

COMMISSION OF INQUIRY INTO STATE CAPTURE
HELD AT
CITY OF JOHANNESBURG OLD COUNCIL CHAMBER
158 CIVIC BOULEVARD, BRAAMFONTEIN

20 OCTOBER 2020

DAY 287



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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 20 OCTOBER 2020

CHAIRPERSON: Good morning Mr Myburgh, good morning everybody.

ADV MYBURGH SC: Good morning Chairperson.

CHAIRPERSON: Yes.

ADV MYBURGH SC: Mr Chairperson with your leave we would like now to switch to the evidence of – or dealing with the Manganese Expansion Project and Hatch.

CHAIRPERSON: Yes.

10 **ADV MYBURGH SC:** My colleague Ms Segeels-Ncube will deal with the first witness.

CHAIRPERSON: Yes no that is fine.

ADV MYBURGH SC: Thank you. Why is the air conditioner making such a lot of noise today? Thank you. Mr Myburgh you do not have to stand up where you are I just mention this for record. You know yesterday at some stage in the afternoon when we looked at the minutes of the meeting of the 11th April 2011 I do not think it was the board I think it was one of the committees I mentioned that
20 there was something I wanted to raise later but I forgot about it. I am just mentioning it so that one can pick it up next time. The minutes that we were looking at reflects that Mr Gama was acting Group CEO at the time. It means within two weeks of him going back to Transnet he – he came acting Group CEO but I think it was temporary

because it appears that Mr Brian Molefe was outside the country. But there may be some significance in that fact. So I just mention that. Okay alright.

ADV SEGEELS-NCUBE: Good morning Chair.

CHAIRPERSON: Good morning.

ADV SEGEELS-NCUBE: Chair as Mr Myburgh indicated today we will be dealing with the evidence of Transnet's Manganese Expansion Project.

CHAIRPERSON: Yes.

- 10 **ADV SEGEELS-NCUBE**: And events that occurred during 2013 and 2014 during the procurement process of service providers at the time for the project. Now just for the benefit of the public Chair the Transnet Manganese Expansion Project was a project to increase Transnet's capacity on the ex-manganese line – rail line from what it was 5.5 million tons per annum to what would effectively at the end of the project be 16 million tons per annum.

In 2008 Transnet and the Manganese Ore Mining Industry identified the need to increase the capacity
20 because there was anticipated increase in demand for manganese at the time.

The plan was to upgrade the rail network between the Northern Cape and the Eastern Cape at the time and this would include a new bulk terminal in the Eastern Cape.

The project was to include the rail and the port

component with a projected cost of R25 billion at the time. Mr Henk Bester which is the first witness that we calling today was at the time the Project Director of Hatch Goba which was one of the service providers that was awarded one of the contracts – actually two contracts in phase 1 and phase 2.

Now the evidence that we will be leading will centre around what happened with the – during the procurement process and the pressure that was placed on Hatch at the
10 time to incorporate some of the services providers identified by Transnet to be its service – preferred service providers.

If – with the leave of the Chair may I then call Mr Henk Bester to take the affirmation or oath Chair?

CHAIRPERSON: Yes thank you. Please administer the oath or affirmation. Please stand up and

ADV SEGEELS-NCUBE: Ja remove your mask.

CHAIRPERSON: Put on your microphone – put on your microphone. If you are going to be audible with the mask
20 on that is fine but if you are not audible we will tell you. Okay alright.

MR BESTER: Ja I will take it off ja.

ADV SEGEELS-NCUBE: Thank you.

CHAIRPERSON: Okay.

MR BESTER: Thank you.

REGISTRAR: Please place your full names on record.

MR BESTER: Hendrik Jacobus Bester.

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

MR BESTER: Yes.

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

MR BESTER: No I do not.

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

MR BESTER: Yes I do.

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

MR BESTER: So help me God.

CHAIRPERSON: Thank you Mr Bester you may be seated. Yes you may proceed.

ADV SEGEELS-NCUBE: Thank you Chair.

20 **CHAIRPERSON:** Yes.

ADV SEGEELS-NCUBE: Chair we will be going through Bundle – working through Bundle 4[a] and 4[b] today.

CHAIRPERSON: Yes okay.

ADV SEGEELS-NCUBE: Bundle 4[a] contains Mr Bester's statement and that can be found Chair in the second folder

marked BB19.

CHAIRPERSON: Yes.

ADV SEGEELS-NCUBE: Commencing on page 24 of the white – the black numbers Mr Bester. And can you go to page 24?

MR BESTER: Ja.

ADV SEGEELS-NCUBE: And may I ask you to also go to page – if you could also go to page 130. You can keep page – yes Chair.

10 **CHAIRPERSON:** You have – have you advised Mr Bester that you will be looking at the black numbers.

ADV SEGEELS-NCUBE: Yes I have Chair I have just told him now.

CHAIRPERSON: Because [inaudible] page okay.

MR BESTER: Did you say page 130?

ADV SEGEELS-NCUBE: Yes so page – we will start on page 24 and page 130. I just want you to identify that the statement is in fact your statement. It is the black numbers. So you will see that the numbers say Transnet

20 04, 025.

MR BESTER: 04, 025 ja.

ADV SEGEELS-NCUBE: We are just looking at the last number which says 25 – so page 24. Do you have that?

MR BESTER: Ja.

ADV SEGEELS-NCUBE: And page 130 of the black

numbers. The last page of your statement is page 130.

CHAIRPERSON: On mine that the last page of his statement seems to be page 52. Have I got something wrong?

ADV SEGEELS-NCUBE: It seems so Chair. We – I am looking at – yes page 52 is the end of the – of the affidavit.

CHAIRPERSON: The bundle that I have is Transnet Bundle 04[a].

ADV SEGEELS-NCUBE: Yes Chair.

10 **CHAIRPERSON:** It is a bundle that starts with Mr Mkwanazi's affidavit.

ADV SEGEELS-NCUBE: Correct Chair.

CHAIRPERSON: And Mr Bester's affidavit or statement seems – starts at page 24.

