank Governor at the time had spoken about increasing interest rates to lower inflation which points to inflation likely falling over the three/four year period. So 6% for us was a  
 20 reasonable number to assign. Ja to assume for inflation going forward.

**ADV MAHLAPE SELLO:** Thank you.

**MR CHABI:** The memorandum seems to support that as well. You adopt the same philosophy abroad. Abroad they target 2%. The Federal Open Market Committee in the United States targets a – targets 2% inflation. The EU the Monetary Policy in the EU has the

same target of 2% with the same abroad objectives as we would expect here. Price stability, economic growth, low unemployment and so forth. So 2% again on the foreign and made sense to us as an assumption going forward. Weighing that between local and foreign rough estimating 50/50 you looking at about 4%. I think what we have here is way in excess of percent. I think when we read – if my recollection serves me right it must be paragraph 80 I think.

**ADV MAHLAPE SELLO:** Of the memorandum?

**MR CHABI:** Of the memorandum.

10 **CHAIRPERSON:** What page is the memorandum again?

**ADV MAHLAPE SELLO:** It starts at page 165.

**CHAIRPERSON:** 165.

**ADV MAHLAPE SELLO:** Chair.

**MR CHABI:** Actually I think it is paragraph 56.

**ADV MAHLAPE SELLO:** That is the MPV at 80.

**MR CHABI:** So I will read that.

**ADV MAHLAPE SELLO:** Try page 171.

**MR CHABI:** Oh sorry 175 I think in my pack.

**ADV MAHLAPE SELLO:** You at 175?

20 **MR CHABI:** Yes. In my bundle. Paragraph 56.

**ADV MAHLAPE SELLO:** Okay. Paragraph 58?

**MR CHABI:** Well we will start on 56 I suppose.

**ADV MAHLAPE SELLO:** Okay.

**MR CHABI:** And then 58. 56 speaks to the local content. So it says:

“The high level of local content being 60% makes

local indices more applicable to assess the cost of escalation going forward.”

That of course presents with a challenge sitting on the Transnet end because this serves to increase the cost and not reduce the cost. You have – even if it was 90% local content it will still try to reduce the cost by ensuring that the remaining 10% has a lower inflation rate applied to it and not apply the local indices across the 100% just because you got a high local content. So that is our interpretation of 56 in this instance. Not only that not all locomotive suppliers, OEM's met the DGI

10 requirements.

**ADV MAHLAPE SELLO:** So what are – I take out from 56 is that the memorandum appreciates that the manufacture of the locomotives has got a local and foreign component.

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** And it works on the basis that the local component disregarding the specifics of what the OEM's had contracted for they shall work on the basis that constitutes 60%? The local of the component of all the locomotives equal 60% that is what they are suggesting.

20 **MR CHABI:** Yes.

**ADV MAHLAPE SELLO:** The detail of whether or not they are wrong or right is neither here nor there but this is the basis on which they then do a computation – they must do a computation. Appreciating the 60% local component. That is only 60% is local component.

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** You then where I think leading to 58 which is notwithstanding what is set out in 56 appreciating that 60% constitutes local component what the memorandum actually does in inflate – in calculating inflation going forward.

**MR CHABI:** Should I read that?

**ADV MAHLAPE SELLO:** Please do.

**MR CHABI:** Okay so it says:

10                   “Hence a CPI of 6% escalated for 35 months which is  
                      roughly three years on a compound basis excluding a  
                      premium for risk results in 18.5 – an 18.54%  
                      increase. That is the nett 16.8% as per E in table 2  
                      above is reasonable. That is because the 6.7 billion  
                      represents a 16.8% increase.”

The problem with that is it assumes that all your locomotives are purchased in the 35<sup>th</sup> month. We know however that they are spread out over the delivery period of three to four years. So to have to compare 18.6 – 16.8 to 18 odd% is incorrect.

20                   **ADV MAHLAPE SELLO:** Okay. And – so what you are suggesting to  
                      the Chair is you take issue with the method of computation of the  
                      escalation going forward. It is how it was calculated that you have a  
                      difficulty with.

**MR CHABI:** So I take issue with point 58 which seems to suggest that all locomotives are acquired in the last month

**ADV MAHLAPE SELLO:** Yes.

**MR CHABI:** I also take issue with point 56 which seems to suggest that



applying local inflation rates across the entire batch – across the local and foreign component is the right way to go about it. We know that if we have to look at a 6 and 2% - 6 local and 2% abroad the differential is 4% it is quite a significant difference.

**ADV MAHLAPE SELLO:** So for you to arrive at – at 3.4 you applied the South African inflation rate going forward to the 60% of the locomotive price.

**MR CHABI:** To the respective.

**ADV MAHLAPE SELLO:** To each.

- 10 **MR CHABI:** Correct each locomotive supplier's respective local content declaration. Because they declared it in negotiation stages what their foreign components would be in the total locomotive price.

**ADV MAHLAPE SELLO:** The let us look at what is the – what ranges were they in? What was the lowest of our – of local component and what was the highest offer among the OEM's?

**MR CHABI:** The lowest was 36.7.

**ADV MAHLAPE SELLO:** Yes.

**MR CHABI:** And the highest I think was 49.6.

**ADV MAHLAPE SELLO:** 9?

- 20 **MR CHABI:** .6.

**ADV MAHLAPE SELLO:** .6. So your 3.4 billion for forward escalation is it based on the average of that range or is it based on the highest of 49 or on the lowest of 36.

**MR CHABI:** The respective. So we created an index for the local inflation.

**ADV MAHLAPE SELLO:** Yes.

**MR CHABI:** Assumption and index for the foreign inflation assumption. From there we then went onto creating an index for each OEM based on their local and foreign content declarations and that we applied to the price and the delivery schedule.

**ADV MAHLAPE SELLO:** Now did you try and reach the figure of 6.7 billion? Did you do any calculation to see how they arrived at 6.7 billion?

**MR CHABI:** I did. So the number – the weighted average number that  
10 gives us 6.7 billion is about 7.35%.

**ADV MAHLAPE SELLO:** Okay. 7.35?

**MR CHABI:** % yes.

**ADV MAHLAPE SELLO:** Okay. So in layman's terms do we take it that they applied – would I be correct if I say they applied 6% across the board or is it 8% across the board?

**MR CHABI:** No, no so not 6 but their approach was equivalent to them applying.

**ADV MAHLAPE SELLO:** Yes.

**MR CHABI:** 7.35% across the board.

20 **ADV MAHLAPE SELLO:** Okay.

**MR CHABI:** It is not to say that they applied 7.35% locally.

**ADV MAHLAPE SELLO:** I am with you.

**MR CHABI:** And 7 – it could have been any combination however the weighted average of that was 7.35%.

**ADV MAHLAPE SELLO:** And you say equivalent because when you do

that exercise at 7.35% you too get the figure of 6.7 billion?

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** Is that – okay. Now are you able to express an opinion as to the reasonability or otherwise of such an approach understanding the intricacies of this locomotives acquisition process?

**MR CHABI:** In a negotiation process I guess on the side of Transnet I will try as much as possible to reduce the cost. On the side of the OEM's as much as possible to increase the cost. How we arrive at 7% as a weighted average on both ends I do not know.

- 10 **ADV MAHLAPE SELLO:** But it is not open for me or a Transnet official to decide that I like 7% more so I am going to apply 7% across the board. They are required to comply with the applicable inflation policy.

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** Whether it is South Africa or whether it is the US?

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** I do not see much of that happening in this calculation. Would I be wrong in concluding that?

**MR CHABI:** I do not see it either.

- 20 **ADV MAHLAPE SELLO:** I do not see an appreciation of applying the correct inflation policy?

**MR CHABI:** Oh yes. I agree with you.

**ADV MAHLAPE SELLO:** Alright. We then deal with the next item which is forex hedging and we have discussed forex hedging before. This is the forex going forward right?

**CHAIRPERSON:** Before you proceed Ms Sello.

**ADV MAHLAPE SELLO:** Yes Chair.

**CHAIRPERSON:** I know we have to do justice to Mr Chabi's evidence which is quite important but we must keep an eye on our time allocation. I want to check how we are doing?

**ADV MAHLAPE SELLO:** We are doing very well Chair.

**CHAIRPERSON:** We doing very well?

**ADV MAHLAPE SELLO:** Very, very well. Thank you Chair.

**CHAIRPERSON:** Our target was what time?

10 **ADV MAHLAPE SELLO:** It was – we had three hours.

**CHAIRPERSON:** Hm.

**ADV MAHLAPE SELLO:** We were budgeted three hours which would take us to midday but we said we will try and bring it in two and a half.

**CHAIRPERSON:** Ja I am looking at the last one not the first one.

**ADV MAHLAPE SELLO:** That was...

**CHAIRPERSON:** I think you initially told about twelve o'clock we ultimately if I remember correctly we either ended up at aiming for eleven or half past eleven.

20 **ADV MAHLAPE SELLO:** No we aiming two and a half. We said that is what we will push to achieve.

**CHAIRPERSON:** Yes, no that is what I am talking about.

**MR CHABI:** Yes two and a half.

**CHAIRPERSON:** Ja.

**ADV MAHLAPE SELLO:** Let us take it at half past eleven.

**CHAIRPERSON:** And two and a half takes us to?

**ADV MAHLAPE SELLO:** Half past eleven.

**CHAIRPERSON:** Half past eleven.

**ADV MAHLAPE SELLO:** Yes.

**CHAIRPERSON:** Ja I think that is what is in my mind.

**ADV MAHLAPE SELLO:** Okay.

**CHAIRPERSON:** So you saying we doing well even with that?

**ADV MAHLAPE SELLO:** We doing okay.

**CHAIRPERSON:** Okay. Okay I just want to make sure that we are on the same page.

10 **ADV MAHLAPE SELLO:** No – but we are still aiming for that two and a half.

**CHAIRPERSON:** Ja no that is fine.

**ADV MAHLAPE SELLO:** And we just might make it Chair.

**CHAIRPERSON:** Ja no that is fine.

**ADV MAHLAPE SELLO:** I fear the Chair should not hold me strictly to two and a half so – but I – it is still an objective on my part.

**CHAIRPERSON:** Well I – it would be I think it would be nice if that target can be achieved.

**ADV MAHLAPE SELLO:** I will try and do better than the timing.

20 **CHAIRPERSON:** Ja.

**ADV MAHLAPE SELLO:** Thank you Chair. Then talking about forex hedging on your slide. We do not have – you come to the same figure as the memorandum?

**MR CHABI:** Take the figure yes.

**ADV MAHLAPE SELLO:** Ja that is what is reflected there which means

you do not take issue with 2.7 billion?

**MR CHABI:** Not – we do not take issue with that yes.

**ADV MAHLAPE SELLO:** But there is an issue with that. Please tell the Chair about it.

**MR CHABI:** So based on the delivery schedule per OEM using the March – the April 2013 curve we get to a figure of about 3.4 billion. Because we are trying as much as possible to get to this 2.7 billion. We could not understand how they got to it. The March – the April 2013 Curves however are not the right curves to apply in this instance  
10 so we thought could they have applied a slight premium onto the curve to get them to 2.7? We tried to test that and that is roughly 12.5% premium that you would have to apply to get that considering that the US Dollar – the rand depreciated by 18% against the Dollar and by about 24% against the Euro over that period. We then went onto source the March 2014 curves because those would be the correct curves to apply on that and we got to a figure of R3.9 billion. So we could not make sense of the R2.7 billion applied. We thought okay maybe it was a benefit of the negotiation however it is not unthinkable to think that the hedging costs to have the hedging costs come in lower  
20 than what it would cost Transnet to hedge the transactions on the market. Reason being each OEM has its own cost structures. If one OEM decides to take the risk on his balance sheet then he can afford to reduce the cost to Transnet. For example if one OEM has an operation in South Africa it does not need to have the rands converted to Euro or to United States Dollars and brought back in to that corporation. It is

unnecessary transaction costs. That means it does not carry any foreign currency risk on that portion of revenue that it wishes to allocate to its secondary operation within the country. If that is the case we can afford to lower its effects hedging costs. So we took the 2.7 as is as opposed to the 3.9 billion that we got.

**ADV MAHLAPE SELLO:** So your calculation – a proper calculation for forex hedging cost going forward was over 3 billion?

**MR CHABI:** It was just over 3 billion yes.

**ADV MAHLAPE SELLO:** The memorandum tells you that it is going to  
10 come in at 2.7 billion.

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** You accept that on two basis. Firstly that it is lower than your 3 billion calculation.

**MR CHABI:** Yes.

**ADV MAHLAPE SELLO:** Okay and secondly that this is actually a risk assumed by the OEM?

**MR CHABI:** Yes.

**ADV MAHLAPE SELLO:** So if the OEM is – made a mistake and negotiated on a wrong forex hedging cost that mistake will not – should  
20 not by right impact Transnet.

**MR CHABI:** No it should not.

**ADV MAHLAPE SELLO:** Because that is what the OEM offered?

**MR CHABI:** Agreed to yes. That is what you signed off on the contract. And I think just to add there was reason why the forex curve actually – why the costs were that high. We had a depreciation in the

rand and not only that interest rates locally went up abroad went down so that increased the hedging costs.

**ADV MAHLAPE SELLO:** Okay. Now I do not know whether it is through your control or the technical people. I do not see that this memorandum – ag – the slide we talking about I do not see it on the screen. If we may because now we are getting to the end of this entire exercise. You – the last item you deal with is contingency and by virtue of it being read you take issue with it?

**MR CHABI:** It is again as we mentioned earlier simply a arithmetic  
10 exercise.

**ADV MAHLAPE SELLO:** Ja.

**MR CHABI:** But over and above that the memorandum makes clear what the contingencies are for. It is in respect of options, variations, spare parts, capital spares in general. So these are I guess components relating to the locomotive that may need replacement in future I suppose. When we go back to the buffer letters we come to a totally different figure. We come to about 600 million when we total those options, spares, variation across all 1064 because the OEM's provide us with information on those. So we simply took the 2.2 billion  
20 from the business case and just added the spares which could have been a duplication of costs but nonetheless we thought 2.8 would have been a more reasonable number as a contingency as opposed to 4.9 billion. The 4.9 billion is 10% across the entire line items that you see in the memorandum. Contingency costs usually within the region of 5 to 10% on projects. 10% for highly risky projects and 5% for projects



within an acceptable level of risk. That 2.8 represents about 7% of the capital cost of base locomotive price. So we also thought 7% is not a bad figure it sits in well between 5 and 10%. To have to take in this instance on project where you have you are pretty certain about your risk you have mitigated them well. You have transferred the inflation risk to your OEM. You have transferred the currency risk to your OEM. You have adjusted for economic conditions up to March 2014. To then take an additional 10% on those escalation costs and those forex costs in our view was unnecessary. It is similar to you purchasing insurance  
 10 on your motor vehicle and then setting aside a reserved [indistinct] for the same risk but you have transferred the risk to the insurer so there is no need for you to again set aside premiums every month for the same risk which is essentially what we seem to be observing here. If 120% if taken off the escalation and off...

**ADV MAHLAPE SELLO:** So the contingency is a provision for some risks that may arise in the future that is not catered for in the calculation you know but you are saying that insofar as forex and escalation going forward are concerned Transnet cannot face a risk on that because those are transferred to the manufacturers?

20 **MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** So it should not be – the cost associated there with should not be taken into consideration when we are trying to determine the contingency which must provide for in this?

**MR CHABI:** And the contingency also includes 10% of your batch pricing adjustment which is a penalty that has been levied onto

Transnet. So there is no reason...

**ADV MAHLAPE SELLO:** And you still take a contingency for it?

**MR CHABI:** On it.

**ADV MAHLAPE SELLO:** Okay. You then draw conclusions. You compare the price, the business case price which is 38.6 billion after all this exercise and you say the business case arrived at 38.6, you arrived at 45.3 billion and the memorandum arrived at 54.5 billion.

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** And at the bottom there you indicate with a  
10 green amount of 6.8 billion. That is a difference between your calculation – the increase from the business – the 38.6 billion of the business case to your worked out figure?

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** And then you compare in red the business case and the memorandum. So you arrive at 6.8 the memorandum arrives at 15.9 billion.

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** And this is a summary in part of the memorandum. You remember we started this conversation with a 6.5  
20 billion saving?

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** Should it not be reflected somewhere and I say if my total is 4.5 billion I should reduce it by 6.5 billion as a saving or how would I work with that? Where do I see a saving? We understood the middle column to reflect figures taken from table 2 at

page 169.1 – 169.1. You remember? Table 2.

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** Okay. Now I look at table two. I - I do not see the saving of 6.5 billion. What is - I do not see a line item that even calls a saving.

**MR CHABI:** Correct. Unless the table two is the result after the saving.

**ADV MAHLAPE SELLO:** So by the time table two you are suggesting is created the saving has been achieved?

10 **MR CHABI:** That is as you ...

**ADV MAHLAPE SELLO:** Where would it be placed? The saving.

**MR CHABI:** I guess the question then would be in which line item was the saving achieved.

**ADV MAHLAPE SELLO:** Yes.

**MR CHABI:** Would it have been in ...

**ADV MAHLAPE SELLO:** Okay.

**MR CHABI:** The TE scope.

**ADV MAHLAPE SELLO:** Approaching it that way then. Are you able to point us to a line item?

20 **MR CHABI:** I am not.

**ADV MAHLAPE SELLO:** Okay and in your slides overleaf at 23 - at 22. No. You would be 23. I do not know why our numbering is different. You say an opinion on a reasonable ETC, but you - you qualify without TE costs. The Chair will recall that you had accepted the TE costs - the additional TE costs of eight - 800 million. Right and the original TE

cost of 1.7 billion ...

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** And that is what led you in the previous slide to a total of 45.3 billion as an ETC?

**MR CHABI:** That is correct.

**ADV MAHLAPE SELLO:** On this line all you are doing is because your acceptance of those costs is conditional upon the results of the investigation currently being undertaken by MNS. Should the investigations result demonstrate that TE costs whether the original or  
10 additional should not form part of the ETC? What you are doing here is taking them out.

**MR CHABI:** Correct and ...

**ADV MAHLAPE SELLO:** And you say in that case then my ETC would drop from 45 to 42 billion?

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** And whereas previously there was a - the increase from the 38.6 billion taking into consideration TE costs relative to your calculation was 6.8 billion. When you take out the TE related costs the - the escalation drops down to 4.2 billion?

20 **MR CHABI:** That is correct.

**ADV MAHLAPE SELLO:** But we know that the - the actual escalation effected was 15.9 billion?

**MR CHABI:** That is correct.

**ADV MAHLAPE SELLO:** Chair I think that brings us actually to - around in a slightly different way. We have worked through the

statement.

**CHAIRPERSON:** *Ja.*

**ADV MAHLAPE SELLO:** Hm.

**CHAIRPERSON:** Okay.

**ADV MAHLAPE SELLO:** And just a question. Is there anything else you would like to bring to the Chair's attention? He has got your - your statement and your presentation and your transcript already. Is there anything in particular you would like to bring to his attention as regards this 1064 transaction and the mandate you had that perhaps we have -  
10 you - you feel we have not covered in sufficient detail that is important?

**MR CHABI:** Well I suppose maybe two additional inclusions in the statement.

**ADV MAHLAPE SELLO:** Yes.

**MR CHABI:** I guess the hurdle rate and NPV computation. I think that was addressed in - at the very high level in the statement. So the profitability of the project after the change in the delivery schedule from seven to three to four years.

**ADV MAHLAPE SELLO:** Okay. You are quite correct and thank you for bringing that to my attention. Let me just recap then you - you can  
20 explain to the Chair what it is you are talking about. Chair will recall that the 38.6 billion - ETC produced a NPV. A profit of 2.7 billion ...

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** And that was applying the hurdle rate and 18.56 percent. Correct?

**MR CHABI:** That is correct.

**ADV MAHLAPE SELLO:** And we know that we get the hurdle rate from the work policy.

**MR CHABI:** The Work and Hurdle Rate Policy.

**ADV MAHLAPE SELLO:** Work and Hurdle Rate Policy of Transnet?

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** That policy tells us when you are dealing with Greenfields Projects you use a hurdle rate of 18.56 percent?

**MR CHABI:** For TFR. Yes.

**ADV MAHLAPE SELLO:** Okay. So it is a binding kind of requirement.

10 **ADV MAHLAPE SELLO:** So it would make sense that in the computation of 38.6 percent - 38.6 billion they would use that hurdle rate?

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** Now we are adjusting this to 54. Okay. Billion per the memorandum. There were changes to the rate - the hurdle rate applied. Two questions. Applying the hurdle rate of 18.56 percent. What was the - what was the result NPV? That is the first and second, what changes - and secondly whether this project in the end is presented to the Board as a profitable project and the basis for such contention. Let us start with the first.

20 **MR CHABI:** Okay. So applying the rate of 18.56 and the memorandum clearly states that. It resulted in the project turning loss - becoming loss making. So turning - the NPV turning negative and I think it attributable value of R1.67 billion. The correctness of that was not verified because the model (indistinct) that was not provided to us.

The hurdle rate then had to be changed to 15.2 percent. So

it says not - not had to be changed. It says using a hurdle rate of 15.2 percent the project becomes profitable at R12 billion. I just the challenge here is why a hurdle rate of 15.2 percent. When the rate applicable at the time was 18.56 and I suppose that still needs to be answered.

We then tried to find policies that spoke to the 15.2 hurdle rate. We could not come across one. We however came across a policy that referred to 16.2 percent, but that was only applicable after the conclusion of the transaction.

10 **ADV MAHLAPE SELLO:** If - if I may just perhaps interject. In the memorandum still at page 178 paragraphs 77 and 78 deal with - with these aspects. It might be important to go to that. At 77 the memorandum states that:

“The business case resulted in a positive NPV (2.7 billion) and the TFR had a rate of 18.56 percent and 34.1 billion at the rate of 12.56.”

Okay.

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** But we know that we - we could never have  
20 achieved an NPV of 34.1 billion, because the policy required us to apply 18.6 - 18.56?

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** So we could only get 2.7 billion. At 79 - at 78 rather. The memorandum states:

“The Transnet Hurdle Rate has since been amended

to 15.2 percent and the NPV at this hurdle rate using the business case assumptions would be 16.2 billion.”

So two things here. 78 - paragraph 78 suggests that Transnet has relooked its hurdle rate and the new policy provides for a 15.2 percent hurdle rate. Do you agree? That is what the paragraph suggests.

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** Have you seen such a policy reflecting a  
10 hurdle rate of 15.2 percent?

**MR CHABI:** No.

**ADV MAHLAPE SELLO:** Have you inquired as to whether it existed at the time?

**MR CHABI:** Yes.

**ADV MAHLAPE SELLO:** And what response did you get?

**MR CHABI:** We got provided all the policies that applied and none of them made reference to 15.2.

**ADV MAHLAPE SELLO:** I will ask a question perhaps to which you do not know the answer? Where do you think the 15.2 percent applied  
20 here came from?

**MR CHABI:** I have no idea.

**ADV MAHLAPE SELLO:** Conjecture. Okay. I am inviting that, but then accepting that they decided to use a 15.2 percent hurdle rate the project actually has improved by - with profitability, because now it - it gives an NPV of 16 billion.



**MR CHABI:** Which is in contradiction to paragraph 7 of the same memorandum which speaks to 11.68 billion, but that could have been a typing error.

**ADV MAHLAPE SELLO:** Okay. So the - would I be correct in understanding the memorandum to suggest that at 50 - at a cost of 54 billion the project is more profitable to Transnet than at a cost of 38 billion, because at 38 billion I know I am going to make NPV of 2.7 billion, but at 54 I am going to make a - a NPV of 16 billion.

**MR CHABI:** Correct.

- 10 **ADV MAHLAPE SELLO:** Can you explain that? The rationale behind that. I - I do not understand.

**MR CHABI:** It would be very difficult to explain.

**ADV MAHLAPE SELLO:** Okay and all that improved NPV is - is as a - is a result of manipulation of the applicable hurdle rate. That is all it is.

**MR CHABI:** It could be.

**ADV MAHLAPE SELLO:** No. I say this on the basis that if I applied 18.56 percent hurdle rate then I am in a loss making position.

**MR CHABI:** Correct.

- 20 **ADV MAHLAPE SELLO:** In order to get a profit of 16.02 I must massage that hurdle rate and bring it down to 15.2. That is what gives me mathematically an NPV of 16 billion.

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** Okay. Okay. I - I think that was - that was quite important and I overlooked it in a bid to meet my commitment to

the DCJ and thank you - to the Chair and thank you for pointing it out.  
Is there something else?

**MR CHABI:** Well they also provide a view on the (indistinct) of the 6.5 billion in the statement - I think - for the Chair to consider when - correct.

**CHAIRPERSON:** *Ja.* We - you could find that there are requests for clarification of part of your evidence after I have gone through the transcript and everything in due course.

**MR CHABI:** Okay.

10 **CHAIRPERSON:** Okay.

**ADV MAHLAPE SELLO:** Chair a quick one. The Chair will recall we - when we started we said we are dealing with two transactions.

**CHAIRPERSON:** Yes.

**ADV MAHLAPE SELLO:** The 1064 transaction and the 100 transaction.

**CHAIRPERSON:** Yes.

**ADV MAHLAPE SELLO:** The statement to the 100 transaction appears under tab two ...

**CHAIRPERSON:** Yes.

**ADV MAHLAPE SELLO:** Of BB8B2.

20 **CHAIRPERSON:** Yes.

**ADV MAHLAPE SELLO:** This is a much ...

**CHAIRPERSON:** Under tab two?

**ADV MAHLAPE SELLO:** Two - tab two.

**CHAIRPERSON:** *Ja.*

**ADV MAHLAPE SELLO:** It is a much smaller transaction ...

**CHAIRPERSON:** *Ja.*

**ADV MAHLAPE SELLO:** And - and in the interest of time I think I can explain to the Chair that in scope Mr Chabi's mandate was narrower. If one compares it to the 1064 transaction. His mandate appears at page 6 of that paragraph 2 and it was - before I say that. Transaction 100 also experienced a change - an increase in ETC. It was a movement from a 3.8 billion Board approved ETC to a 4.84 billion. A year later.

So Mr Chabi's mandate as set out in his - his paragraph 2 was to identify the reasons for that movement to test the possibility -  
10 the reasons put forward for that and to give a - an opinion as to the reasonability of the increase in ETC. The - that particular transaction as well in Annexure AOC1 starting at 0 - no.

At page 22 was based on a memorandum to the Board seeking approval for the increase in the ETC. Signed at page 36 over a period of what would look like the 22<sup>nd</sup> to 23 May 2014. Much like the memorandum for the 1064 increase.

**CHAIRPERSON:** I am sorry. I am - I am looking at the wrong ...

**ADV MAHLAPE SELLO:** We are in the statement. We are in the second - behind the second tab. We are in the second tab now.

20 **CHAIRPERSON:** Same - same bundle that has his statement?

**ADV MAHLAPE SELLO:** That has his statement.

**CHAIRPERSON:** And then tab 2?

**ADV MAHLAPE SELLO:** It is followed by - no, no, no. We are at tab two first. The cardboard tab.

**CHAIRPERSON:** *Ja.*

**ADV MAHLAPE SELLO:** Yes. Then we get his statement as regards 100 and if you go to page - that - that statement starts pagination all over again.

**CHAIRPERSON:** Okay. Let - let us start afresh.

**ADV MAHLAPE SELLO:** Ja.

**CHAIRPERSON:** Okay. This is the exhibit. This is the bundle that has got Mr Chabi's statement. Is that the correct one you want me to look at?

**ADV MAHLAPE SELLO:** May I say it contains Mr Chabi's statement.

10 **CHAIRPERSON:** And then we go to tab two?

**ADV MAHLAPE SELLO:** Tab two.

**CHAIRPERSON:** Right. Which is at page ...

**ADV MAHLAPE SELLO:** Chair. No, no, no. Do not. The Chair should not look at the plastic flags. Those are annexures to Mr Chabi's first statement. Way behind the annexures is a tab.

**CHAIRPERSON:** You people.

**ADV MAHLAPE SELLO:** Marked two and yes we have taken note that I cannot say that our colours of the tab should be different. It should be the same colour.

20 **CHAIRPERSON:** But also the - the tab should not be obscured by the annexures.

**ADV MAHLAPE SELLO:** Yes. The flags for the annexures.

**CHAIRPERSON:** The - the tabs to the annexures. The - the dividers must stand out.

**ADV MAHLAPE SELLO:** We will request longer dividers so that you

know the eye will just fall on the divider.

**CHAIRPERSON:** It - it makes life easier.

**ADV MAHLAPE SELLO:** Thank you Chair. I will ... (intervenes).

**CHAIRPERSON:** Yes. Okay.

**ADV MAHLAPE SELLO:** So we are now in tab two and ...

**CHAIRPERSON:** Yes.

**ADV MAHLAPE SELLO:** The Chair will see that is a statement in relation to 100.

**CHAIRPERSON:** *Ja.*

10 **ADV MAHLAPE SELLO:** 100 transaction.

**CHAIRPERSON:** Hm.

**ADV MAHLAPE SELLO:** It is a 21 page statement and at - from page 22 is a singular annexure that Mr Chabi relies on. The point I was making is if the Chair goes to page 36 that is a signature page. It also is a memorandum prepared by the Group Chief Financial Officer. The Transnet Freight Chief Executive and the Group Chief Executive Officer. Signed it would appear somewhere in the period the 21<sup>st</sup> - between 21 May ...

**CHAIRPERSON:** Recommended by the same three officials?

20 **ADV MAHLAPE SELLO:** As - as with the 1064 ...

**CHAIRPERSON:** *Ja.*

**ADV MAHLAPE SELLO:** And again it is - it is a memorandum to the Board.

**CHAIRPERSON:** Hm.

**ADV MAHLAPE SELLO:** In justifying this increase ...

**CHAIRPERSON:** Hm.

**ADV MAHLAPE SELLO:** Of six - 969 million.

**CHAIRPERSON:** Hm.

**ADV MAHLAPE SELLO:** So that is the background.

**CHAIRPERSON:** Hm. Hm.

**ADV MAHLAPE SELLO:** Now that is - that is what we are supposed to deal with ...

**CHAIRPERSON:** Hm.

**ADV MAHLAPE SELLO:** And I am confident that we can deal with it  
10 very briefly.

**CHAIRPERSON:** Yes. Okay.

**ADV MAHLAPE SELLO:** There are - the issues arising therefrom are slightly different.

**CHAIRPERSON:** Hm.

**ADV MAHLAPE SELLO:** The conclusion maybe the same, but I think that transaction or the costing for that transaction was set - beset with its own problems.

**CHAIRPERSON:** Yes.

**ADV MAHLAPE SELLO:** That Mr Chabi I think would be in a position to  
20 quickly take us through them ...

**CHAIRPERSON:** Yes.

**ADV MAHLAPE SELLO:** But the reading of the statement makes it clear what the issues identified were and Mr Chabi's conclusions. Okay.

**CHAIRPERSON:** Okay.

**ADV MAHLAPE SELLO:** So I see that the time is quarter past.

**CHAIRPERSON:** Yes. Okay.

**ADV MAHLAPE SELLO:** 13 minutes past.

**CHAIRPERSON:** Let us - what is your estimate of how much time we need to finish this part?

**ADV MAHLAPE SELLO:** I was going to say to Mr Chabi to - I pose one question and he should give a full answer in 15 minutes. At the end of which we are done.

**CHAIRPERSON:** Oh.

10 **ADV MAHLAPE SELLO:** That would have been my suggestion. I have not checked whether it is doable.

**CHAIRPERSON:** Yes. Well check ...

**ADV MAHLAPE SELLO:** This is a race against time.

**CHAIRPERSON:** Let us check with him whether it is doable that way.

**MR CHABI:** I suppose it is.

**ADV MAHLAPE SELLO:** It is doable?

**MR CHABI:** I suppose. *Ja*.

**ADV MAHLAPE SELLO:** Hm.

**CHAIRPERSON:** Yes. Maybe let us do that with a view that we can  
20 take the tea break at half past 11 and then we know we have done with him.

**ADV MAHLAPE SELLO:** May I just check something?

**CHAIRPERSON:** *Ja*.

**ADV MAHLAPE SELLO:** Because we had been given three hours.

**CHAIRPERSON:** *Ja*.

**ADV MAHLAPE SELLO:** I just want to see whether the next witness is ready and the next evidence leader is ready.

**CHAIRPERSON:** Well ...

**ADV MAHLAPE SELLO:** Ja. I am - I am told ...

**CHAIRPERSON:** I - I do not but there is no reason why they should not be ready.

**ADV MAHLAPE SELLO:** I am - I am told they are.

**CHAIRPERSON:** Ja.

**ADV MAHLAPE SELLO:** No. It is because we had given them the hour  
10 of 12 o'clock. Now that we are ...

**CHAIRPERSON:** Yes.

**ADV MAHLAPE SELLO:** But I am - I am assured that they are.

**CHAIRPERSON:** Yes.

**ADV MAHLAPE SELLO:** So we can do a run through then.

**CHAIRPERSON:** Yes.

**ADV MAHLAPE SELLO:** Hopefully to finish Mr Chabi by half past 11.

**CHAIRPERSON:** Yes. No. That is - that is fine. Let us do that.

**ADV MAHLAPE SELLO:** Okay.

**CHAIRPERSON:** Ja.

20 **ADV MAHLAPE SELLO:** So Mr Chabi, I - I tried to give the - the Chair a brief background to this 100 transaction - 100 locomotives and just to remind you Mr Sedumedi during his testimony took the Chair through the various transactions and - and showed how they all fit together. So you do not have to worry about the background to this 100 transaction. That - that one has been laid before the Chair.