ADV SEGEELS-NCUBE: Correct Chair.

CHAIRPERSON: But on mine it seems to go only up to page 52.

ADV SEGEELS-NCUBE: Correct Chair. I am referring to inclusive of the annexures.

20 **CHAIRPERSON:** Oh.

ADV SEGEELS-NCUBE: I just want to orientate Mr Bester as to what we will be dealing with.

CHAIRPERSON: Okay. Hm.

ADV SEGEELS-NCUBE: Mr Bester do you have 130? Do you have page 130?

MR BESTER: 130.

ADV SEGEELS-NCUBE: Yes. It will still be under the same folder. So if you going to a new blue folder then you have gone too far. Go on.

CHAIRPERSON: 130 is blank on mine.

ADV SEGEELS-NCUBE: It is a blank yes – it is a blank page.

MR BESTER: Blank?

ADV SEGEELS-NCUBE: Yes correct.

10 **CHAIRPERSON:** So the last page is 129.

ADV SEGEELS-NCUBE: Page 129.

MR BESTER: Ja.

ADV SEGEELS-NCUBE: Do you confirm that this is your statement that you provided to the commission?

MR BESTER: Yes I confirm it is my statement yes.

ADV SEGEELS-NCUBE: And then on page 52 do you confirm that that is your signature? Page 52.

MR BESTER: Yes I confirm that is my signature.

20 **ADV SEGEELS-NCUBE:** Chair with your leave may Mr Bester's statement with annexures be admitted as Exhibit BB19.

CHAIRPERSON: Yes. Just for the sake of completeness. You confirm that the contents of the statement are true and correct?

MR BESTER: Yes.

CHAIRPERSON: To the best of your knowledge and belief?

MR BESTER: That I confirm.

CHAIRPERSON: You do okay. You would like to admit – you would like me to admit this statement as Exhibit?

ADV SEGEELS-NCUBE: BB19 Chair – BB19.

CHAIRPERSON: BB19?

ADV SEGEELS-NCUBE: Correct Chair.

CHAIRPERSON: Okay alright. I do not want to

10 **ADV SEGEELS-NCUBE:** Delay.

CHAIRPERSON: I do not want to not pronounce your surname correctly – incorrectly.

ADV SEGEELS-NCUBE: Yes Chair.

CHAIRPERSON: Is it pronounced Segeels-Ncube?

ADV SEGEELS-NCUBE: It is Segeels-Ncube Chair. Segeels.

CHAIRPERSON: Segeels.

ADV SEGEELS-NCUBE: Segeels-Ncube.

CHAIRPERSON: Okay alright.

20 **ADV SEGEELS-NCUBE:** I think the Ncube part is the easy part.

CHAIRPERSON: I am very sensitive about not pronouncing people's names correctly because I do not like mine not to be pronounced. So – but if I were to try and write it as I would pronounce it I would say S?

ADV SEGEELS-NCUBE: S-e-e

CHAIRPERSON: Yes.

ADV SEGEELS-NCUBE: G

CHAIRPERSON: Yes.

ADV SEGEELS-NCUBE: E-e-

CHAIRPERSON: Yes.

ADV SEGEELS-NCUBE: L-s.

CHAIRPERSON: But in terms of – are the e's pronounced as like a are

10 **ADV SEGEELS-NCUBE:** See – so it – the first ee's would be see as in see – so Segeels. So you could say it is Segeels.

CHAIRPERSON: Okay Segeels.

ADV SEGEELS-NCUBE: So after the G you could spell it as a girl and you would get it.

CHAIRPERSON: Okay alright.

ADV SEGEELS-NCUBE: Thank you Chair.

CHAIRPERSON: If I mispronounce it please forgive me we will – by the time we finish I hope I will be able to
20 pronounce it correctly.

ADV SEGEELS-NCUBE: Ncube is also just fine Chair.

CHAIRPERSON: Yes okay. Thank you.

ADV SEGEELS-NCUBE: Thank you.

CHAIRPERSON: The statement by Mr Henk Bester which starts at page 24 is admitted and will marked as Exhibit –

is it BB18?

ADV SEGEELS-NCUBE: BB18 Chair.

CHAIRPERSON: BB19. Okay.

ADV SEGEELS-NCUBE: Thank you Chair.

CHAIRPERSON: Thank you.

ADV SEGEELS-NCUBE: Chair at some point I will also be referring Mr Bester to the statements of Ms Deirdre Strydom who is a Transnet employee as well as Mr Gerhard Bierman who is a former Transnet employee and the former
10 CFO of Transnet Capital Projects.

I am not sure if Chair would want me to identify those statements now for the record but not have them admitted as yet since the witnesses have not yet given evidence.

CHAIRPERSON: Let us see when you need to refer to refer to them.

ADV SEGEELS-NCUBE: Thank you Chair.

CHAIRPERSON: Ja okay.

ADV SEGEELS-NCUBE: Okay. Mr Bester can we start on
20 page 24 of the bundle which is the start of your statement and I would like to begin with how you came to be the Project Director of Hatch Goba and what it is that Hatch Goba does as you deal with in paragraph – from paragraph 5 of your statement to page 25?

CHAIRPERSON: I do not know whether your voice is on

the soft side.

ADV SEGEELS-NCUBE: Okay Chair.

CHAIRPERSON: You might wish to raise it just a little bit.

ADV SEGEELS-NCUBE: Project it.

CHAIRPERSON: Ja.

ADV SEGEELS-NCUBE: Okay Chair.

CHAIRPERSON: Okay alright.

ADV SEGEELS-NCUBE: Thank you Chair. If you could just take us through how it came to be that you became the
10 Project Director of Hatch Goba and what it is that Hatch Goba does

MR BESTER: Ja. Okay so I started my career Chair in 1990 with Transnet as I had a bursary with them. I worked there for about eight years and then I joined a private consulting firm called RMH **Ryberg** [?] Consultants where I became the Managing Director. And over that next ten years you know we worked a lot for Transnet projects that we tendered for and were successful for a lot of studies that we have done.