Considering your mandate as you set out in your paragraph 2.1 just briefly - we accept and I do not think any issue arises from your paragraph 3 which sets out the methodology and you confirm that the methodology is in keeping with the same methodology you followed for 1064?

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** Okay. So the methodology is not an issue. We are clear as to what your mandate was. Can you then speak to the issues and difficulties you identified in this transaction and when you  
10 are done to then express an opinion as - as regards the issues you were supposed to express an opinion on which is the possibility of the reasons advanced for an ETC increase by 969 million and you undertook to the Chair you can do all that in 15 minutes or less?

**MR CHABI:** Sorry. I do not have the slide in my hand to project it.

**ADV MAHLAPE SELLO:** Okay, but the Chair has the slide. What you perhaps do not have - Chair on - if you go to your slide 33.

**CHAIRPERSON:** What number?

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

**CHAIRPERSON:** 36?

20 **ADV MAHLAPE SELLO:** Slide 3-3.

**CHAIRPERSON:** Hm. 3-3?

**ADV MAHLAPE SELLO:** Ja. 33 Chair. That is where 100 starts.

**CHAIRPERSON:** Yes.

**ADV MAHLAPE SELLO:** Mr Chabi you had said - so you do have the slides. What you do not have is the slides on the computer to project

onto the screen?

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** But you have your own witness copy of the slide.

**MR CHABI:** I do.

**ADV MAHLAPE SELLO:** Okay. We are now at transaction 100 starting at page 33 and - and what would you like to draw the Chair's attention to in response to the question?

**MR CHABI:** I suppose if you go to slide 4 Chair ...

10 **CHAIRPERSON:** Huh-uh.

**MR CHABI:** Which are the reasons put forward for the increase in the memorandum.

**CHAIRPERSON:** Huh-uh.

**MR CHABI:** We have the numbers in red as per the memorandum and the numbers in blue as per ...

**CHAIRPERSON:** Huh-uh.

**MR CHABI:** The recalculations. Again in this instance we have got an update of the business case for economic factors at 495 million. We came to a figure of 194 million. That is about 40 percent - 40/50  
20 percent. In this instance like the 1064 we have a scope change, because this transaction was awarded to CSR.

CSR did not have the right locomotive which was a 19E locomotive with a level of tractive power. So their solution was to convert a 20E locomotive to a 19E locomotive and that conversion required certain costs to be effected and those costs came to 347

million. Those costs were valid as at March 2014.

**ADV MAHLAPE SELLO:** So - so you are suggesting that CSR was awarded a tender for locomotives they did not have and they - they did not at the time have?

**MR CHABI:** In their arsenal. Yes.

**ADV MAHLAPE SELLO:** And of the locomotives it had it had to effect certain changes to the existing locomotives in order to comply with the bid?

**MR CHABI:** Design changes and modifications yes.

10 **ADV MAHLAPE SELLO:** But appreciating that because the memorandum is dated May 2014. Nonetheless they were awarded the - the contract?

**MR CHABI:** Yes.

**ADV MAHLAPE SELLO:** Okay and, because they did not have that it cost Transnet - Transnet an extra 347 million for the scope change? As - as ...

**MR CHABI:** Not that it cost ...

**ADV MAHLAPE SELLO:** As regards of course the - the make. You spoke of 19E/20E.

20 **MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** So to bring the - the locomotive to actual spec ...

**MR CHABI:** Yes. That ...

**ADV MAHLAPE SELLO:** At this bid. Transnet had to fork out another 347 million?

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** Ja. Yes.

**MR CHABI:** Risk mitigation costs in this instance amounted to 371 million. We came to about 300 million. Contingents at about 440 million. We came to 373 million. Unlike the previous case where we applied a seven percent contingency. We applied 10 to the entire contract here, because there were just so many uncertainties from the memorandum and one major one for us was it kept referring to a Rand/Yen exchange rate.

10                    In keeping with the mandate and trying to reproduce the cost based on the - using the basis put forward in the - in the memorandum. There was a cost of about 765, but I think we will get to that. It was a problem for us, because we thought okay. If CSR's submission were in Dollars why is the memorandum making reference to Yen. If you look at the currency movements between the Yen and the Dollar they were quite - they were materially different.

                    In certain instances the Rand appreciated against the - the Yen. Counting as a benefit to Transnet. However when you compare it to the Dollar right through we see a depreciation in the Rand. So that  
20                    would have material effects on the - well a material impact. Sorry. On the results. In other words the increase in ETC that we put forward as a reasonable increase in ETC.

                    The memorandum also speaks to a discount negotiated of 247 million. I would like to note here that looking at the first page of the memorandum we did pick up certain errors in that table. In fact that

discount should have been higher than 247 million, because the costs of 373 million in the executive summary should have been 1100 - sorry. 811 million. So that is understate about 400 million.

**ADV MAHLAPE SELLO:** Okay.

**MR CHABI:** In trying to get to an increase of R969 million in this instance. You are going to get a much bigger discount than 2.47. We however did not dispute that discount which made up five percent. Roughly five. Actually 5.32 percent of the locomotive costs. So we applied the same principle in our calculation allowing for a five percent  
10 discount, because it is unlikely that at a reduced fee Transnet would have gotten a similar level of discount. So we adjust the discount downwards to reflect the law - a contract price.

**ADV MAHLAPE SELLO:** Okay. Then I think we can then move on to your slide 38 - slide 6.

**MR CHABI:** Slide 6.

**ADV MAHLAPE SELLO:** Chair it would be page 38 of your slide pack and - and that slide that is where you all - you put it all together.

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** As you did previously with the 1064. You  
20 made a comparison between your figures and the memorandum's figures per line item. The one thing you do not do at slide 8 is to consider the - the business case itself.

**MR CHABI:** Correct. Although in the statement we provide some comments on it.

**ADV MAHLAPE SELLO:** It is headed "Opinion on a Reasonable ETC"

Chair.

**CHAIRPERSON:** Okay. I have found it. Slide 6 page 38.

**ADV MAHLAPE SELLO:** Page - slide 6 page 38 Chair.

**CHAIRPERSON:** *Ja.*

**MR CHABI:** Correct. So if I may. So that slide gives you the build up to 4.8 billion, because the increase was from 3.871 billion to 4.87-odd billion. That is a R969 million increase in the ETC. That slide gives you the build up to the 4.8 billion. Similar to what we saw in 1064. We can see they start with the price per locomotive as at May 2013 of  
10 34.34.

It was not our mandate to at the time of putting this report together to look into the initial ETC of 3.8 billion. However MNS had a subsequent stage through the advocate's request asked to have a quick look at the initial ETC of 3.8 billion. Maybe before I carry on having looked at that ETC we came to the view that that ETC should have been about 4.3 billion as opposed to 3.8.

A number of errors were made in the computation of the 3.8 billion. One of them being that on the local content and instead of applying 60 percent as per the DTI requirement. A 40 percent figure  
20 was applied and on the foreign component instead of applying 40 percent, 50 percent was applied. I think we speak to the effect of those errors on the - on the ETC.

**ADV MAHLAPE SELLO:** So the 4.2 you - you arrive at as what the ETC ought to have been instead of 3.8. Is as a function of your correcting the errors you identified?

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** Okay and you come to 4.2.

**MR CHABI:** In addition that there was a third error that - there was a 10 percent deposit paid in the third 2013/2014 period. That would have been paid as per the business case and the rest of the cost would have been incurred in 2014/2015. So essentially 2015/2016. So 56 locomotives in 2015. 44 in 2016. The application of the discount to those costs was - had I suppose some mathematical errors that we adjusted for ...

10 **ADV MAHLAPE SELLO:** Okay.

**MR CHABI:** And that brought us to a cost of about 4.3 ...

**ADV MAHLAPE SELLO:** Okay.

**MR CHABI:** Six billion.

**ADV MAHLAPE SELLO:** But you - you are saying that the memorandum - the 2014 memorandum departed from the premise that the 3.8 billion was correct?

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** And it is to the 3.8 billion that the 969 million is added?

20 **MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** To give a new ETC of 4.8 billion?

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** That is what you have at your slide 6. You recalculated and you start off with a price of 30.95 per locomotive and not 34.34 as set out in the memorandum.

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** Why - why the difference in that? Why do you apply - do you arrive at a slightly less price per locomotive?

**MR CHABI:** Okay. So the 34.34 is derived from a Yen price of R384 million - million Yen. Sorry and that is on the basis that the ETC was 30 - 3.8 billion. So the 34.34 is wrong on the basis that the - for the reasons we have just mentioned. The incorrect local and foreign components applied and ...

**ADV MAHLAPE SELLO:** So a base price of 34.34 plus whatever errors  
10 is what gives us to 3.8 billion?

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** Okay, but you arrived at 30.95 million?

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** Quickly briefly tell us how and why?

**MR CHABI:** Okay. So CSR in its submissions put forward a price as at April 2012 of 28.86 million.

**ADV MAHLAPE SELLO:** Per locomotive?

**MR CHABI:** Per locomotive, but remember that was for the 20E locomotive. Not the 19E locomotive. We thought it best to work from  
20 that basis. Build it up and then allow for the modification costs to arrive at a cost for an equivalent - well what they term an equivalent 19E ...

**ADV MAHLAPE SELLO:** Ja.

**MR CHABI:** Locomotive ...

**ADV MAHLAPE SELLO:** Yes.



**MR CHABI:** As at March 2014. We will get to that ...

**ADV MAHLAPE SELLO:** So you - you arrive at 30 million.

**MR CHABI:** 30.95.

**ADV MAHLAPE SELLO:** Million ...

**MR CHABI:** Million.

**ADV MAHLAPE SELLO:** Per locomotive?

**MR CHABI:** As at May 2013 ...

**ADV MAHLAPE SELLO:** Ja.

**MR CHABI:** But this is still on the 20E locomotive.

10 **ADV MAHLAPE SELLO:** Of course.

**MR CHABI:** Because they allowed for the modification costs.

**ADV MAHLAPE SELLO:** But then you do factor in the modification costs?

**MR CHABI:** Hm.

**ADV MAHLAPE SELLO:** The 300 - that ...

**MR CHABI:** 3.47 million.

**ADV MAHLAPE SELLO:** 3.47 - 347 for all 100. Right?

**MR CHABI:** Correct.

20 **ADV MAHLAPE SELLO:** So the price then would be with the modification costs 34 million per - per locomotive as at that date. Right?

**MR CHABI:** At which date sorry?

**ADV MAHLAPE SELLO:** As at May 2013.

**MR CHABI:** No because the modification costs with 3.47 as at 28 Feb 2014 valid for a month.

**ADV MAHLAPE SELLO:** So it's 2014 or 2013? Is it May 2014 you say?

**MR CHABI:** No, no so 30.95 is as at May 2013.

**ADV MAHLAPE SELLO:** Yes.

**MR CHABI:** But it's a price for a 20E locomotive as at May 2013.

**ADV MAHLAPE SELLO:** I'm with you. And the memo starts from the premise that the price per locomotive was 34.34?

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** And you say that can't be correct because it  
10 does not correlate with the bid received from CSR, their own costing?

**MR CHABI:** Correct CSR's submission is in dollars ...[intervenes]

**ADV MAHLAPE SELLO:** They came in 2828.

**MR CHABI:** 34.34 it is a 385million Yen price.

**ADV MAHLAPE SELLO:** Okay the memo takes into account the modification cost like – which is what you did as well, so 3.47?

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** So the modified locomotive according to the memo is 34.34million plus 3.47 that brings me roughly into the 38million mark?

20 **MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** Whereas you are at 34million?

**MR CHABI:** Yes.

**ADV MAHLAPE SELLO:** And then we follow that table, we get to your final price per locomotive of 37.27, the memo comes to a price of 44million per locomotive 440?

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** Okay then there are adjustments to allow for the contingencies and then it gets to a final increase number. You – the memo suggests was seeking authorisation or approval for an increase by 969million and your calculation or recalculation can only justify an increase of 229million?

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** And that is the primary difference between yourselves, your calculations and the memo?

10 **MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** You have at that slide complication of 25%, 5.9% and just so when we read it tomorrow we know exactly what you're talking about, can you talk us through it you've got your contingency and just below you've got ETC for 100 locomotives plus contingency 4.8billion per memo where you get 4.1 and you say or you compare with original ETC then it was 3.871 and you use also 3.871, then you've got an RO next to it, it indicates 25% as far as the calculation is concerned and looking at your recalculation it's 5.9% what do those percentages represent?

20 **MR CHABI:** Basically we're saying that an increase of 6% on the regional ETC assuming the ETC is correct would have been more acceptable ...[intervenes]

**ADV MAHLAPE SELLO:** Okay.

**MR CHABI:** Compared to the 25% increase in ETC that the memo put forward.

**ADV MAHLAPE SELLO:** So your finding is that you would permit only an increase of the original ETC by – it's 5.9%.

**MR CHABI:** 6%.

**ADV MAHLAPE SELLO:** 6%, approval sought and granted by the Board was to increase that 3.8billion ETC by 25%.

**MR CHABI:** Correct.

**ADV MAHLAPE SELLO:** Is there anything else you would like to say on the ETC, on the 100 locomotives.

**MR CHABI:** That's it, thank you.

10 **ADV MAHLAPE SELLO:** Chair ...[intervenes]

**CHAIRPERSON:** When you look at what the Board approved and the difference between that and what you arrived at and the information placed before the Board are you able or are you not able to say whether the probabilities are that the Board was misled when you have regard to all factors or are you not able – when I say misled I mean deliberately.

**MR CHABI:** So Chair I think that submission will probably hold more in the 1064 case than it would here.

**CHAIRPERSON:** Yes.

20 **MR CHABI:** And here I highlight that the memo was not consistent.

**CHAIRPERSON:** Sorry?

**MR CHABI:** The memorandum on the 100 was largely inconsistent.

**CHAIRPERSON:** Yes.

**MR CHABI:** With the facts provided from CSR.

**CHAIRPERSON:** Yes.

**MR CHABI:** It is then very difficult to say whether it was management misleading the Board, or management having miscalculated from the business case.

**CHAIRPERSON:** Genuinely?

**MR CHABI:** Sorry?

**CHAIRPERSON:** Having genuinely miscalculated.

**MR CHABI:** On the business case stage yes.

**CHAIRPERSON:** Yes, yes, yes.

**MR CHABI:** Correct.

10 **CHAIRPERSON:** But if it was genuine would you say they must have been negligence, maybe gross negligence or that's something that you wouldn't be able to – well you wouldn't be able to go that far, it might just be a question of them having been wrong and maybe very wrong but that's as far as you can take it.

**MR CHABI:** Yes, it will be very difficult Chair to opine on that, I think MNS's that are placed having I supposed included or allowed for these findings in their overall findings.

**CHAIRPERSON:** Yes, okay.

**ADV MAHLAPE SELLO:** Chair I note that the time is now 11:34 and I  
20 would like to place on record that I have finished with Mr Chabi at 11:31 so I was one minute out on my undertaking.

**CHAIRPERSON:** (laughing) You want to protect your skills in assessment of time and how much time you need to ...[intervenes]

**ADV MAHLAPE SELLO:** My reputation going forward so that the Chair can still trust me tomorrow on my estimations.

**CHAIRPERSON:** Is that influenced by the number of attorneys around today?

**ADV MAHLAPE SELLO:** And counsel.

**CHAIRPERSON:** And counsel.

**ADV MAHLAPE SELLO:** So unless the Chair has further questions that is the evidence of Mr Chabi regarding the 1064 transaction and 100.

**CHAIRPERSON:** Yes.

**ADV MAHLAPE SELLO:** And I think that brings to a close Mr Chabi's  
10 testimony.

**CHAIRPERSON:** No that's fine. Thank you very much Mr Chabi for your evidence and for having been able to come at earlier than normal time to day to be here to give evidence. Should the need arise we will ask you to come back again but as I said you might find that there are questions for clarification that you must be asked, clarifications that you must be asked to give just in writing without coming back but thank you very much, and you are excused.

**MR CHABI:** Thank you Chair.

**CHAIRPERSON:** Thank you. Ms Sello I would like a full set of all the  
20 exhibits and Transnet statements to be made available, a full set and statements but I would like the same thing in regard to Eskom, if you can convey the message to your colleagues.

**ADV MAHLAPE SELLO:** Yes Chair.

**CHAIRPERSON:** I think the transcript of evidence of all the witnesses who have given evidence in regard to both work streams because of

how we have been hearing witnesses, in other words not according to themes but according to availability in order to maximise our time might or might not be difficult to put together but in the end I would want the transcript as well so – but I think the exhibits will be easy to and all the statements will be easy to achieve, they can be achieved quicker so if you could maybe make sure people who know what needs to be done to get that done, they know, but you having been fully involved in at least Transnet, I can't remember whether you were involved in Eskom as well.

10 **ADV MAHLAPE SELLO:** No.

**CHAIRPERSON:** In Transnet you and your colleagues who have been assisting you might be able to assist by making sure that there is a full list of the names of witnesses plus maybe your own bundles to say here is a complete set then they can make copies from those and then I can be told once those are available.

**ADV MAHLAPE SELLO:** Just to make sure we get the message correctly and convey a correct message, we are giving the Chair all statements and their annexures I take it.

**CHAIRPERSON:** Yes, basically everything that has been handed up.

20 **ADV MAHLAPE SELLO:** Everything that has been dealt with in oral testimony.

**CHAIRPERSON:** Yes, yes.

**ADV MAHLAPE SELLO:** When I say this I try to distinguish between that and what we call for instance the Transnet reference bundle, the Transnet reference bundle is huge, and there are other reports in that

reference bundle that we have not dealt with in open hearing.

**CHAIRPERSON:** Yes.

**ADV MAHLAPE SELLO:** So am I understanding the Chair correctly that we confine copies of the exhibits to those that have been dealt with through witnesses here in open hearing.

**CHAIRPERSON:** Well everything that has been placed before me.

**ADV MAHLAPE SELLO:** Through witnesses?

**CHAIRPERSON:** Even without witnesses as long as it has been placed before me. It may be that we start with what has been placed before  
10 me through witnesses.

**ADV MAHLAPE SELLO:** Yes Chair.

**CHAIRPERSON:** And then seeing from your reaction you are thinking about me, ...[indistinct]

**ADV MAHLAPE SELLO:** For the Chair because if we do it that way then the Chair can express an opinion as to whether that is what he wanted.

**CHAIRPERSON:** Yes, *ja, ja, ja*, we can start that way, *ja*.

**ADV MAHLAPE SELLO:** Because I am thinking if the Chair will recall when we did the Transnet reference bundle we in effect gave the Chair  
20 the reports only and the actual exhibits that sit behind those reports we didn't give in hard copy because the Chair would have ended probably with 60 arch lever files.

**CHAIRPERSON:** No, no, that's fine, let's limit it for now to the witnesses and their bundles.

**ADV MAHLAPE SELLO:** To the witnesses.



**CHAIRPERSON:** And so on.

**ADV MAHLAPE SELLO:** Then we will just add then copies of transcripts.

**CHAIRPERSON:** Then we can take, ja, I mean I have got mine, that is fine, but there is a reason why I need a separate set.

**ADV MAHLAPE SELLO:** No, no we should be able to do that, and we will communicate that to Eskom team as well.

**CHAIRPERSON:** Ja, okay and same thing with Eskom.

**ADV MAHLAPE SELLO:** Yes Chair.

10 **CHAIRPERSON:** Ja, thank you. Okay, we are going to take the tea adjournment now, it is about 18/nineteen minutes to, we will resume at twelve for the next witness. We adjourn.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Yes Ms Rangata are you ready?

**ADV BAITSENG RANGATA:** Good morning DCJ yes, yes I am ready.

**CHAIRPERSON:** Good morning, good afternoon.

20 **ADV BAITSENG RANGATA:** Good afternoon Chair. Good afternoon Chair.

**CHAIRPERSON:** Yes.

**ADV BAITSENG RANGATA:** Thank you.

**CHAIRPERSON:** It is only a few seconds into the afternoon.

**ADV BAITSENG RANGATA:** Yes thank you.

**CHAIRPERSON:** Okay.

**ADV BAITSENG RANGATA:** Good morning Mr Hlongwane and welcome. Chair we are here today to – to ask Mr Hlongwane some few questions.

**CHAIRPERSON:** You will have to raise your voice.

**ADV BAITSENG RANGATA:** Oh sorry about that.

**CHAIRPERSON:** Hm.

**ADV BAITSENG RANGATA:** Chair we are here today – the witness today is Mr Hlongwane – Mr Fana Hlongwane he is here today to answer some few questions. We do not think that this session is going  
10 to be that long because the questions are very particular. They arise out of the evidence of Mr Jonas from his statement which he has provided to this commission in August 2018. Mr Hlongwane has received – he is here because he has received summons I want to say from the legal team and the task team that is out of not – of distrust or any reason but it is just for easier measures to make sure that everything is done properly but we really appreciate you coming here and please no offence I understand we had a discussion earlier. But thank you very much for coming. I must also acknowledge that we have attempted previously to – to have this session Sir – Chair and for  
20 obvious reasons and reasons why we have received from him unfortunate reasons from the sickness of his father he could not make it during that time. And we thank the Chair for understanding for that. So today we are ready to proceed and Mr Hlongwane is here with his legal representative. I think it is an opportune time to let – to put themselves on record.

**CHAIRPERSON:** Ja let us – let us have his counsel placing himself on record. Thank you.

**ADV J C CILLIERS SC:** May it please you Chair yes I am J C Cilliers senior counsel practicing as such at the Pretoria Bar and I am here on behalf of Mr Hlongwane instructed by my attorneys Mrs Stockenstrom Fouche Attorneys.

**CHAIRPERSON:** Yes thank you very much. Thank you. I think we must also have the legal representative for Mr Jonas placing herself on record as well.

10 **ADV BAITSENG RANGATA:** Thank you Chair.

**ADV LEAGO BATABATE:** Good morning Chair my name is Leago Batabate[?]

**CHAIRPERSON:** Good morning, good afternoon.

**ADV LEAGO BATABATE:** Good afternoon.

**CHAIRPERSON:** Yes.

**ADV LEAGO BATABATE:** I appear on Mr – on behalf of Mr Jonas. I am here on a watching brief as we did not receive notification that Mr Hlongwane would be providing evidence today.

**CHAIRPERSON:** Yes.

20 **ADV LEAGO BATABATE:** So we just wish to place on record that our client reserves his rights.

**CHAIRPERSON:** Ja.

**ADV LEAGO BATABATE:** Should the need arise to present an application to cross-examine Mr Hlongwane.

**CHAIRPERSON:** Ja okay. Thank you. Okay let us have the oath

administered or affirmation.

**ADV BAITSENG RANGATA**: Thank you Chair.

**CHAIRPERSON**: Administered.

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

**MR HLONGWANE**: Fana Hlongwane.

**CHAIRPERSON**: Please speak up a little bit more Mr Hlongwane.

**MR HLONGWANE**: Fana Hlongwane.

**REGISTRAR**: Do you have any objection to making the prescribed affirmation?

10 **MR HLONGWANE**: No.

**CHAIRPERSON**: Do you solemnly affirm that the evidence you will give shall be the truth; the whole truth and nothing but the truth, if so please raise your right hand and say, I truly affirm?

**MR HLONGWANE**: I truly affirm.

**CHAIRPERSON**: Thank you very much. Essentially Mr Hlongwane the evidence that is required by the commission from you really relates to the evidence given by Mr Jonas about a meeting that you both agreed took place on the 23 October 2015 at the Gupta residence in Saxonwold. As I understand the position you both agreed that a  
20 meeting took place, you disagree about the content of the discussion in that meeting and whether or not there was a member of the Gupta family in the meeting or not. Everything else revolves around that and the questions that you will be asked will relate to that. You understand?

**MR HLONGWANE**: Thank you Chair.

**CHAIRPERSON:** Thank you.

**ADV BAITSENG RANGATA:** Thank you Chair.

**CHAIRPERSON:** Ms Rangata.

**ADV BAITSENG RANGATA:** Thank you for that.

**CHAIRPERSON:** You may – you may – you may ahead.

**ADV BAITSENG RANGATA:** Thank you for that – for that [indistinct] yes Chair. Chair for today's process we – we going to be relying on the following documents. We have in front of us LL8 which has got an index of documents that we are going to rely on. But as the Chair has  
10 already correctly pointed most we are going to rely on item 1.7.3 that appears on the index. So we going to be relying on three files. Chair if I can enter into the record with your permission LL8.

**CHAIRPERSON:** Hang on I have got three lever arch files here.

**ADV BAITSENG RANGATA:** Yes Chair.

**CHAIRPERSON:** One is marked Exhibit LL and LL1A another one Exhibit LL1B and then Exhibit LL8.

**ADV BAITSENG RANGATA:** Yes Chair.

**CHAIRPERSON:** Now has any one of these been previously admitted already?

20 **ADV BAITSENG RANGATA:** Yes Chair.

**CHAIRPERSON:** Which ones?

**ADV BAITSENG RANGATA:** LL1A and LL1B has already been entered into the record as such during the evidence of Mr Duduzane.

**CHAIRPERSON:** They have been admitted.

**ADV BAITSENG RANGATA:** Yes.

**CHAIRPERSON:** Ja.

**ADV BAITSENG RANGATA:** Yes.

**CHAIRPERSON:** And LL8?

**ADV BAITSENG RANGATA:** LL8 is the new introduced by me.

**CHAIRPERSON:** It has not been?

**ADV BAITSENG RANGATA:** Yes Chair.

**CHAIRPERSON:** Admitted.

**ADV BAITSENG RANGATA:** Yes, yes.

**CHAIRPERSON:** And LL8 consists of?

10 **ADV BAITSENG RANGATA:** LL8 Chair it consists of – it consists of the item 2 and item 3. Item 2 being the transcripts of Mr Duduzane Zuma for both days the 8 October and the 7<sup>th</sup>. And item 3 that is other documents in particularly being the phone analysis – phone number analysis for Mr Jonas – Mcebisi Jonas as well as the draft statement of Mr Bongani More together with a signed statement that is more identical to 3.2 and 3.3 are more identical they have just been provided for convenience and because the other one is not that much clear.

**CHAIRPERSON:** I am tempted to [indistinct] take out the transcripts but that is going to cause some problems with the planning that you  
20 have already done. So we will just have to make do.

**ADV BAITSENG RANGATA:** Yes Chair.

**CHAIRPERSON:** Yes. The lever arch file containing the transcript of the evidence of Mr Duduzane Zuma as well as – what comes after that?

**ADV BAITSENG RANGATA:** It is the phone number analysis.

**CHAIRPERSON:** No, no,no. After the transcript of Mr Duduzane Zuma.

**ADV BAITSENG RANGATA:** Other documents.

**CHAIRPERSON:** Well after 2.2 what transcript is that – is that argument or is that still Mr Zuma continuing?

**ADV BAITSENG RANGATA:** Under 2 we have got 2.1 being day 1 178 and 2.2 being day 179. And then it is sub-folder 3.

**CHAIRPERSON:** Ja.

**ADV BAITSENG RANGATA:** Yes.

**CHAIRPERSON:** But why is it separated if it is the same evidence with 2.2?

10 **ADV BAITSENG RANGATA:** 2.2 it is – it is 2 contents of 1 and 2 being separate dates.

**CHAIRPERSON:** Ja why – why separate them? But we separate days but it is the same witness, same evidence.

**ADV BAITSENG RANGATA:** I take that point Chair.

**CHAIRPERSON:** Ja it causes confusion. Okay the lever arch file which contains Mr Duduzane Zuma's transcript of evidence and a document marked SCC digital forensic technologies data analysis output will be marked Exhibit – will be admitted as Exhibit LL8.

**ADV BAITSENG RANGATA:** Thank you Chair.

20 **CHAIRPERSON:** Okay.

**ADV BAITSENG RANGATA:** Thank you very much for that Chair.

**CHAIRPERSON:** Hm.

**ADV BAITSENG RANGATA:** Chair I want to move straight to – to our file LL1B under item 1.7.3.

**CHAIRPERSON:** Huh-uh.

**ADV BAITSENG RANGATA:** And let me go to – straight to page 813. Mr Hlongwane if you – if you go to file – if you look at your spine you will find that this is marked as LL1B and if you go to – if you look at your extreme left on each page there is red numbering. That is the number that I will be referring to when I call the numbers and I will only be calling the last number. Are you struggling with?

**MR HLONGWANE:** I will manage. What number is it?

**ADV BAITSENG RANGATA:** Are you – okay page 613.

**CHAIRPERSON:** 613?

10 **ADV BAITSENG RANGATA:** Yes DCJ.

**MR HLONGWANE:** 613.

**CHAIRPERSON:** On which Exhibit?

**ADV BAITSENG RANGATA:** Exhibit LL1.1B.

**MR HLONGWANE:** 613? I do not see 613.

**ADV BAITSENG RANGATA:** They – they are coming to assist you.

**CHAIRPERSON:** Are you going to be using the right numbers?

**ADV BAITSENG RANGATA:** Yes Chair. Yes.

**CHAIRPERSON:** What page did you say we must go to?

20 **ADV BAITSENG RANGATA:** Chair it is page 613 it is a document entitled Affidavit of Mr Fana Hlongwane. Are you there Sir?

**MR HLONGWANE:** Yes I am.

**ADV BAITSENG RANGATA:** Yes. Can you identify – Chair are we?

**CHAIRPERSON:** Hm.

**ADV BAITSENG RANGATA:** You – you got the document?

**CHAIRPERSON:** Yes.



**ADV BAITSENG RANGATA:** thank you Chair. Can you identify that document that appears on page 613?

**MR HLONGWANE:** Yes it is an affidavit by myself Chair.

**ADV BAITSENG RANGATA:** Okay that is you Fana Hlongwane, you confirm that?

**MR HLONGWANE:** Yes Ma'am.

**ADV BAITSENG RANGATA:** Thank you. If you go to the same pattern in numbering if you go to page 622.

**MR HLONGWANE:** Yes.

- 10 **ADV BAITSENG RANGATA:** Are you there? If you look at the bottom of that page there is a name there or a signature there, can you identify that?

**MR HLONGWANE:** Yes I can.

**ADV BAITSENG RANGATA:** Is that your signature?

**MR HLONGWANE:** Yes it is.

**ADV BAITSENG RANGATA:** Okay can you confirm this – that this is your statement or your affidavit that you have signed?

**MR HLONGWANE:** Yes I can.

**ADV BAITSENG RANGATA:** Can you confirm that?

- 20 **MR HLONGWANE:** Yes I do.

**ADV BAITSENG RANGATA:** Thank you. Can we then accept that the contents of this document that this is what – this is what you say to this – to this – to the Chair contained in this affidavit?

**MR HLONGWANE:** Correct.

**ADV BAITSENG RANGATA:** Thank you. Thank you very much.

**CHAIRPERSON:** Just to also confirm is this an affi – is this the affidavit that you filed with the commission in support of your application for Leave to Cross-examine Mr Jonas?

**MR HLONGWANE:** Yes I – casually reading yes. That would be the same thank you Chair.

**CHAIRPERSON:** Yes. Ja. Okay.

**ADV BAITSENG RANGATA:** Thank you Mr Hlongwane. I am going to try and attempt to – to deal with issues that I think they might not be that much of a dispute. Please tell me if you do not agree if you think  
10 it is something that we need to debate or if you agree with it. For example I am going to deal with the issue of the meeting that you had with Mr Duduzane and Mr Jonas and yourself. Can we accept that the three of you had a meeting on the 23 October 2015?

**MR HLONGWANE:** That is correct.

**ADV BAITSENG RANGATA:** Okay can we confirm that the meeting was arranged by Mr Duduzane Zuma?

**MR HLONGWANE:** Correct.

**ADV BAITSENG RANGATA:** Can we also confirm that the meeting was initially arranged to take place at the Hyatt Hotel in Rosebank, would  
20 you know that?

**MR HLONGWANE:** I can confirm that they had the meeting initially at the Hyatt in Rosebank not that it was arranged to be at the Hyatt in Rosebank yes.

**ADV BAITSENG RANGATA:** Okay.

**CHAIRPERSON:** Or maybe we could – maybe we could do it this way.

Maybe because it is not a long story. Maybe we could let Mr Hlongwane tell me in his own words how that meeting came about and once he has finished then you can ask questions.

**ADV BAITSENG RANGATA:** Thank you.

**CHAIRPERSON:** Ja.

**ADV BAITSENG RANGATA:** Thank you.

**CHAIRPERSON:** Just tell me in your own words as far as you know how that meeting came about, who was at the meeting, what was the purpose of the meeting, what was discussed at the meeting and insofar  
10 as there may be anything that happened after that is relevant mention it as well?

**MR HLONGWANE:** Thank you Chair.

**CHAIRPERSON:** And – and feel free to tell me about yourself. If you – if there is something about yourself and the background that you think I should know for purposes of today but if there is nothing it is fine.