20 And it was also during that time that we got involved as they call it the Manganese Line is basically the line from the Northern Cape to the Port of Port Elizabeth.

We did a lot of studies for Transnet but also for the private sector looking at options to expand the line, increase the capacity both for the infrastructure and the

rolling stock as we call it wagons and locomotives.

And in 2008 I joined a global company called Hatch and South Africa name as Hatch Goba at the time where I became the Global Lead for Rail. Not only looking after South Africa but also countries like Australia and South America.

And it was during this time that we became very much involved with the manganese line as I call it. We did earlier studies to look – looking at options of expanding
10 the capacity of the Port of Port Elizabeth where we looked at different Ports like Saldanha, Durban, Richards Bay and also other Ports on the West Coast of South Africa.

And it was during that time that Transnet announced that they are going to expand the manganese line to 16 million tons and they will doing a project called the 16 Million Tons Expansion Study – Manganese Expansion Project and that is where I became the Project Director for the Manganese Expansion Project.

ADV SEGEELS-NCUBE: Okay now at paragraph 14 of your
20 statement on page 27 you deal with the how TFR approached Hatch. Can you just explain to us what exactly was the Manganese Expansion Project and why was it necessary to expand the rail line?

MR BESTER: Ja. Just in a bigger context if you understand the manganese industry in the world South

Africa probably sits with about 80% of the world's reserves. But we only exporting at that time about 6 to 8 million tons of manganese which was less than 20% of the world demand.

So also understanding that South Africa has got some of the best grade manganese in the world so it was well sought after.

So there was a big need for Transnet to expand the capacity of the railway lines because if you understand the
10 manganese exporting system most of the mines are located in the Northern Cape which is about a 1000 kilometres from the coast.

So these manganese are transported by Transnet over the railway line from the mines in the Northern Cape to the Port of Port Elizabeth.

It was also at that time that Transnet announced that they will relocate from the Port of Port Elizabeth to the Port of Coega because they wanted to make Port Elizabeth a clean Port and Coega was earmarked for bulk minerals
20 like manganese.

So at that time we were busy with another study for Transnet looking at the immediate options to expand the manganese line and specifically at the time if I can recall there was a study called the 5.5 Million Tons Manganese Export Study which I was the Project Director for where we

looked at the as we call it the immediate bottlenecks.

It was bottlenecks that we could identify in the very short term that could be expanded to sort of open up the industry for the manganese. And that culminated in a project called the 5.5 Million Tons Manganese Export Study and project later years.

And then after that Transnet announced that they want to go for the big export expansion project called the 16 Million Tons Manganese Study or Project and that is
10 where this whole study came about to do a feasibility about doing this project, understanding what the tariffs would be, understanding in Transnet's case if the business case made sense in terms of the hurdle rates that they have identified at the time. And then actually going for the execution of that study.

So that is where we became involved with the bigger 16 Million Tons Manganese Expansion Project.

ADV SEGEELS-NCUBE: Okay and then in also still on page 27 at paragraph 15 you deal with the fact that phase
20 1 and phase 2 – there was a phase 1 and phase 2 for the Manganese Expansion Project and that phase 1 was a confinement. Can you explain what that means?

MR BESTER: Yes. So getting the feasibility of the Manganese Expansion Study part of the study is to identify and do a detailed cost estimate of what such a project

would cost for Transnet.

So if I recall at the time we estimated the project to be in the region of about R27 billion and understanding Transnet cash flow and balance sheet at the time and the ability to fund the project Transnet decided at the time to split the project into a phase 1 and phase 2 for cash flow reasons and also budget constraints reasons.

But of course another reason was to see what they do as a short-term immediate spending to open up the –
10 the corridor for the Expansion of the manganese. And for that reason they decided to split the project into a phase 1 which could be considered as short-term project and the phase 2 which was a much longer term project happen after phase 1.

ADV SEGEELS-NCUBE: And why was phase 1 a confinement as opposed to an open tender?

MR BESTER: So considering the fact that Hatch was doing the feasibility study at the time Transnet also identified that to go out onto the open market for a tendering process
20 will consume a lot of time.

And also considering the time value of money they decided to – it made sense at the time considering also the knowledge that we had as consultants about the project to confine the project to Hatch and then phase 2 would be an open – public tendering process that they will advertise.

ADV SEGEELS-NCUBE: Okay and you then say in your statement at paragraph 16 that one of the requirements in the confinement request for quotation was a supplier development requirement. Can you just explain to us what is supplier development and what was the requirement from Transnet's side?

MR BESTER: Yes. So supplier development I think now is a well-defined term. At the time when it happened during those years it was quite a new concept and I can also
10 recall our President at the time Mr Jacob Zuma at the State of the Nation Address basically the first time used the word supplier development and that was introduced where state owned enterprises like Transnet will have a requirement for – that they need to use at least 30% of the contract values need to go towards supplier development.

Now supplier development as I understand it and I understand it now is to capacitate smaller suppliers and consultants in South Africa to capacitate them in terms of capacity and also capability and by using the bigger
20 consultants and the bigger suppliers to do that.

So it is a requirement that you use these small companies in your bigger contracts for Transnet projects.

ADV SEGEELS-NCUBE: Okay and what was Transnet's requirement in terms of supplier development?

MR BESTER: So Transnet's requirement at the time was

supposed to be 30% but we were surprised to see that there was a requirement for 50% in our confinement.

ADV SEGEELS-NCUBE: Why did that come as a surprise to you?

MR BESTER: Well we – as I said at the time supplier development was quite a new concept for all of us and we were at the time well aware that there was an announcement by the President that there was a 30% supplier development requirement.

10 So the first time we heard about the 50% is when we got the confinement or the request for a quotation with the 50% supplier development requirement in it. So it was quite a surprise to us. You must also understand in terms of supplier development is that the main supplier which was in this case Hatch Goba would take all the responsibility and liability and professional indemnity for the project.

 So that means basically doing 50% of the work but taking 100% of the liability and responsibility for the
20 project which was not acceptable to us at the time.

ADV SEGEELS-NCUBE: Okay. Now on page 28 of your statement at paragraph 18 you speak of a call that you received on the 19 July 2013 can you tell us about this call and what transpired thereafter?