**MR HLONGWANE:** The genesis of the meeting Chair was Duduzane Zuma highlighting to me that he has hearing rumours that I was allegedly blackmailing Mr Jonas. He mentioned it several times on different occasions. I did not take up the matter at the time because I  
20 thought it improbable because of the relationship I had with Jonas. And after several times of trying...

**CHAIRPERSON:** And you had been friends with him for a long time Mr Jonas?

**MR HLONGWANE:** That is correct Chair.

**CHAIRPERSON:** Yes okay.

**MR HLONGWANE:** Friends and comrades. I believe the same still prevails now. However...

**ADV BAITSENG RANGATA:** Sorry I did not get that.

**MR HLONGWANE:** I believe the same still prevails now.

**ADV BAITSENG RANGATA:** Alright.

**MR HLONGWANE:** I still believe he is comrade. So it worried me a lot. I could not understand it there is all manner of conspiracies in the political space so first, second time I did not take up the matter but the young man raised it again then I said, listen just arrange a meeting at  
10 the source of the story arrange a meeting let us deal with this issue decisively because he is a man I hold in high regard. I do not believe in stabbing anybody in the back.

**CHAIRPERSON:** Let me just understand. His reports to you was – were that he had heard that Mr Jonas was blackmailing you. Is that what he said to you?

**MR HLONGWANE:** Yes I think the background to that Chair is he knew I had a close relationship with Jonas, a gentleman I held in high esteem and I think what he found at odds is how I spoke highly of him and what was picking up in the market place. So he raised it several  
20 times and then it was difficult for me to believe that, that is why I said let us have that meeting.

**CHAIRPERSON:** Yes just one second Mr Hlongwane. The technicians if they can have a look.

**MR HLONGWANE:** Am I not audible?

**MR HLONGWANE:** I do not know whether – you are not as clearly

audible as I would like you but it was happening with the previous witness as well but I thought – so it may be that if – no actually bringing in the microphone closer might complicate it – the situation more. Maybe if you are – you lift quite some distance – just talk now before they do anything without coming closer. Just talk. What – tell us what Mr Duduzane said to you then I am going to see how audible it is.

**MR HLONGWANE:** What he found at odds was the contradiction between the esteem which I held.

10 **CHAIRPERSON:** That is much clearer for me. That is much clearer. So maybe do not come close just speak from a distance but I will ask you to raise your voice a bit. Okay I think let us leave it like that. If there is a problem then we will ask the technicians to check if there is anything.

**ADV BAITSENG RANGATA:** Okay thank you.

**CHAIRPERSON:** Can you hear well from that side? Are you able to hear?

**ADV BAITSENG RANGATA:** Yes I can hear Chair.

**CHAIRPERSON:** Okay thank you.

20 **ADV BAITSENG RANGATA:** Thank you.

**CHAIRPERSON:** Okay you may continue.

**ADV BAITSENG RANGATA:** You going to proceed.

**MR HLONGWANE:** So in the intervening period I made an undertaking which he had asked me to make that I am not going to raise the issue prior to that meeting that I demanded must be held Because it what – I

might have been hot under the collar. I made that undertaking that I will not raise it until such time that we have a three way meeting with Jonas. He sought to have that meeting. I placed the responsibility on him squarely. We are raising this issue with somebody who is close to me whatever your sources are I would like you to [indistinct] this issue in my and his presence. Which meeting was duly arranged between them and Jonas. They met at the Hyatt for whatever reasons. One was at Ned [indistinct] one was at [indistinct] that was the nearest venue for them. The Hyatt was a problem for me Chair. I said to both of them I

10 called Mr Zuma let us find a private venue for this meeting. I called Mr Zuma on the same telephone conversation I spoke to Jonas. We agreed to move the meeting. The young man [indistinct] respond really to us to ascertain a venue nearby. Ja ascertain the venue which was both the business centre and the residence. I think that is where he operated from most of the time. We went to that venue Chair and the meeting duly took place. Given that I was not supposed to raise any issue before it was – fell upon the young man to raise the issue for the reason of that particular meeting. Because for anything else to take place we had to clear the air. I had my own issues in my mind so I

20 needed to clear the air. And the point was duly raised. Mr Jonas' response to the best of my recollection was – he said he does not have a recollection of ever having said that. That is what he said. Beside the basic niceties it was not a long meeting. He had a flight to catch and those kinds of things. My only brief was to establish that because of the nature of the relationship that we had until then. There were a

number things happening in the political space some of which resulted in this commission. So I just needed to understand what would be the issue around me? Why would I be dragged into any – essentially that was it in brief Chair.

**ADV BAITSENG RANGATA:** How long was the meeting?

**MR HLONGWANE:** It was very brief Ma'am I do not know.

**ADV BAITSENG RANGATA:** If you have to estimate was five – ten minutes?

**MR HLONGWANE:** I do not want to mislead the Chair.

10 **ADV BAITSENG RANGATA:** Okay.

**MR HLONGWANE:** The meeting was very brief you can say under a half an hour.

**CHAIRPERSON:** Twenty minutes, thirty minutes, one hour?

**MR HLONGWANE:** You can say around half an hour.

**CHAIRPERSON:** hm.

**ADV BAITSENG RANGATA:** About thirty minutes.

**CHAIRPERSON:** Hm;

**MR HLONGWANE:** Ja.

20 **ADV BAITSENG RANGATA:** So I want you to just take me back to when you met – when you went into that meeting who broke the ice? Who spoke?

**MR HLONGWANE:** Who broke the ice?

**ADV BAITSENG RANGATA:** Yes who started?

**MR HLONGWANE:** Ma'am look we arrived simultaneously. We got into the place. Naturally the issue is not raised. We all greet. I do not

know which part is breaking the ice. We greet. We know each other that kind of thing so I am not sure which part would be breaking the ice.

**ADV BAITSENG RANGATA:** The – the main issue that we are there to discuss who started on it? Was it yourself or was it Duduzane?

**MR HLONGWANE:** It was Mr Duduzane. It had to be Mr Duduzane.

**ADV BAITSENG RANGATA:** Right okay.

**MR HLONGWANE:** My recollection tells me that yes.

**ADV BAITSENG RANGATA:** Alright and when he started what was his  
10 context of the discussion? What did he say?

**MR HLONGWANE:** Huh?

**ADV BAITSENG RANGATA:** What did he say exactly?

**MR HLONGWANE:** Exactly I cannot tell you but essentially I know you guys to be my senior comrades' etcetera. Fana holds you in high esteem etcetera. I was picking up these things in the market place so it was important to clear it up. Because yes I did – I do hold both of them in high esteem. That does not change now.

**ADV BAITSENG RANGATA:** Okay alright. You mentioned that when  
20 you – when you were advised that the meeting was going to take place at the Hyatt you had a problem with the venue

**MR HLONGWANE:** Yes.

**ADV BAITSENG RANGATA:** Of the Hyatt. What exactly was the problem with the Hyatt Hotel?

**MR HLONGWANE:** They were seated at the lobby.

**CHAIRPERSON:** I am sorry. I do not know whether it is your voice or



the microphone is too far from you.

**ADV BAITSENG RANGATA:** Okay I will...

**CHAIRPERSON:** It looks like...

**ADV BAITSENG RANGATA:** Thank you, thank you Chair.

**CHAIRPERSON:** I cannot hear anybody today.

**ADV BAITSENG RANGATA:** Thank you Chair. I just – ja so I apologise for that. I wanted to know your concern with the...

**CHAIRPERSON:** Yes that is a – that is a better volume. So – so if you raise your voice it becomes quite audible.

10 **ADV BAITSENG RANGATA:** Thank you Chair.

**CHAIRPERSON:** Hm.

**ADV BAITSENG RANGATA:** Can you tell us what exactly what is the problem – what made you made uncomfortable having the meeting at the Hyatt Hotel?

**MR HLONGWANE:** Privacy Ma'am.

**ADV BAITSENG RANGATA:** Privacy.

**MR HLONGWANE:** Yes Ma'am.

**ADV BAITSENG RANGATA:** The – and the hotel could not provide you with a private rooms?

20 **MR HLONGWANE:** How?

**ADV BAITSENG RANGATA:** The hotel has – it did not have the business section where you can make use of the business side of the meeting or the rooms?

**MR HLONGWANE:** Okay Chair our chance of that nature generally have those facilities available.

**ADV BAITSENG RANGATA:** Yes.

**MR HLONGWANE:** There was time pressure. Somebody had to catch a flight. In order to get that facility there is

1. Availability issues.
2. There is time issues. You need to book.
3. There is cost issues.

So it is not a given that because you are there you can walk into any private room no.

**CHAIRPERSON:** Hm.

- 10 **ADV BAITSENG RANGATA:** So you could not consider the Hyatt because it needed to have been prearranged for that facility for business meetings?

**MR HLONGWANE:** I did not hear that.

**ADV BAITSENG RANGATA:** So you could not have the meeting at the Hyatt for privacy reasons but because you could not have arranged a business room at that time?

**MR HLONGWANE:** Okay context Ma'am again. The meeting at the Hyatt the convergence was not arranged by myself.

**ADV BAITSENG RANGATA:** Yes.

- 20 **MR HLONGWANE:** The two gentlemen, one was nearby do – in the [indistinct] meeting finished so what was the easiest place for them to meet. They converged at the Hyatt. So prearrangements does not arise because I was not party to that.

**ADV BAITSENG RANGATA:** Alright.

**MR HLONGWANE:** So when they were there they told me they were

there I raised the issue of privacy. So the prearrangement could not arise at the time.

**ADV BAITSENG RANGATA:** Okay. I am just not getting – getting to your response on this one because if privacy was the main issue and if you have to look at the time pressures obviously I would imagine that you talking about Mr Jonas because he had to go to the airport. Would it not have been quicker to have actually the hotel to provide you with that facility rather than to go outside the hotel?

**MR HLONGWANE:** I do not think it would have been quicker. Like I  
10 said in order to get a room you need to prearrange and 2. Its availability. These places are always busy. 3. There is a cost element.

**ADV BAITSENG RANGATA:** I understand you and they could not have established at that time if it was available? We – I am not hearing that it was not available I am hearing that availability. So what I am asking is was it asked and they said they were full?

**MR HLONGWANE:** The issue never arose.

**ADV BAITSENG RANGATA:** Okay.

**CHAIRPERSON:** I said we must find a private place it is a hotel they are in the lobby. The issue never arose. I asked for a private space.

20 **ADV BAITSENG RANGATA:** Alright. And when you – when you asked about the privacy is it Duduzane who suggested an alternative venue?

**CHAIRPERSON:** Mr Duduzane Zuma.

**ADV BAITSENG RANGATA:** Mr Duduzane Zuma.

**CHAIRPERSON:** Not Duduzane.

**ADV BAITSENG RANGATA:** Sorry Sir.

**MR HLONGWANE:** As far as I can remember yes Ma'am.

**ADV BAITSENG RANGATA:** And what address did he suggest for you?

**MR HLONGWANE:** The address was sent to me.

**ADV BAITSENG RANGATA:** He sent it to you?

**MR HLONGWANE:** The address was sent to me. They were both of them seated there so they would have communicated the address to each other yes.

**ADV BAITSENG RANGATA:** They sent via sms or how was it sent to you?

10 **MR HLONGWANE:** Ja sent to me or communicated verbally I do not remember.

**ADV BAITSENG RANGATA:** Alright.

**MR HLONGWANE:** Yes Ma'am.

**ADV BAITSENG RANGATA:** And what address was that?

**MR HLONGWANE:** It was in Saxonwold Ma'am where we had a meeting.

**ADV BAITSENG RANGATA:** Number 5?

**MR HLONGWANE:** It could have been number 5 yes.

20 **ADV BAITSENG RANGATA:** When you received that address or when it was communicated to you was it familiar to you?

**MR HLONGWANE:** What was familiar? Saxonwold? Yes it was familiar.

**ADV BAITSENG RANGATA:** The address itself did you have an idea what kind of a place it was? Whether it will provide you with the same privacy that you desired?

**MR HLONGWANE:** Yes.

**ADV BAITSENG RANGATA:** You could – you were satisfied?

**MR HLONGWANE:** That is his work space. It had the necessary facilities yes.

**ADV BAITSENG RANGATA:** At that stage did you understand that address to be a residence area?

**MR HLONGWANE:** Excuse me?

**ADV BAITSENG RANGATA:** Did you understand that address to be a residential place?

10 **MR HLONGWANE:** Yes ma'am. I understood it to be both a residential place and a business centre, because I have interactions with the Duduzane over a period of time.

**ADV BAITSENG RANGATA:** So you have been there before - before that - on that date?

**MR HLONGWANE:** At this point I do not remember ma'am. It is a long time ago.

**ADV BAITSENG RANGATA:** I just want to - to imagine this. You - you are not happy with - with the address that you - you have been provided and you suggest that you need a private space and then they give you  
20 an alternative space or an address which happens to be 5 Saxonwold which I am sure you can agree that it is - it is a Gupta residence. You - can you confirm that?

**MR HLONGWANE:** What was the question ma'am?

**ADV BAITSENG RANGATA:** Can you confirm that 5 Saxonwold is a Gupta residence - residence?

**MR HLONGWANE:** I do not understand the sense of the question though.

**CHAIRPERSON:** She is asking whether you are able to confirm that the place where you had this meeting was a residence for the Gupta family.

**MR HLONGWANE:** Yes. Of course. Certainly.

**ADV BAITSENG RANGATA:** And at that time when you were given the address you - you identified that as the Gupta residence?

10 **MR HLONGWANE:** Duduzane had a business centre where he operated from. I have known the gentleman. So I knew about this thing. Just like he came to my house. I - I knew his - his business. I do not understand what is the point.

**ADV BAITSENG RANGATA:** Please forgive me sir. I am just ...

**CHAIRPERSON:** Well Mr Hlongwane the question is whether you were given the address you knew or were told that the venue to which the meeting was shifted was a Gupta residence.

**MR HLONGWANE:** I can confirm that Chair. I understand the question better now. I confirm that. Thank you.

**CHAIRPERSON:** Okay. Thank you.

20 **MR HLONGWANE:** (Intervenes).

**ADV BAITSENG RANGATA:** Thank you for that Chair.

**MR HLONGWANE:** My apologies.

**CHAIRPERSON:** Okay.

**MR HLONGWANE:** That is ... (intervenes).

**CHAIRPERSON:** Okay.

**ADV BAITSENG RANGATA:** So we now under - understand that when you received the address you - you knew at the time that you were now given the Gupta residence address and that you are going to have your meeting at the Gupta residence. At some - a third party's residential area.

**MR HLONGWANE:** I knew the address. Third party or not. That is a different issue, because the young man worked from there.

**ADV BAITSENG RANGATA:** You were comfortable going into that - in that - in that area?

10 **MR HLONGWANE:** Yes. It is a venue that is private. Yes. I was comfortable.

**ADV BAITSENG RANGATA:** Let me ask you this. Are you aware that Duduzane owns a house at Saxonwold? Actually when he gave his evidence he said to the Chair that he is residence is more or less about 600 metres from - from the Gupta residence.

**MR HLONGWANE:** That is correct.

**ADV BAITSENG RANGATA:** Are you aware of that?

**MR HLONGWANE:** Yes. I am aware.

**ADV BAITSENG RANGATA:** Can I - can I ask why you - you - a  
20 meeting was not - did not take place at his residence?

**CHAIRPERSON:** Well ...

**MR HLONGWANE:** I ...

**CHAIRPERSON:** Remember that - as I understand his evidence. He said it was Mr Duduzane Zuma who decided which venue.

**ADV BAITSENG RANGATA:** Yes Chair.

**CHAIRPERSON:** So it is not him.

**ADV BAITSENG RANGATA:** Yes.

**CHAIRPERSON:** Hm.

**ADV BAITSENG RANGATA:** Okay. I can - I cannot take it any further Chair. So you - you go into this - in - into this house. It is yourself. It is Mr Jonas. It is Mr Duduzane and you enter the house. Is it in - inside the house or is it - is it a separate - is a separate office where you can work or is it inside the - the - is it - is a separate business side where you can work?

10 **MR HLONGWANE:** It is - it is a lounge ma'am.

**ADV BAITSENG RANGATA:** It is a lounge?

**MR HLONGWANE:** Ja. Meeting lounge.

**ADV BAITSENG RANGATA:** It is a meeting lounge?

**MR HLONGWANE:** Yes.

**ADV BAITSENG RANGATA:** Is if office - does it have office utensils like your proper boardroom tables?

**MR HLONGWANE:** It is a lounge ma'am. A lounge.

**CHAIRPERSON:** Hm.

**ADV BAITSENG RANGATA:** Okay.

20 **CHAIRPERSON:** Hm.

**ADV BAITSENG RANGATA:** So you - you enter the house and anybody that received you when you entered the house?

**MR HLONGWANE:** Mr Duduzane Zuma was familiar with the place.

**ADV BAITSENG RANGATA:** Okay.

**MR HLONGWANE:** So he led us to the relevant lounge.



**ADV BAITSENG RANGATA:** Was there somebody in the house when you entered?

**MR HLONGWANE:** The house was buzzing. Yes. I am sure there are people. The securities. People walking around.

**ADV BAITSENG RANGATA:** Alright. Except for the three of you did anyone join you for the meeting?

**MR HLONGWANE:** Except for the three of us during the course of the meeting ma'am there were a number what I would call interruptions. Somebody coming for coffee. Somebody for this. Somebody looking  
10 for this, but anybody joining to sit us for the substantive meeting. No ma'am.

**CHAIRPERSON:** As I understand the position you were friends with both Mr Jonas and Mr Duduzane Zuma. Is that correct?

**MR HLONGWANE:** That is correct Chair.

**CHAIRPERSON:** Yes and as far as you know and as far as you are concerned the purpose for the meeting was to discuss what Mr Duduzane Zuma had reported to you about rumours of blackmailing and to discuss this in the presence of Mr Jonas. So that you could hear what he has to say? Is that right?

20 **MR HLONGWANE:** That is right. *Ja*.

**CHAIRPERSON:** Yes. Now you - you did say that Mr Duduzane Zuma is the one who - if I understood you correctly - introduced the subject. Is that correct?

**MR HLONGWANE:** Yes sir.

**CHAIRPERSON:** Yes. Now let us - let us look at the content of what

he said in introducing the subject. Are you able to remember whether he said I heard from so and so that you are blackmailing Mr Hlongwane and gave whatever details and I reported this to Mr Hlongwane and that is why we have this meeting. So as to find out from you what you know about this. Are you able to remember how he put it without necessarily looking for his exact words?

**MR HLONGWANE:** Chair, as I said earlier it took me sometime before I said he should convene the meeting. I think his issue was here I am speaking highly of somebody and this is what he is picking up. So it  
10 happened several times. Then I said okay. Convene this meeting. We will flash out the issues there. I was very keen on knowing the source or sources. I am keen up to now.

I was hoping at some point or during this Commission somebody will come up with the story, because there was a rumour that mentioned all sort of games. He indicated that this is a set up. One holds in high esteem. There is this thing happening in the marketplace and he thought it would be important to - to clear the matter. So to the best of my recollection sir it was facts around the discussions around those facts.

20 **CHAIRPERSON:** So from what you say it seems to me that Mr Duduzane Zuma did not at that meeting say to Mr Jonas and to you who the source of the rumour was. Is that right?

**MR HLONGWANE:** Yes. To the best of my recollection sir. No.

**CHAIRPERSON:** Yes.

**MR HLONGWANE:** And in my - in my case what was more important

was to look the man in the face, because he is a friend. Is this thing reasonably possible? Could it be said and I was hoping the discussion will go further and get into the debate.

**CHAIRPERSON:** Yes. Do - do you remember or let me put this question. It would seem from what you have said that even on the occasions when Mr Duduzane Zuma told you about these rumours or reports that he made to you before you asked him to convene a meeting with Mr Jonas. It seems that he did not tell you the source even at that time. Is that right? Am I right?

10 **MR HLONGWANE:** That is correct sir.

**CHAIRPERSON:** Did you ask him for the source? Where do you take this from?

**MR HLONGWANE:** I duly asked sir, but the source was never divulged.

**CHAIRPERSON:** Yes. So you asked him even before you asked him to convene a meeting when he made the reports. You asked him for the source and he did not give you.

**MR HLONGWANE:** I asked and I was hoping that it would come out at that meeting, but no.

**CHAIRPERSON:** Yes and you said he made these reports more than  
20 once to you. Before you asked him to convene a meeting with Mr Jonas.

**MR HLONGWANE:** As far I - as I can remember. Yes. He raised the matter more than - more than once.

**CHAIRPERSON:** Yes.

**MR HLONGWANE:** Yes.

**CHAIRPERSON:** Are you able to give other details about this rumour or allegation of blackmailing that he told about or was it simply that - that there are rumours that - I understand that there are rumours or there are rumours that Mr Jonas is blackmailing you. Are you able to remember other details about this blackmailing? What was it about and so on or were you never given this information?

**MR HLONGWANE:** Chair, all I can remember is broadly the situation at the time. (Indistinct) all manner of agendas, but I am not able to say any other details that I remember, but I was hoping with time those  
10 details were going to emerge.

**CHAIRPERSON:** Hm. So am - am I - is my understanding of the essence of what Mr Duduzane told you on two or so more occasions before you asked him to convene a meeting. Is my understanding of the essence of what he said to you correct? Namely that he said he - he had heard rumours that Mr Jonas was blackmailing you. Is my understanding of what he said to you correct?

**MR HLONGWANE:** That he had heard rumours?

**CHAIRPERSON:** Yes. I just want to make sure I understand clearly what report he made to you that made you say to him you must convene  
20 a meeting with Mr Jonas. So I just want to - to go back. How he put it.

**MR HLONGWANE:** He put it over a period of time Chair and, because he was insistent upon it, because my view was - the view I had was different. So I suspect maybe out of a sense concern that I have got this particular view and there is something else going on. So he raised it over a period of time. That there is this particular thing. So instead

of being told be careful around whoever and whatever that kind of thing.

I decided that let us get this thing clarified. The tone was similar. The theme was - was the same. So you - you are correct sir. You are understanding that the tone and theme was similar about this particular matter, because I was also consistent in my views of the relationship. So it clearly bothered me. I said okay. Let us deal with this.

**CHAIRPERSON:** So my understanding is correct of what he reported to  
10 you in essence?

**MR HLONGWANE:** In essence. That is correct, sir.

**CHAIRPERSON:** Yes and - but what he was blackmailing you about was also not told to you by Mr Duduzane Zuma or was it?

**MR HLONGWANE:** What I was supposed to be blackmailing him about you mean sir?

**CHAIRPERSON:** (Indistinct).

**ADV BAITSENG RANGATA:** Yes. Yes. Yes. It is the other way around Chair.

**CHAIRPERSON:** I am sorry.

20 **ADV BAITSENG RANGATA:** Yes.

**CHAIRPERSON:** Okay. No.

**ADV BAITSENG RANGATA:** Thank you for that.

**CHAIRPERSON:** Oh. Okay.

**ADV BAITSENG RANGATA:** Yes. Yes.

**CHAIRPERSON:** I - I thought - I thought all along it was ...

**ADV BAITSENG RANGATA:** It is the other way around.

**CHAIRPERSON:** Okay. So - oh so he - so the report that was made to you ...

**MR HLONGWANE:** Yes Chair.

**CHAIRPERSON:** By Mr Duduzane Zuma was that Mr Jonas was going around saying that you were blackmailing him?

**ADV BAITSENG RANGATA:** Yes.

**CHAIRPERSON:** That is - that is the report?

**MR HLONGWANE:** Yes Chair.

10 **CHAIRPERSON:** Okay, but you were not given details in terms of the source of - of the rumours and in terms of what you were alleged to be blackmailing him about. Did - did Mr Duduzane Zuma give you those details prior to you asking him to convene the meeting?

**MR HLONGWANE:** No Chair.

**CHAIRPERSON:** He did not give you?

**MR HLONGWANE:** He did not. I thought the meeting would - would deal with all those things.

**CHAIRPERSON:** Yes.

**MR HLONGWANE:** Yes Chair.

20 **CHAIRPERSON:** Yes and when the meeting took place Mr Duduzane Zuma said nothing more in essence at the meeting in terms of what this was about than what he had already told you before? In other words he did not say anything new in terms of this blackmailing rumour or did he?

**MR HLONGWANE:** Look in essence that is what he said. There might

be - might have been other details around the rumour and what he ...

**CHAIRPERSON:** Yes.

**MR HLONGWANE:** What he said and so on, but I do not have recollection, but ...

**CHAIRPERSON:** Yes.

**MR HLONGWANE:** The main thrust of it was that I am alleged to be blackmailing ...

**CHAIRPERSON:** Yes.

**MR HLONGWANE:** The gentleman.

10 **CHAIRPERSON:** Yes. So, but the point - the point that I am - I am trying to establish is. Although he might have mentioned some details that he might not have previously mentioned to you. They did not go to the essence. The essence remained the same. Namely what he had told you before. Is that correct?

**MR HLONGWANE:** That is correct Chair.

**CHAIRPERSON:** Yes and did Mr Jonas in response to what Mr Zuma said ask Mr Zuma where he got this information from that he was going around alleging that you were blackmailing him? Do you remember whether he - he did or you do not remember?

20 **MR HLONGWANE:** I do not think there was such an engagement. What I do remember is him saying he had no recollection of ever saying that to anyone.

**CHAIRPERSON:** Yes and once he had said that was Mr Zuma able to take the discussion further asking him anything further in relation to this rumour or that was basically the end of the discussion of that

rumour?

**MR HLONGWANE:** I do not recall Chair. My - my entire focus was more on the response that I would get around - surrounded that issue.

**CHAIRPERSON:** Yes.

**MR HLONGWANE:** My entire focus was that ...

**CHAIRPERSON:** Yes.

**MR HLONGWANE:** Because it was a ...

**CHAIRPERSON:** Yes.

**MR HLONGWANE:** It was a big one for me.

10 **CHAIRPERSON:** So as far as you are concerned. It would be fair to say Mr Zuma introduced the subject of the meeting - the purpose of the meeting that this - it was about this rumour and in essence he - he said nothing different from what he had told you previously. He may have given some more details, but really in terms of essence it was the same thing that he had told you and Mr Jonas said he had no recollection of ever having said anything along the lines that you were blackmailing him and the issue could not be taken further after that. Would that be a fair summary of what happened before the three of you might have started talking about other things?

20 **MR HLONGWANE:** That is a fair summary Chair.

**CHAIRPERSON:** It is a fair summary.

**MR HLONGWANE:** Yes Chair.

**CHAIRPERSON:** Okay. Do you want to continue?

**ADV BAITSENG RANGATA:** Yes Chair. Thank - thank you for that Chair. Mr Hlongwane, in - in that meeting when you - when you asked -



when Mr Duduzane asked details or - or introduced the issue. How was Mr Jonas' reaction? Was he surprised or - or how did you read his reaction?

**MR HLONGWANE:** Well I am no expert, but it was a tense engagement.

**ADV BAITSENG RANGATA:** Was he tense?

**MR HLONGWANE:** Yes ma'am.

**ADV BAITSENG RANGATA:** And during the engagement were you able to say anything during the meeting? Did you - did you raise anything  
10 with him personally?

**MR HLONGWANE:** The issue that was being raised was of such a serious nature that and the manner in which it was raised, because here is somebody I consider a friend. There is an issue of that nature. So it was important for me to re-establish that thing and he said he had no recollection.

**ADV BAITSENG RANGATA:** Were you satisfied with that answer?

**MR HLONGWANE:** In this business ma'am no I was hoping at some point something would emerge as I still - still do hope something will come up on this matter, because it could not just have been plucked  
20 from the air.

**ADV BAITSENG RANGATA:** So you were not - you were not satisfied with the answer?

**MR HLONGWANE:** I am not.

**ADV BAITSENG RANGATA:** Did you take it with him after the meeting?

**MR HLONGWANE:** With who - him?

**ADV BAITSENG RANGATA:** With Jonas - Mr Jonas Mcebisi?

**MR HLONGWANE:** The source was the one that was there ma'am and there was nothing to take up after that.

**ADV BAITSENG RANGATA:** I - I want to pick up from the fact that you - you are friends. You - you have just give us a background that you - you are friends and you have been friends for - for some time.

**MR HLONGWANE:** Huh-uh.

**ADV BAITSENG RANGATA:** So I would imagine that you - you will speak occasionally. Do you visit each other's house?

10 **MR HLONGWANE:** We used to a lot before the incident.

**ADV BAITSENG RANGATA:** You used to?

**CHAIRPERSON:** Ms Rangata, at some stage you were very audible.

**ADV BAITSENG RANGATA:** Sure.

**CHAIRPERSON:** Maybe you raised your voice, but I think after I had commended you the voice went down.

**ADV BAITSENG RANGATA:** Thank you. Thanks. Sorry about that Chair. Sorry about that Chair.

**CHAIRPERSON:** Hm.

**ADV BAITSENG RANGATA:** I want to - to go slightly back.

20 **CHAIRPERSON:** Yes. If you keep it at that level.

**ADV BAITSENG RANGATA:** Thank you. I want to go slightly back. Before the meeting of 23 October 2015. Did you have any meeting prior to that? Immediately prior to that just to be more - even more clear. Beginning of October. Around beginning of October with Mr Jonas.

**MR HLONGWANE:** Chair, we had frequent interaction. So to say immediately prior to that. I cannot remember today, but we had frequent interactions. We were friends. Comrades. Frequent interactions over a period of time. It would be twice a day. Three times. Frequent interactions.

**ADV BAITSENG RANGATA:** Right. Mr Jonas makes reference in his statement - I am sure you have read his statement. To be more - more particular if you go to LL1A. The - the other - that is the other sub file paragraph 4. He - he makes reference to a meeting that took place  
10 between yourself and him and - and in this case he mentioned Mr Bongani More. Are you familiar with that name?

**MR HLONGWANE:** Yes. I am.

**ADV BAITSENG RANGATA:** And - and what is your - what is your relationship with him?

**MR HLONGWANE:** Friends/comrades. He is one of the gentlemen that came to the house regularly with frequent interactions.

**ADV BAITSENG RANGATA:** Would you say that your friendship was more - the same as that of Jonas - Mr Jonas?

**MR HLONGWANE:** We are comrades. Comrades are the same.

20 **ADV BAITSENG RANGATA:** Okay. So do - do you recall having such kind of a meeting where he was present?

**MR HLONGWANE:** Like I said ma'am we had frequent interactions as comrades. So there is nothing ...

**ADV BAITSENG RANGATA:** I am asking in particular beginning of October. Prior to 23 October do you recall having a meeting of such

nature where Mr Jonas and - and Mr More were - were in that meeting.

**MR HLONGWANE:** We have had frequent meetings with Mr Jonas and Mr More ma'am. So there is no particular meeting like you say. I - I remember a particular meeting.

**CHAIRPERSON:** Hm.

**ADV BAITSENG RANGATA:** And do you recall having a meeting where you spoke about Mr Duduzane Zuma wanting to speak to Mr Jonas?

**MR HLONGWANE:** Mr Duduzane Zuma wanting to speak to Mr Jonas it is a communication I had with Mr Duduzane Zuma and Mr Jonas and the  
10 communicated numbers.

**ADV BAITSENG RANGATA:** Do you recall that meeting where you had a meeting with Mr Jonas where Mr More was present and you - you spoke to Mr Jonas and advised him that Mr - I mean - Mr Duduzane Zuma would like to speak to Mr Jonas.

**MR HLONGWANE:** No ma'am.

**ADV BAITSENG RANGATA:** Do you recall that meeting?

**MR HLONGWANE:** No ma'am.

**ADV BAITSENG RANGATA:** You do not recall that meeting?

**MR HLONGWANE:** I recall that conversation between me and  
20 Duduzane about the names for Mr Jonas and Jonas, me and him. Not with Mr More. No. I do not remember that.

**ADV BAITSENG RANGATA:** Do you recall Mr Duduzane wanting to speak to Mr Jonas about inviting him to some awards?

**MR HLONGWANE:** Yes.

**ADV BAITSENG RANGATA:** When was that?

**MR HLONGWANE:** I do not remember. Sometime that year.

**ADV BAITSENG RANGATA:** Sometime?

**MR HLONGWANE:** Sometime in that year.

**ADV BAITSENG RANGATA:** During the - just before the meeting of October, the 23<sup>rd</sup>?

**MR HLONGWANE:** Just before when - no. I do not remember that, but I recall a discussion about that and it was between me and Duduzane and me and Jonas and they - they asked for numbers and they duly exchanged the numbers. So there was no Mr More in that - in ...

10 **CHAIRPERSON:** Who - who exchanged numbers?

**MR HLONGWANE:** Mr Jonas and Mr Zuma needed to exchange numbers. I was the medium. There was no Mr More in that interaction of numbers.

**CHAIRPERSON:** Oh. Was it just yourself and Mr Jonas only ...

**MR HLONGWANE:** In that communication ...

**CHAIRPERSON:** On that particular meeting?

**MR HLONGWANE:** In that communication it was telephonic Chair. It was telephonic. Yes.

**CHAIRPERSON:** Yes.

20 **ADV BAITSENG RANGATA:** So if - if you read the statement of Jonas where he makes reference to a meeting that you had in October where you had spoken about the importance of the Guptas. What would be your comment to that?

**MR HLONGWANE:** My comment would refer back to my earlier comments. We had frequent interactions at different places with

Mr Jonas. We are friends and comrades and we covered a variety of topics. So to pick out one and say such and such a thing happened would be I think asking too much, but I am happy to answer any question.