MR BESTER: Yes. So it was during this time of

confinement and working on this project that I received a call from Mr Nailan Padayachee that indicated he would like to come and see me. You know at the time he just indicated that he would like to come and see me about the manganese project and the details were not discussed on the phone.

ADV SEGEELS-NCUBE: Did you know Mr Padayachee?

MR BESTER: I did not know him at all.

ADV SEGEELS-NCUBE: Okay. What transpired after
10 that?

MR BESTER: So I agreed that you know Mr Padayachee come and see him at the Hatch offices in Woodmead. So Mr Nailan Padayachee brought with him another gentleman Mr Dave Reddy and they came and see me in my office where they told me that we need to include them as part of our supplier development into our confinement for phase 1 Manganese Expansion Project.

ADV SEGEELS-NCUBE: Did you know Mr Reddy?

MR BESTER: I did not know Mr Reddy at all.

20 **ADV SEGEELS-NCUBE:** Do you know the names of –
sorry yes Chair.

CHAIRPERSON: Which year are we talking about? Is it 2012 when these activities happened?

MR BESTER: 2013.

CHAIRPERSON: 2013.

MR BESTER: Yes.

CHAIRPERSON: Okay alright. And at that meeting did Mr Padayachee say which – from which company he was coming?

MR BESTER: Mr Padayachee was from a company called PM Africa.

CHAIRPERSON: And did you know the company or ...

MR BESTER: Oh not at all.

CHAIRPERSON: Okay alright. You may proceed.

10 **ADV SEGEELS-NCUBE:** Thank you Chair. And Mr Reddy what company was he from?

MR BESTER: He was from a company called DEC Consultants if I can recall.

ADV SEGEELS-NCUBE: Okay. And when they told you that you had to include them in Hatch's submission for the confinement did they say how this request came about?

MR BESTER: Yes. So they came to see me if I can say it like this almost as if they were sent to me. So they indicated that there was a wish from Transnet and they
20 were sent by Number 1. That they need to be part of our supplier development component and that is it. You know we at the meeting we discussed their skills and what is required and that is it.

ADV SEGEELS-NCUBE: And did they say who Number 1 was?

MR BESTER: They did not say to me who Number 1 was.
You know I...

CHAIRPERSON: Did you ask them? Did you ask them
who is Number 1?

MR BESTER: Yes I did ask Mr Dave Reddy who was
Number1 and he said you can figure out who is Number 1.

CHAIRPERSON: So he did not want to tell you who
Number 1 was but he said you could figure it out yourself?

MR BESTER: Ja. I mean at the time I recall he – he said
10 to me you know who is Number 1.

CHAIRPERSON: Yes. Yes. And that part of the
discussion was left at that? The question of who Number 1
was was left at that?

MR BESTER: It was left at that yes.

CHAIRPERSON: Yes okay alright. Continue.

ADV SEGEELS-NCUBE: Thank you Chair. And did you
have any idea of who Number 1 could be?

MR BESTER: Well I mean obviously at the time in the
media how everybody referred to Mr Zuma as Number 1 but
20 in my world for Transnet it was either Mr Anoj Singh or Mr
Brian Molefe that was Number 1. So it was between those
three that I figure out must be Number 1.

ADV SEGEELS-NCUBE: Okay and how did the meeting
conclude?

MR BESTER: Well we had quite a discussion at the

meeting because as I said at the time supplier development was quite – quite a new concept for us. You know we treaded very carefully about how we went about our business because as I said it was an issue about liability and responsibility and professional indemnity for us because it was quite a big – a large project to execute.

I clearly recall I asked them about the skills sets that they have and Mr Reddy indicated to me he has got a lot of engineers in India that can help and I recall telling
10 him that you know supplier development is not about growing skills in India it is a South African initiative.

ADV SEGEELS-NCUBE: Okay and was there anything about them approaching you that concerned you because this was a confinement would they know about this confinement, would it – was it public knowledge?

MR BESTER: At the time it was very concerning because they gave me a lot of facts about the project which I thought at the time was confidential to Transnet. So they had an intimate knowledge about the project.

20 Even the confinement was not public knowledge. The confinement and I have to say the confinement at that time was not confirmed because if you understand the confinement process it is not concluded until you have signed the contract. It is a very closed process within Transnet of the confinement.

ADV SEGEELS-NCUBE: Okay. Now on page 30 of your statement at paragraph 21, you say that upon the conclusion of the meeting it was agreed that Padayachee would send a Memorandum of Understanding which had to be considered and give an indication of its willingness to PM African and DC as potential partners for FD in the future. How did the topic about a memorandum of understanding come about?

MR BESTER: Well, if you understand our Hatch operates. It is a global company. So everything needs to be formal
10 and in writing. So I insisted that the discussion that we had must be formalised in writing and they need to send me a letter.

And the best of way of doing that at the time was considered. Send met a memorandum of understanding of how you see we can work together and your expectations and then I will take it to the management within Hatch and we will consider it.

ADV SEGEELS-NCUBE: Okay I will take you to the memorandum in a minute. I just want to continue with
20 paragraph 21. In your statement you also say that you have discussed it with Mr Alan Grey who was the Managing Director at Hatch at the time. Why did you feel the need to discuss the matter with him?

MR BESTER: Ja, he was the Managing Director for Infrastructure and not the Managing Director for Hatch at the

time.

ADV SEGEELS-NCUBE: Ja.

MR BESTER: Well, I mean, we had a very transparent system within Hatch where we have to share information about clients and projects on a continuous basis, you know.

Because we would, as I said, we are dealing with very large projects. We are dealing with clients, sensitive clients like Transnet.

And being a global company, you know, there is a
10 platform that we have created where we share, between managers, information and that is put to us.

And for that reason, you know, it was best for us to share within Hatch these types of meetings and discussions that we had.

ADV SEGEELS-NCUBE: Okay so then did Mr Padayachee sent the Memorandum of Understanding?

MR BESTER: Yes, he emailed me a MOU.