**CHAIRPERSON**: From what you have said I think it seems that prior to this meeting of the 23<sup>rd</sup> as far as you were concerned your friendship/comradeship relationship with Mr Jonas was normal ...

**MR HLONGWANE**: Yes Chair.

**CHAIRPERSON**: And you were interacting with him as and when the  
10 need arose. There was no problems. Is that correct?

**MR HLONGWANE**: That is correct Chair.

**CHAIRPERSON**: Yes and with regard to Mr Bongani More was that the same situation as well? You were interacting with him as and when the need arises. There were some interactions among the three of you, yourself, Mr Jonas and him, but others maybe not involving all three of you necessarily prior to that meeting.

**MR HLONGWANE**: That - that would be correct Chair.

**CHAIRPERSON**: That would be correct. Yes.

**MR HLONGWANE**: That would be correct.

20 **CHAIRPERSON**: So one can accept that when you had the report that Mr Duduzane Zuma gave - gave to you or made to you about the rumours. You would not ordinarily have had any problem with speaking to Mr Jonas or and even raising this as your friend to say I - I have heard something that I cannot believe here, but I hear that from Mr Duduzane Zuma that there are rumours that you are throwing around

saying I am blackmailing you.

That is not something that you would ordinarily have had a problem with doing. Is that right, but you might have chosen for a reason that you gave not to raise it directly with him.

**MR HLONGWANE:** Chair, I think you are raising a valid point.

**CHAIRPERSON:** Hm.

**MR HLONGWANE:** In the space that we are in when we get stuff like that you look deeper into what could be the motivation. It is not just like in any ordinary relationship. Why would this be coming up? There  
10 is a number of permutations. Then the best option for me was indeed as per agreement let us put Jonas here and you are here and you articulate the issue.

So the fact of our friendship within that I could invest in. It would have been a recurring decimal. Who told you that? So I wanted that matter to have been closed at that point, but I could not be in Duduzane Zuma's mind to be or force him to tell me, but he may well have sources that he may not have with to disclose at that point.

**CHAIRPERSON:** I guess the - the answer is you did not have any problem and you would not have any problem raising any issue with  
20 Mr Jonas at the time if you wanted to, but for this particular one. You thought it was best not to raise it directly with him, but rather to say Mr Zuma please convene a meeting where all three of us will be present. Is that correct?

**MR HLONGWANE:** Sir ...

**CHAIRPERSON:** Yes.

**MR HLONGWANE:** Chair that will be a fair reflection of my ...

**CHAIRPERSON:** Yes.

**MR HLONGWANE:** Of my state of mind.

**CHAIRPERSON:** Okay. Chair I am looking at the time and I see it is 1 o'clock. Can I take direction from you?

**CHAIRPERSON:** I - subject to everybody being fine with it. I am inclined to say let us try and see if we can finish with his evidence ...

**ADV BAITSENG RANGATA:** Okay.

**CHAIRPERSON:** Because I do not think we should take much longer ...

10 **ADV BAITSENG RANGATA:** Thank you Chair.

**CHAIRPERSON:** After this.

**MR HLONGWANE:** We will have no problem Chair.

**CHAIRPERSON:** You will be fine with that. Yes. Is that fine with you Mr Hlongwane?

**MR HLONGWANE:** Absolutely fine Chair.

**CHAIRPERSON:** Yes.

**ADV BAITSENG RANGATA:**

**MR HLONGWANE:** Absolutely.

20 **CHAIRPERSON:** Let - let us continue. I think we should be able to finish before half past and - and then we - we can be done. Then we can take the lunch break and after lunch have the next witness.

**ADV BAITSENG RANGATA:** Thank - thank you Chair.

**CHAIRPERSON:** Yes.

**ADV BAITSENG RANGATA:** I am - I am indebted to you. Mr Hlongwane I meant to take you to LL1A and I want to take you to in



particular page 7. It is a statement by Mr Jonas. It will help if you go there, because you might want to refresh your memory. I know you might have read - read the statement.

**MR HLONGWANE**: Yes ma'am.

**ADV BAITSENG RANGATA**: So - so maybe you might need to - as we - as we are talking you might need to.

**MR HLONGWANE**: (Intervenes).

**CHAIRPERSON**: Well if you tell her - tell him what it says ...

**ADV BAITSENG RANGATA**: Yes. Yes. Yes.

10 **CHAIRPERSON**: He might not need to - to look it up. *Ja*.

**ADV BAITSENG RANGATA**: Okay. That is fine.

**MR HLONGWANE**: Thank you Chair.

**ADV BAITSENG RANGATA**: There - there ...

**MR HLONGWANE**: I am indebted.

**ADV BAITSENG RANGATA**: I am making particular reference to paragraphs 17 and 18 of Mr Jonas' statement. This is his version and this is his evidence what he has told this Commission or the Chair.

**MR HLONGWANE**: Huh-uh.

**ADV BAITSENG RANGATA**: He says that on the date, on the 23<sup>rd</sup> of  
20 October 2015 when you were at the Gupta residence it's common cause when you started with your meeting, when you sat and you started talking, somebody walked into the room, okay, he said that person walked in and he started talking. Walked into the room, started talking while you – the three of you were sitting in that space. He goes on, on paragraph 19 and 20, he says,

“This person who walked in says, he started by saying, we know you and we know that Hlongwane is blackmailing you”, referring to Jonas, speaking to Mr Jonas and that they had intelligence on him.

Do you recall such conversation taking place or even to start, do you recall somebody walking into your meeting and uttering such statements?

**MR HLONGWANE:** Chair at a meeting in which I was present, no such happened.

10 **ADV BAITSENG RANGATA:** It did not happen?

**MR HLONGWANE:** At the meeting at which I was present.

**ADV BAITSENG RANGATA:** You made reference earlier on that somebody walked into the room, into the meeting or people were walking in and out was there any other particular person who walked in and spoke, you might have heard what that person said, is there any particular person that walked in that space while you were talking?

**MR HLONGWANE:** Ma'am as I recall there were there of us in the room I was facing Mr Duduzane Zuma, my back to the door, Mr Jonas to the right, if I remember well. So there would have been a number of  
20 what you'd call interruptions, doors opening and closing.

**ADV BAITSENG RANGATA:** Yes.

**MR HLONGWANE:** Was the question, did anyone speak to Mr Duduzane?

**ADV BAITSENG RANGATA:** Yes.

**MR HLONGWANE:** Indeed as far as I can remember somebody did

peep in briefly but there were a number of doors opening a number of times, what they spoke about I do not know but I did think it was a member of the Gupta family that was my impression.

**ADV BAITSENG RANGATA:** You've said that to the Public Protector during your interview, maybe just to tap from that we've gone through the transcript of the interview which we have provided your lawyers with. The interview recorded being asked particular if you are aware of the person that walked into that meeting, do you recall such question being posed to you by the Public Protector?

10 **MR HLONGWANE:** Yes I do.

**ADV BAITSENG RANGATA:** And do you recall what the response was?

**MR HLONGWANE:** Yes I do, broadly it was somebody did peep in briefly and I thought it was a member of the Gupta family.

**ADV BAITSENG RANGATA:** Of interest, you might not be able to comment to that because it's not you, Mr Duduzane Zuma, when he was giving evidence, he said it was Mr Rajesh, what would be your comment to that? He says Mr Rajesh, during the meeting peeped in and came to approach him and spoke to him about arranging for a meeting for the  
20 following day, did you see that happening?

**MR HLONGWANE:** My comment to that Chair, would be Mr Duduzane Zuma knows his business partners and these people very well over a long period of time, I'd only met only one of the brothers but only but once, so objectively speaking I'd have to defer to the version of Mr Zuma in terms of identification I would not fight a second world war

about the identification issue, I'll have to defer to Mr Zuma because if I also remember well some time ago I think there must have been another affidavit deposed to by the same person where they, themselves indicate that they peeped in. So in the face of such I can only but accept diversion.

**ADV BAITSENG RANGATA:** Thank you, which member of the Gupta family are you familiar with?

**MR HLONGWANE:** Then or now?

**ADV BAITSENG RANGATA:** Then.

10 **MR HLONGWANE:** Familiarity, somebody I've spoken to, somebody I've met I had only had lunch with one member of the Gupta family organised by Mr Duduzane Zuma at some place in the Northern Suburbs yes.

**ADV BAITSENG RANGATA:** Yes and do you recall who that was?

**MR HLONGWANE:** Tony.

**ADV BAITSENG RANGATA:** That is Rajesh?

**MR HLONGWANE:** I think – otherwise referred to as Rajesh.

**ADV BAITSENG RANGATA:** Yes, yes I think they use the names interchangeably yes. So you are familiar with Rajesh Gupta, Tony  
20 Gupta?

**MR HLONGWANE:** At that time, it was a person I knew, familiar, no because I'd only met the person but once.

**ADV BAITSENG RANGATA:** Would you recall if that would have been the same person that walked into the room?

**MR HLONGWANE:** Would I recall that it would have been the same

person that walked into the room?

**ADV BAITSENG RANGATA:** Yes.

**MR HLONGWANE:** Given that my back was to the door and my focus was on the discussion I would not lay my head on the line, but like I said I will have to defer to the version of Mr Duduzane Zuma who knew the people better and very well, I did not at the time.

**ADV BAITSENG RANGATA:** Thanks you – during the interview with the Public Protector you were asked specifically if it was Mr Rajesh and you made a clear – your answer was very clear to say it was not Mr  
10 Rajesh, so what will be your comment now that Mr Duduzane said that it was him, will you still say that you might...[intervenes].

**MR HLONGWANE:** I think I may have answered that question Chair but I'll repeat it for the sake of clarity. My interviews with the Public Protector, I repeat that which I said is that which I said indeed and I am saying in view of what Mr Zuma and the gentleman in question have testified to under oath, I'll have to defer to their version they know each other better, that their identification had been correct on my part it certainly would then mean it was a misidentification.

**ADV BAITSENG RANGATA:** Yes.

20 **CHAIRPERSON:** You said the meeting – you estimate that the meeting may have taken about 30 minutes is that right?

**MR HLONGWANE:** Ja about that.

**CHAIRPERSON:** You were estimating?

**MR HLONGWANE:** Yes.

**CHAIRPERSON:** Yes, and at the end of the meeting did you and Mr

Duduzane Zuma remain at the venue while Mr Jonas left, do you recall if that is what happened?

**MR HLONGWANE:** As far as I recall Chair we all went down the stairs our cars were parked there, I think Mr Jonas went in a different car from the one he came in and we parted. Whether Mr Duduzane remained or not I do not recall.

**CHAIRPERSON:** Yes, yes okay well you have, I'm sure read Mr Jonas' statement that gives his version and maybe you have even read the transcript of his evidence is that correct?

10 **MR HLONGWANE:** That's correct sir.

**CHAIRPERSON:** So you know what he has told the Commission?

**MR HLONGWANE:** Broadly.

**CHAIRPERSON:** Broadly, yes, yes and you know what he says happened at the meeting which is different from what you say happened in terms of him having been offered by a member of the Gupta family the position of Minister of Finance and...[intervenes].

**MR HLONGWANE:** The R600million story Chair.

**CHAIRPERSON:** And being offered a lot of money and that the member of the Gupta family told him, if I recall correctly that Mr  
20 Nhlanhla Nene was Minister of Finance at the time was either going to be dismissed or was not going to be Minister of Finance in due course or something to that effect do you remember that part of his evidence?

**MR HLONGWANE:** Yes Chair, if I may comment, are you inviting me to comment Chair?

**CHAIRPERSON:** No, no, I just want to know whether that's your – you

remember those features of Mr Jonas' evidence or not.

**MR HLONGWANE:** Yes Chair...[intervenes].

**CHAIRPERSON:** I just want to make sure that we don't have to ask you things that you remember about what Mr Jonas said.

**MR HLONGWANE:** Yes Chair, as – if I may Chair I was not in business with the Gupta's at that time.

**CHAIRPERSON:** Yes.

**MR HLONGWANE:** At any point ever.

**CHAIRPERSON:** Yes.

10 **MR HLONGWANE:** They were not particularly familiar to me, my point of contact was Duduzane.

**CHAIRPERSON:** Yes.

**MR HLONGWANE:** I hold no brief for the Gupta's or anybody else for that matter and when I said, if whatever offers were made at the meeting in which I was present, no such offer was made. Maybe if one can extrapolate one would have to be in business with them for them to make whatever offers of that nature in my presence. I was not in business then I'm not in business now, we never were in business, actually Chair if I may say, I'm peripheral to this matter.

20 **CHAIRPERSON:** Ja.

**MR HLONGWANE:** Really peripheral I happened to – there was a particular issue that the young man had conversed with me, I needed it resolved and it so happened that the meeting took place at the place which happens to be controversial for whatever reasons but my issue really here was that particular point and as I indicated now that we're

quoting PP's things I've had a relationship with Jonas we met at my place, many other times. So I have no association nor – and that's why I look dimly upon any attempt to try and throw me into whatever narrative of State Capture, thank you Chair.

**CHAIRPERSON:** Yes, no, no, no the idea was just to make sure that you recall at least certain features of Mr Jonas' evidence. You might disagree and say, at the meeting that you had with him and Mr Zuma, no such things happened but you understand that, that is his evidence.

**MR HLONGWANE:** That's correct Chair.

10 **CHAIRPERSON:** You understand that ja.

**MR HLONGWANE:** I do.

**CHAIRPERSON:** Now he says – he said in his evidence, and I think in his statement that after he had left the meeting which, if I recall was in the afternoon I think maybe after two I'm not sure, he called Minister Pravin Gordhan because he felt he wanted to talk to some of the people that were close to him or that he had confidence in to tell them what had happened to him because it was something that he, I think found unacceptable, was unexpected that he should be told the information that he was told at this meeting by the Gupta family member that he  
20 talked about.

He says he called Mr Pravin Gordhan and said he would like to see him and they arranged that they would meet on Sunday, the 23<sup>rd</sup> of October was a Friday as I understand the position. They agreed to meet on Sunday, he also called Minister Nene who he says was on his way to KZN at the time for the weekend and they arranged to meet on



Sunday and indeed he says on Sunday he met with them separately Minister Pravin Gordhan – no, no he met only Minister Pravin Gordhan on Sunday at his official residence in Pretoria with regard to Minister Nene they arranged on Sunday that they would meet on Monday and Mr Pravin Gordhan has given evidence that indeed they met and he told him something, I think to the effect that he had been made an offer or something illegal had been offered to him by the Gupta's and he had a meeting on Monday morning with Minister Nhlanhla Nene and he told him what had happened.

10           Both these ministers have confirmed in evidence before the Commission that he told them that at that meeting he was made the offer that he has told the Commission about but he also says when he arrived in Port Elizabeth, because he was catching a flight I think, to the Eastern Cape, he says he called you and you might have called each other during that evening but he says one of the things he said to you, I guess in one of the calls was he says, he expressed his disgust at what you had done as far as he was concerned that you shouldn't have done this to him and you shouldn't do it to anybody and as I understand his evidence he was talking about, he saw you as having  
20   played a role in him being taken to the Gupta residence maybe, and I say maybe because I don't want to put words into his mouth, maybe more than that, I don't know but he did say both you and Mr Duduzane Zuma, during the meeting on his version were quiet didn't say much really.

The person who was talking was the Gupta family member. So

I've looked at your affidavit and you didn't say anything about any calls that he may have made to you that evening so I don't know whether you are able to say anything, whether you remember that the two of you did speak in the evening and whether he did say anything along the lines that he says he said?

**MR HLONGWANE:** Chair, if I may just take us back for a couple of seconds, this [indistinct] as I indicated in some of my affidavits, we have come up from the Eastern Cape long before he became a Minister we tried to put – we put together teams we were pursuing opportunities  
 10 together so pursuing opportunities necessitates whatever it says because he had no certainty that he was going to go back to Government, we had many such frequent interactions so that's number one, about taking anybody anywhere.

Number two, a communication that I remember with Jonas is that I trust too easily, I think subsequent to that meeting, I trust people too easily and in my mind that was reference to the fact that somebody had indicated that he was making these serious allegations against me. So Chair, again by way of context when I said frequent engagements, even in my evidence to the Public Protector I actually indicated that  
 20 they can use this new technology to check whether what I'm saying makes sense or not, that we were frequently at my house, my family's family knows each other our teams work together.

A small detail, even on the day he was called to be appointed as the Deputy Minister, Chair, he left from my house. So this particular relationship that existed in a particular context and I will not cast

aspersions on him or anybody else for that matter I hold no brief for Gupta's or any other person but that's the relationship as it was then. What then happened in the intervening period, I do not know but I volunteered to go to the Public Protector, I was subpoenaed here but I'm here and I therefore say that which I remember being said was, you trust people too easily and yes Chair I'm aware of the version that he gave. I would not say to you what is excluded what's not included but at the meeting which I attended Chair with Duduzane Zuma and the gentleman no such things – offers were made.