ADV SEGEELS-NCUBE: Okay. Can we go to page 71 of ...[intervenes]

20 **CHAIRPERSON**: Well, before that ...[intervenes]

ADV SEGEELS-NCUBE: Sorry, Chair.

CHAIRPERSON: You say you had a discussion with Mr Alan Grey. Tell me about that discussion. What was Mr Alan Grey's reaction to the meeting that you have had with Mr Reddy and Mr Padayachee?

MR BESTER: Chair, I did not hear that question?

CHAIRPERSON: You say in paragraph 21 you discussed with Mr Alan Grey who was Managing Director of Industrial Infrastructure at what transpired at the meeting. And you informed him that PM Africa and DEC would send an MOU or Hatch to consider.

I take it that that discussion that you are talking about and until you telling what had transpired at your meeting with Mr Padayachee and Mr Reddy. Is that correct?

10 **MR BESTER**: Yes. So ...[intervenues]

CHAIRPERSON: What was his reaction to you telling him what they have come to say to you?

MR BESTER: I discussed with him exactly what transpired at the meeting about the sensitive information that was communicated to me about the project. And he was very uncomfortable about the discussion. Yes. He indicated that to me.

CHAIRPERSON: But at that stage, no decision was taken between the two of you as to what to do before the
20 Memorandum of Understanding would arrive?

MR BESTER: No.

CHAIRPERSON: Yes.

MR BESTER: It was agreed that we will wait for the MOU ...[intervenues]

CHAIRPERSON: Yes.

MR BESTER: ...to understand and see what they communicate to us before we take any actions.

CHAIRPERSON: Yes, okay alright. Okay you may proceed.

ADV SEGEELS-NCUBE: Thank you, Chair. I was going to take you to page 71 which is an annexure to your statement, the black numbers. And at the foot of the page, there is an email. Is that the email that Mr Padayachee sent to you with the MOU?

MR BESTER: Ja. This is a... you will see at the bottom of
10 the page, it says from Nailan Padayachee to Henk Bester and he copied Mr Dave Reddy. It was sent on the 25th of July, five to two in the afternoon.

ADV SEGEELS-NCUBE: And what does it say?

MR BESTER: It says:

“Hi, Henk. Thank you for the meeting on Monday, the 22nd of July 2013, 07:25. We attached for your attention and comment the promised MOU. Please advice on your comments and/or input so we can finalise asap. Regards Nailan Padayachee.”

20 **ADV SEGEELS-NCUBE:** Okay.

MR BESTER: For and on behalf of PM Africa Project Management.

ADV SEGEELS-NCUBE: Okay. Then on page 74 to page 76. Can you identify what that document is?

MR BESTER: Yes. So on page 74 is the actual

Memorandum of Understanding that was sent to me.

ADV SEGEELS-NCUBE: Okay. And what was it... what was your reaction to the memorandum? And if you can just take us through your understanding of its contents at the time.

MR BESTER: Well... [microphone not switched on]

ADV SEGEELS-NCUBE: Your mic is off.

MR BESTER: Apologies. I received the MOU. I have read through it and then I sent onto Mr Alan Grey. So this is the MOU that we received from PM Africa, the gentleman that
10 came and see me. Obviously, at the time when we read through it, we were both uncomfortable with it.

ADV SEGEELS-NCUBE: Why were you uncomfortable with its terms?

CHAIRPERSON: Maybe before that.

ADV SEGEELS-NCUBE: Yes, Chair.

CHAIRPERSON: You might wish to ask him to identify the main features of the memorandum.

ADV SEGEELS-NCUBE: Thank you, Chair.

CHAIRPERSON: That attracted his attention at the time.
20 He read it and how he felt about that.

ADV SEGEELS-NCUBE: Yes. If you can just take us through the main features of the MOU that drew your attention and what your reaction was of that and your understanding?

MR BESTER: Ja. So the MOU states that?

“The overview, which is basically the two companies, Development and Engineering Consultants referred to as DEC and PM Africa referred to as PMA forms an unincorporated JV in short referred to as DC PMI JV between the two companies and then Hatch on the other side. Hatch Goba herein referred to as Hatch.

It is a project management and engineering services company with the address.:

10 And then they go further into the scope.

“This is to facilitate a close working relationship based on an enterprise development and/or supply development initiative between both entities whilst delivering multi-disciplinary engineering design and project management solutions for a South African market within the Rail Engineering Transportation and Infrastructure and Engineering Sectors on an EPCM basis.”

CHAIRPERSON: Okay.

20 **MR BESTER**: And then it goes further into a non-compete which is a standard clause and an MOU liabilities. Dispute resolution law and then the signature requirements.

ADV SEGEELS-NCUBE: Okay. If you can just go to page 76 and just identify the parties to the MOU.

MR BESTER: So the parties at the bottom on the

signatures. Hatch Goba Africa. It is myself, Henk Bester. Designation and Global Director Rail. And on the other side, Development and Engineering Consultants. The name is Davelin Richmond Reddy. Designation CEO.

ADV SEGEELS-NCUBE: And PM Africa?

MR BESTER: And PM Africa. At the bottom, name Mr Nailan Padayachee, designation CEO.

ADV SEGEELS-NCUBE: Okay. Now the MOU does not specifically mention Transnet or the Manganese Expansion
10 Project. So what was it about the MOU? Because on the face of it, it seems quite innocuous. What was it about it that made you uncomfortable, you and Mr Grey?

MR BESTER: I think exactly as you said. It would made us uncomfortable. It was a very lose arrangement. At the time we felt it is too lose. It needs to be specific because it can create an impression... all sorts of impressions that we do not want. We need to firm up on it and make it very specific.

ADV SEGEELS-NCUBE: If you were going to make it specific, what would you as Hatch have expected to include
20 in it?

MR BESTER: As a minimum, it would have included the scope of works and the roles and the responsibility, exclusivity or not, duration, liabilities and you know, this is not a Hatch standard MOU that was in front of me. It came from Mr Padayachee and Mr Reddy. So it was too loose for

us.

ADV SEGEELS-NCUBE: Oka on page 31 of your statement.

MR BESTER: On page?

ADV SEGEELS-NCUBE: 31. Three, one. At paragraph 23. After receiving the MOU, you then referred to a meeting at paragraph 23 on page 31. Do you have it?

MR BESTER: [No audible reply]

ADV SEGEELS-NCUBE: Do you have it Mr Bester?

MR BESTER: Ja, I have it.

10 **ADV SEGEELS-NCUBE**: You refer there to a meeting that you had with Mr Rudi Basson of Transnet Capital Projects. Why did you have a meeting with him?

MR BESTER: So if you understand how the projects are executed ...[intervenes]

CHAIRPERSON: I am sorry. Just to make sure it connects properly. After you received the memorandum, you noted certain features, you had certain concerns but then you shared it with Mr Grey. Is that right?

MR BESTER: That is correct.

20 **CHAIRPERSON**: Ja. And Mr Grey shared your concerns about it?

MR BESTER: Yes. I can remember ...[intervenes]

CHAIRPERSON: The same concerns?

MR BESTER: I sent him the email with the MOU. At the time, I think, he was in Cape Town. I was in Johannesburg.

And he said he will peruse the document, make some comments and send it back to me. And then we need to discuss it. But we did have a phone discussion where we both agreed we cannot sign this document.

CHAIRPERSON: Yes. Before the next meeting, was there another opportunity for the two of you to discuss further the MOU? You and Mr Grey.

MR BESTER: Yes, we did discuss it. Yes.

CHAIRPERSON: You have another discussion.

10 **MR BESTER:** Ja.

CHAIRPERSON: And confirming the same concerns? This... the meeting that... the second discussion, did he basically confirm the same concerns and did it deal with the question of how you were going to respond?

MR BESTER: Yes. So Mr Grey and myself had a discussion. We have agreed how we are going to respond. And it was agreed that I will send an email back to the two gentlemen.

CHAIRPERSON: Yes.

20 **MR BESTER:** And put our concerns in writing.

CHAIRPERSON: Okay alright. Take it from there.

ADV SEGEELS-NCUBE: Thank you, Chair. So prior to you sending your email to Mr Padayachee and Mr Reddy. You then have a meeting with Mr Rudi Basson on the 26th of July. Why did you have that meeting with him?

MR BESTER: Well, Mr Rudi Basson was the Project Director on the Capital Project side for Transnet. So it would have come out in the discussion between myself and Mr Grey that we decided we are going to share with Mr Rudi Basson the meeting that we had.

And that we felt uncomfortable about the information that was shared with us about the project and from Transnet and we were looking towards him for his advice.

ADV SEGEELS-NCUBE: Okay. And at that meeting,
10 Ms Deirdre Strydom was present as well?

MR BESTER: That is correct.

ADV SEGEELS-NCUBE: Okay. What did Mr Basson say in that meeting?

MR BESTER: Mr Basson was surprised that we had a visit because he knew about the two gentlemen. He indicated that Mr Anoj Singh spoke to him and Mr Bierman about these two gentlemen.

CHAIRPERSON: Okay. I am sorry. Let us tackle the meetings differently. I want to hear the arrangements for the
20 meeting, who was at the meeting, when was the meeting, what was the issue to be discussed, what was discussed, who said what? I would like it that way.

ADV SEGEELS-NCUBE: Thank you, Chair.

CHAIRPERSON: So was this meeting with Mr Basson the one on the 26th of July? Is it 26 July?

MR BESTER: The 26th of July 2013.

CHAIRPERSON: Yes.

MR BESTER: It was a meeting with Mr Rudi Basson, yes.

CHAIRPERSON: Yes. I think you have covered this but go back to how that meeting came about and then tell me who was present, what was discussed and what was concluded, what was the conclusion?

MR BESTER: Chair, I was not... the meeting could have come about where I either discussed with Ms Deirdre
10 Strydom at the time who was the Project Director for Transnet Freight Rail for the project. And she suggested I need to see Mr Rudi Basson.

Or I would have phoned Mr Rudi Basson myself and said to him I need to see him urgently about a discussion I have had with these two gentlemen that had confidential information about Transnet and the project. So I set that meeting up.

CHAIRPERSON: And when you set the meeting up, would this have been before you could respond to Mr Padayachee
20 or would it have been before you could respond?

MR BESTER: That was before we responded to Mr Padayachee.

CHAIRPERSON: Yes.

MR BESTER: Because we were also looking to Mr Basson for advice.

CHAIRPERSON: Yes okay. So you did not respond to Mr Padayachee until after that meeting?

MR BESTER: That is correct.

CHAIRPERSON: Okay alright. Take it from there.

ADV SEGEELS-NCUBE: Thank you, Chair. So at the meeting, it is yourself, Mr Basson and Ms Strydom?

MR BESTER: That is correct.

ADV SEGEELS-NCUBE: And as the Chair indicated, what was discussed at the meeting?

10 **MR BESTER:** So at the meeting, I gave Mr Basson a full briefing of what transpired at the meeting, my meeting with Mr Padayachee and Mr Dave Reddy. I told him about the information that was shared to us. I told him about what their requirement was to work with us.

Obviously, I also told him about Number 1. And Mr Basson indicated to me that he knew about these two gentlemen because he was informed about these two gentlemen by Mr Anoj Singh. Him and Mr Gerhard Bierman. And he was surprised that they came and see us. That were
20 his words.

ADV SEGEELS-NCUBE: Now when you say they were informed by Mr Anoj Singh. What exactly did Mr Singh say to Mr Basson and Mr Bierman according to what Mr Basson told you?

MR BESTER: If I can recall what was said at the meeting

by Mr Basson at the time is that Mr Anoj Singh indicated that he wants a specific company to be included as our supply development company for the Manganese Expansion Project and he mentioned the names of these two gentlemen.

ADV SEGEELS-NCUBE: Okay. And what was Mr Basson's and Mr Bierman's reaction to that, according to what Mr Basson told you?

MR BESTER: At the time, at that specific meeting, I told him that, you know, what is happening within Hatch that we
10 are not going to sign the MOU.