10 I've had all other manner of things in his statements that I'm not familiar with. It's unfortunate that whatever it is that was [indistinct] to go this direction but not such things, it could have been handled better, thank you Chair.

**CHAIRPERSON:** I understand that I think from what you say you may be feeling constrained to go beyond a certain point because of the relationship and friendship that you have had for a long time with him. I just want to make two points and you can comment on them.

20 When he says coming out of the meeting I was in a certain state of mind because of what I'd gone through, what had been – what had happened at the meeting and I phoned Minister Pravin Gordhan and Minister Nene and he actually did meet with them and they confirmed that he met with them, it does seem, and I'm not putting it higher than that, it does seem like somebody who was quite concerned about something, what it may be might be the question of whether it's what he said or something else but it seems that there was something

that he was concerned about and then when he says, when I arrived in Port Elizabeth I phoned Mr Hlongwane and I expressed my disgust at his role in this whole thing.

It does seem to be consistent with somebody who left the meeting very unhappy whereas Mr Duduzane Zuma when he gave his evidence here, he said the meeting ended, you know very – he said it was fine there was, it was normal I don't know if he said positive but he said –I think it was normal and so – which is not consistent with somebody then phoning and talking about being disgusted and so on.

10 So I mention this so that you can comment – offer your comment if you'd like to but also I want to say for me there is something a little strange about the fact that a whole meeting is convened, and I just want you to give me your perspective, you know, a whole meeting is convened in circumstances where there is hardly any detail about this rumour that Mr Duduzane Zuma tells you about, you know so it doesn't give any source there is no detail and of course the moment Mr Jonas says at the meeting, on your version and the version of Mr Duduzane Zuma says I've no recollection of making such allegations that's about the end but you might be able to give me your comments which deal  
20 with that.

So I'm just giving you a chance to deal with these aspects.

**MR HLONGWANE:** Yes Chair indeed, I myself found a number of things strange, number one, the disgust that you talk about the surprise, the shock I'm not aware of, number two it was some time...[intervenes].

**CHAIRPERSON:** I'm sorry before you proceed, when you say you are not aware of, do you mean you are not aware of that, that's what Mr Jonas says in his statement or evidence or you're saying you're aware of that but you don't know what he's talking about?

**MR HLONGWANE:** Okay at the time Chair the expressions of disgust and the shock and all these related things I did not see evidence of that at the time, I'd sought for the meeting to be at a private place so that when these matters are dealt with there's no witnesses or that kind of thing.

10           Chair some of my comments would be, since that meeting took place I also heard rumours months after, months after that there seems to be things that Mr Jonas is saying, months later. Again it bothered me, again rumours, now nothing was said to me, not disgust nothing, months after there seems to be these rumours and ultimately at some point, now these rumours finally emerged as I'm hoping the other ones would also emerge, I think time may prove me right Chair.

              So that emerged and when that emerged I saw that there was an engagement by the ANC with Mr Jonas getting his view, what is strange to me is there was no such engagement with myself as I  
20   thought would have been the correct thing to do.

              If he's consulting his ANC comrades and there's this disgust surely these comrades must also convene me to say, comrade what is this thing that is happening? That did not happen, maybe things took long time to brew in his head before he expressed his disgust but it was strange to me. I went to the Public Protector to kind of understand

what's actually going on, what's the agenda here. I'm still confused to this point because it's something illegal that's supposed to have happened it was alleged to have been at that meeting, I know myself not to have been at that meeting. Things of that nature, just my comment Chair, would be in any serious position is something you take to the relevant authorities, so that the relevant authorities pursue this matter. Going to all manner of social stops addressing this matter may be not particularly useful, that's what brings me here because that matter could have been addressed at the time.

10           So Chair I have sympathy indeed from where you are as a Chair of this Commission with your perspective of somebody says there's a rumour, they don't go into the detail well slightly different with respect sir, the logic is slightly different that's why I did not raise the matter with Jonas, that's why somebody said but you're friend, you could raise it, that's not how it works.

              I needed to establish in a particular way, I believe some point this thing will come out but from where you sit I can understand that and especially if somebody says they went to this Minister and that Minister, those are big names Ministers in society sir because if I had  
20   to tell you I went to Joe and Sipho they would sound like small names. So because he went to this Minister and that Minister so it would be, oh why would this guy do that.

              Chair I – your wisdom will perhaps help here because in this same Commission many fanciful things were said also being Chairman of this, Chairman of that I did not seek to contest that when I thought

the issues were canvassed and just to answer the question that the wonderful counsel may have.

**CHAIRPERSON:** Yes.

**MR HLONGWANE:** Chair coming here is not the cheapest thing you guys are paid for by the State it's not the cheapest thing...[intervenes].

**CHAIRPERSON:** Mr Hlongwane they get paid quite – not the Chair.

**MR HLONGWANE:** I'll accept that so I've written affidavits to you making all manner of applications but on following the Commission, some of the issues I wanted to canvass were canvassed. I opted, one  
10 not my battle to fight, two, it's above my pay grade, three, financial constraints. In this case because the good lady decided to subpoena me I had no choice the attorney also negotiated with the guys, I volunteered because I really am peripheral to this thing.

So I will not create a big issue out of the fact that, for my purpose is that, all manner of fanciful stories were told about me but it's for you to establish why that would be the case. Somebody can say, but why didn't you want to come and cross-examine a particular person, the point is made, because I think those issues were canvassed. I equally did not come to cross-examine Mr Jonas because it's not my  
20 battle to fight, it's bigger issues – I'm peripheral to this thing.

**CHAIRPERSON:** Yes.

**MR HLONGWANE:** And then there's really financial constraints.

**CHAIRPERSON:** Ja.

**MR HLONGWANE:** And thank you for understanding my earlier personal circumstance I could not come to the Commission but I'm

happy to be here now.

**ADV BAITSENG RANGATA:** No, we sympathise with that.

**MR HLONGWANE:** Excuse me?

**ADV BAITSENG RANGATA:** I am saying the Commission is sympathising for the circumstances that you went through.

**MR HLONGWANE:** Thank you very much, I am indebted.

**ADV BAITSENG RANGATA:** Yes.

**CHAIRPERSON:** Well Ms Rangata I don't know how much else you need but my feeling is that a lot has been covered here.

10 **ADV BAITSENG RANGATA:** I think the Chair has actually covered all ...[intervenes]

**CHAIRPERSON:** From my side I don't remember any particular issue I still have that I want him to clarify.

**ADV BAITSENG RANGATA:** Yes, yes, I don't want to ask Mr Hlongwane a question, I just want to – you don't have to comment but from what you have engaged, and I really – I sympathise because this is as the Chair has already alluded, what really puzzles me you know you're feeling pity for us you know putting the puzzle together, what puzzles me still is after the meeting on the 23<sup>rd</sup> of October 2015 almost  
20 two months after what was spoken about or what was alleged to have been it actually happened on the 9<sup>th</sup> of December 2015 and one ask oneself whether it was a coincidence or not, you might not be able to comment to that but it is just an observation you know trying to understand what actually happened.

**MR HLONGWANE:** Please counsel, the point through you Chair.



Read me the point.

**ADV BAITSENG RANGATA:** I am saying you might not be able to comment to it but it is just an observation of what transpired almost two months after the meeting of what has been alleged to have taken place indeed took place about two months ago, you might not be able to answer that question unless you think you want to answer to it.

**CHAIRPERSON:** Well I think what counsel is saying is one of the things that Mr Jonas said he was told by the Gupta family member at that meeting that he says you attended was that Mr Nene was going to  
10 go as Minister of Finance, I can't remember the actual words used but in effect that he was going to go or he was going to be dismissed or fired and she is simply saying you might not be able to say anything but what is interesting she is saying is that indeed on the 9<sup>th</sup> of December 2015 Mr Nene was dismissed.

**MR HLONGWANE:** Chair I understand the point that you don't expect me to comment as it would be speculation indeed, what also puzzles me counsel is that when that event of December 9<sup>th</sup> happened Mr Jonas was not removed.

**CHAIRPERSON:** Yes, but remember he had not been told that he would  
20 be removed according to his version.

**MR HLONGWANE:** But according to the same version he had been told that he would be promoted, I am just deliberately with holding on saying he was not promoted.

**CHAIRPERSON:** Yes I think the – but I think on his evidence he would be promoted if he accepted the offer that was given to him on his

evidence and he says he didn't accept the offer from the Gupta family member.

**MR HLONGWANE:** Well for me there is a number of puzzles here but if there was intensity in all these things that were supposed to have happened surely he could not have remained in that position, but that is for you wiser people to determine.

**CHAIRPERSON:** *Ja.*

**MR HLONGWANE:** Because it is one thing to say something that was spoken about happened, I don't want to talk about the prediction of rain  
10 but if I see it is going to rain it rains then must call it a big puzzle, the bigger puzzle for me is even did that which is claimed to have happened happened because of that I think I have heard here Mr Zuma Senior indicating that he did not ...[indistinct] the one that made the appointments, that was his evidence under oath.

**ADV BAITSENG RANGATA:** Yes.

**MR HLONGWANE:** So I speculate on why certain things happened at a particular time, the best position to say that, but for me as an ordinary person if that is indeed the case how does this one remain in position. I think it is a puzzle too, because there is supposed to have been this  
20 facility.

**ADV BAITSENG RANGATA:** Thank you.

**MR HLONGWANE:** He has to have gone too Chair.

**CHAIRPERSON:** Yes, well I have told you what I think about that, you are entitled to have it remain as a question in your mind. The one part which I want to clarify is did you say earlier on that since that meeting

your friendship or relationship with Mr Jonas is no longer the same or did you say it has continued in the same way?

**MR HLONGWANE:** Chair I have not had any meetings with Mr Jonas since that time.

**CHAIRPERSON:** Sorry just repeat sir.

**MR HLONGWANE:** I have not had any meetings with Jonas since that time.

**CHAIRPERSON:** Yes.

**MR HLONGWANE:** I did see him at that – in ...[indistinct] hotel, he  
10 said hi, I responded back.

**CHAIRPERSON:** Yes.

**MR HLONGWANE:** Sometime this year.

**CHAIRPERSON:** Yes.

**MR HLONGWANE:** I still operate on the basis of these things will unravel themselves there, they are above my pay grade, I still insist.

**CHAIRPERSON:** Well it would seem that it would be fair comment therefore to say since that if you haven't met him since then other than maybe on the occasion where you say he just said hi and you said hi, it would seem that things in terms of your friendship and your relationship  
20 are certainly no longer the same because you said that prior to this meeting you were interacting with him very frequently, is that right?

**MR HLONGWANE:** That would be correct sir, maybe I am less required because at the time he was not established.

**CHAIRPERSON:** Yes. No, no that's fine.

**ADV BAITSENG RANGATA:** Thank you Chair, that will be the end of

my questioning for this witness.

**CHAIRPERSON**: Yes okay. I have no further questions, I am ready to excuse – you have no questions, ja.

**ADV BAITSENG RANGATA**: Thank you very much Chair.

**CHAIRPERSON**: Yes, thank you very much Mr Hlongwane for coming and you are excused, it is unlikely that we will ask you to come back but if a need arises we will ask you. Thank you very much.

**MR HLONGWANE**: Yebo.

**CHAIRPERSON**: We are going to take the lunch adjournment now, it is  
10 twenty five to two, we are going to resume at twenty five to three for the next witness.

**ADV BAITSENG RANGATA**: Thank you Chair.

**CHAIRPERSON**: We adjourn

**REGISTRAR**: All rise.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON**: Yes Ms Rangata.

**ADV BAITSENG RANGATA**: Good afternoon Chair.

**CHAIRPERSON**: Yes good afternoon everybody.

20 **ADV BAITSENG RANGATA**: Thank you Chair. Chair we have planned for the second witness who is Ms Moroadi Cholota. The legal team is – was ready to – to lead her evidence. Unfortunately we do not have her statement. At this stage Ms Makhapela would like to address the Chair.

**CHAIRPERSON**: Well let us do that then the – she can also place on record that they represent the witness.

**ADV BAITSENG RANGATA:** Yes Chair.

**CHAIRPERSON:** Ja thank you.

**ADV BAITSENG RANGATA:** Yes thank you.

**ADV LUISA MAKAPELA:** Good afternoon Chair.

**CHAIRPERSON:** Good afternoon.

**ADV LUISA MAKAPELA:** My name is Luisa Makapela. I am a member of the Johannesburg Society of Advocates and the Pan African Bar Association of South Africa.

**CHAIRPERSON:** Yes.

- 10 **ADV LUISA MAKAPELA:** I am the legal representative for Ms Nomalanga Moroadi Cholota and our instructing attorneys is Victor Nkhwashu Attorneys Incorporated. Chair we just have an issue with the statement and the reasoning why it was not – or the reason behind – I beg yours – the reason behind why it was not filed and it is due to the fact that Ms Cholota received the summons with the 3.3 Notice attached but it appeared that the 3.3 Notice was dated 1 August 2019 and she had not received that 3.3 Notice.

**CHAIRPERSON:** Hm.

- ADV LUISA MAKAPELA:** And so we seek the Chair's indulgence to file  
20 the written statement to accord with her version of events and present the witness with the witness statement rather than the sworn affidavit at that – at a time that will be determined by the Chair.

**CHAIRPERSON:** Hm. Hm. Yes I am aware that there is no statement from her and I was concerned about that as well. But I had been informed that there were challenges of her – on regard to her

availability because she was not within the country for a certain period of time. So it would be convenient if before she gives her evidence we could have her statement that deals with all the matters and issues that she should deal with.

**ADV LUISA MAKAPELA:** Yes.

**CHAIRPERSON:** So I think that it would be fine. I understand that there is no problem from the commission's legal team as well that we adjourn the hearing to enable you to complete her statement that I understand has already been started. But have it finalised and have it  
10 typed and give it to the commission's legal team. I think it will help if before you finalise it you have a discussion with Ms Rangata to make sure that you are on the same page with regard to what issues the statement should cover. So that when you give it to them there is no complaint that maybe it does not cover certain issues that they regard as important. So – so the – from my side we could adjourn to tomorrow. We could adjourn to Friday. I understand that tomorrow might be a – might be difficult for Ms Cholota.

**ADV LUISA MAKAPELA:** Yes that is correct Chair. Mr Cholota is not available for tomorrow.

20 **CHAIRPERSON:** Ja.

**ADV LUISA MAKAPELA:** However she has indicated availability for Friday.

**CHAIRPERSON:** For Friday.

**ADV LUISA MAKAPELA:** And we are also available for Friday.

**CHAIRPERSON:** Yes. Okay. Then no thanks let me hear what Ms

Rangata has to say but otherwise it seems to me that we can accommodate you on that – in that regard.

**ADV LUISA MAKAPELA:** Thank you Chair.

**CHAIRPERSON:** Ja.

**ADV BAITSENG RANGATA:** Thank you Chair. We are indebted and we are in agreement that there is a need for the witness to pen down the statement and I think I – also it is proper for the legal team to register that efforts have been made and actually there have been some consultations from the investigative team with the witness and where  
10 attempts have been made for draft statements that have been – have been submitted for her to consider. And those efforts have not been successful and that is the reason why we find ourselves here today having to sit here without her statement. But that being said we – because we would want to deal with the evidence of this witness so we are agreeable to reconvene again on Friday. Obviously on the admission of the direction from the Chair. Yes.

**CHAIRPERSON:** Okay no that is fine. Ms Cholota you will follow the discussion?

**MS CHOLOTA:** Yes Sir.

20 **CHAIRPERSON:** Yes.

**MS CHOLOTA:** Yes Sir.

**CHAIRPERSON:** No that is fine. Okay we will therefore adjourn the hearing of your evidence to Friday at I think let us make it half past nine to Friday at half past nine.

**ADV BAITSENG RANGATA:** Thank you Chair.

**CHAIRPERSON:** Friday this week at half past nine.

**ADV BAITSENG RANGATA:** Thank you Chair.

**CHAIRPERSON:** By which time then I will hear Ms Cholota's evidence.

But the preparation of the statement as I understand will continue immediately after this adjournment and – and I would like to receive a copy as soon as the legal team has got one and has looked at it to see if it is – covers all the areas.

**ADV BAITSENG RANGATA:** Thank you Chair.

**CHAIRPERSON:** So – so – but the two teams can be in contact and in  
10 discussion to make sure that as soon as it is ready it can be given to  
the commission's legal team.

**ADV BAITSENG RANGATA:** Thank you Chair.

**ADV LUISA MAKAPELA:** Thank you Chair.

**CHAIRPERSON:** Yes we adjourn the proceedings then until Friday this week at half past nine. We adjourn.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS TO DECEMBER 2019**