Obviously, as a global company this is not the way we do business. And at the time, I can recall Mr Basson said to me: Leave it to me.

And I think at the time, my understanding was he will speak to either Mr Anoj Singh or Mr Gerhard Bierman to come back to me on advice.

ADV SEGEELS-NCUBE: Well, I just want to go a step back. You were answering a different question. My question was, what did Mr Basson tell you Mr Anoj Singh had said to them
20 about DC and PM Africa, which you answered.

Then as a follow-up, I asked. What was Mr Basson's and Mr Bierman's responses to Mr Singh in that meeting that they had with Mr Sing according to what Mr Basson told you?

MR BESTER: Yes. So Mr Basson indicated to me that he, both him and Mr Bierman, advised Mr Anoj Singh, it is not

advisable to do that, to include or to indicate to us which companies to include as our supply development companies.

ADV SEGEELS-NCUBE: Okay. In your experience, has Transnet ever required Hatch on a formal basis to include a specific contractor in its contract?

MR BESTER: No.

ADV SEGEELS-NCUBE: So ...[intervenes]

CHAIRPERSON: What is... what Mr Basson told you, was it that Mr Singh had shared with him and with somebody else
10 that he would like your company to include Mr Padayachee's company and Mr Reddy's company as supplier development companies in the project? Is that what you were told?

MR BESTER: That is correct.

CHAIRPERSON: Yes. And Mr Basson said they told Mr Singh that that is not a good idea.

MR BESTER: Yes.

CHAIRPERSON: Okay alright.

MR BESTER: That is correct.

CHAIRPERSON: Okay.

20 **ADV SEGEELS-NCUBE**: Thank you, Chair. Now what then transpired further at the meeting after Mr Basson said to you that he is aware of this and he is quite surprised that they would approach you directly?

MR BESTER: Well, I can remember that we concluded the meeting and it must have been later that same day where

Mr Basson...

Remember, I said at the meeting that he will speak to Mr Anoj Singh or Mr Gerhard Bierman and come back to me on advice.

It must have been later that day that he came back and said to me something to the effect of: Just sign the damn thing.

ADV SEGEELS-NCUBE: And sign the damn thing meaning sign the MOU?

10 **MR BESTER**: That is correct.

ADV SEGEELS-NCUBE: Now what was... just to go back to the meeting. What, prior to you getting the call, what was Ms Strydom's advice to you as to what to do with the MOU?

MR BESTER: Ms Strydom said to me at the time: Please, do not sign this thing. Please do not sign the MOU.

ADV SEGEELS-NCUBE: Okay. And Mr Basson in the meeting, what did he say you should do?

MR BESTER: Not at a meeting on the phone call to me later the day. He said to me: Just sign the damn thing.

20 **ADV SEGEELS-NCUBE**: Ja, I understand that that is what he said out of the call but at the meeting when Ms Strydom is present, what did he say to you, you should do?

MR BESTER: He indicated that, he said to us, to me: Do not sign it. Because he advised, him and Mr Bierman advised Mr Anoj Singh not to do it like that. And in his

words, not to nominate a supply development company to Hatch. So he said why she was not sign it.

ADV SEGEELS-NCUBE: Okay. And so later that day, he then says, sign the damn thing.

MR BESTER: Later that day and phoned us and said: Just sign the damn thing.

ADV SEGEELS-NCUBE: And did you sign?

CHAIRPERSON: So what was ...[intervenes]

ADV SEGEELS-NCUBE: Sorry, Chair.

10 **CHAIRPERSON**: ...your reaction to this new development ...[intervenes]

MR BESTER: My reaction was ...[intervenes]

CHAIRPERSON: ...on the phone?

MR BESTER: Okay we as Hatch, we had no intention of signing that. So I was just confused about the messages that I got from Transnet.

CHAIRPERSON: Okay.

ADV SEGEELS-NCUBE: Thank you, Chair. Did you sign the MOU as directed by Mr Basson?

20 **MR BESTER**: No, we did not.

ADV SEGEELS-NCUBE: Sorry?

MR BESTER: We did not sign the MOU.

ADV SEGEELS-NCUBE: Okay what did you do with the MOU?

MR BESTER: So as I indicated, I emailed the MOU to

Mr Alan Grey who at the time, as I said, was in Cape Town, I think. He made some changes and he emailed it back to me as a suggested re-wording of the MOU that was sent to us.

ADV SEGEELS-NCUBE: So he amended the MOU?

MR BESTER: That is correct.

ADV SEGEELS-NCUBE: Can we just go to page 32 of your statement at paragraph 25? That is where you deal with Mr Grey having amended the MOU.

MR BESTER: Ja.

10 **ADV SEGEELS-NCUBE**: Thank you.

MR BESTER: Yes.

ADV SEGEELS-NCUBE: If we can then just go to the amended MOU which is BMHB-4. My apologies. And that is on page 78 which is the annexures. We first deal with the email and then the amended MOU. If you can go to page 78?

MR BESTER: [No audible reply]

ADV SEGEELS-NCUBE: At the foot of page. So that is also on the 26th.

20 **MR BESTER**: Yes.

ADV SEGEELS-NCUBE: When Mr Alan Grey sends you an email at the foot of the page. Can you see that?

MR BESTER: I can see, ja.

ADV SEGEELS-NCUBE: Can you just read? And it follows on the next page. Can you just read what it says?

MR BESTER: So this email is from Mr Alan Grey to Eric Cook which was his secretary and he copied me, Henk Bester. Subject: MOU Agreement.

“Hi. Been on this for the past hour or so, please print this...”

Remember, this is a message to his secretary.

ADV SEGEELS-NCUBE: H’m.

MR BESTER: And he copied me.

ADV SEGEELS-NCUBE: Ja.

10 **MR BESTER**: Yes.

“Please print this with changes shown and then go through and check and accept any changes and accept my changes in the updated MOU.

Henk. Henk needs to check through and make sure he is happy with it.”

And then he... the last paragraph it is addressed to me.

“Henk. Henk, they need to get the message somehow that they are not the only SD contractor, not do they have first choice/shot at any project that we are pursuing.

20

Hope this wording is not so vague that they are now not happy. Alan Grey, Managing Director Industria Infrastructure.”

ADV SEGEELS-NCUBE: Okay and then on page 81 to page 83. Can you identify what this document is?

MR BESTER: Yes, this is the revised MOU>

ADV SEGEELS-NCUBE: That you received from Mr Alan Grey?

MR BESTER: That is correct.

ADV SEGEELS-NCUBE: Okay. Now can you, as the Chair asked earlier on, with the first MOU identify any key-features that you wanted to highlight to Mr Padayachee and Mr Reddy about how you wanted to operate with them going forward?

MR BESTER: Yes, I can.

10 **CHAIRPERSON**: Sorry.

ADV SEGEELS-NCUBE: Sorry, Chair.

CHAIRPERSON: In doing so, please also tell me what changes Mr Grey made on the email which you had sent him which had come from Mr Padayachee, important changes or amendments that he made.

MR BESTER: Yes, Chair. I think the important changes were. If you look on this. The company details remained the same. And the changes would come into... if I can read this?

20 “DC PMA JV and Hatch have agreed to enter into this Memorandum of Understanding for the express purpose of cooperating where applicable on the enterprise development basis and for specified supplied development initiatives relating to engineering and project management services.

This will be on a specifically agreed project-by-

project basis and on a non-exclusive basis.

The parties will engage of their own free will for the mutual benefit of both parties and hereby agree to honour and be bound by the following terms and conditions.”

So that sentence is the big difference: It will be on a non-exclusive basis and the parties shall agree by their own free will, participate on the project.

ADV SEGEELS-NCUBE: And? Continue.

10 **MR BESTER**: [No audible reply]

ADV SEGEELS-NCUBE: Also in respect of the period that it would be operational ...[intervenes]

MR BESTER: Ja. So it will be on a yearly basis, renewable on a yearly basis, renewed on a yearly basis.

ADV SEGEELS-NCUBE: Okay. Were there any other changes that were made?

MR BESTER: No other changes were made.

ADV SEGEELS-NCUBE: Okay. And is that your signature on the ...[intervenes]

20 **MR BESTER**: Oh, excuse me.

ADV SEGEELS-NCUBE: Ja.

MR BESTER: Excuse. Apologies.

ADV SEGEELS-NCUBE: No, that is fine.

MR BESTER: So the other change that was made. Should... If I can refer you to page 82 on the top?

ADV SEGEELS-NCUBE: Ja.

MR BESTER: It says:

“Should a project materialise, it shall be executed on a basis whereby DCA PMV JV...

Which is the companies from Mr Padayachee and Mr Reddy.

“...shall act as sub-consultants to Hatch Goba on agreed scope, price and terms and conditions. We shall be finalised prior to either bidding for or commencement of the project.”

10

ADV SEGEELS-NCUBE: Okay can you explain the significance of that change?

MR BESTER: Yes. So the significance of that change is that it is on a sub-consultant basis which means, it is no expectations that it will be a joint venture or a 50/50 partnership or any other type of contract.

And then of course, it will be on an agreed scope, price and terms and conditions.

20

ADV SEGEELS-NCUBE: Okay. And did you send this amended Memorandum of Understanding to Mr Padayachee and Mr Reddy?

MR BESTER: Yes, I did.

ADV SEGEELS-NCUBE: Oaky. If we can just go to the email that you addressed to them. It is on the page 85 of the bundle at the foot of the page which is still the same day.

MR BESTER: Ja.

ADV SEGEELS-NCUBE: Okay. Can you just read the email for us.

MR BESTER: So the email is from Henk Bester, sent 26 July 2013, 11:35 in the morning to Mr Nailan Padayachee and I copied Mr Dave Reddy. Subject: RED CP MA JV MOU.

ADV SEGEELS-NCUBE: Okay you can continue.

MR BESTER: And then I said:

10 “Guys, please find the attached signed MOU which I signed on behalf of Hatch Goba. Please note, we have made some changes in...”

And then I numbered there three changes.

“1. MOU for one year renewable. Obviously, as per project.

2. Non-exclusive in that we will also use other companies as see fit to satisfy SD requirements.

3. It will be in a form of a sub-consultant agreement with scope, SD targets, et cetera, et cetera.

20 Please advise you are happy as our intent is to commitment to SD. Regards, Henk Bester.”

ADV SEGEELS-NCUBE: Okay. And what was their reaction to the amended MOU?

MR BESTER: I can recall that they were not happy.

ADV SEGEELS-NCUBE: Okay. On page 33 of your

statement at paragraph 29.

MR BESTER: Paragraph?

ADV SEGEELS-NCUBE: 29.

MR BESTER: Ja?

ADV SEGEELS-NCUBE: At the foot of the page. You speak of a call that you received from Mr Padayachee on the 1st of August 2013 where he requested for you to meet up with him again and you agreed on the 5th of August 2015.

Can you take us through what happened at that meeting
10 on the 5th of August 2015?

And as the Chair indicated, if you can tell us who was present at the meeting and what each person contributed to the meeting and what was discussed.

MR BESTER: So, yes I received a call. They would like to meet me again. It was agreed on the 5th of August 2015. At the meeting, they advised me that the confinement process was eminent.

But they need... they will send me an addendum to the MOU that we have sent to them. They indicated that the
20 MOU as in its current form is not acceptable.

ADV SEGEELS-NCUBE: Now what did you understand by them having mentioned that the confinement is eminent?

MR BESTER: Well, at the time, as I understood it, was that they indicated to me that the confinement is eminent subject to. There is another matter that we need to conclude.

ADV SEGEELS-NCUBE: The other matter being?

MR BESTER: They need to change the MOU to us and we need to agree on a revised MOU.

ADV SEGEELS-NCUBE: So your understanding is that the confinement, that was the only thing that was holding up the aware of the confinement by Transnet to Hatch? Is that correct?

MR BESTER: That is correct. I... in my own work, I understood it that we are being hold ransom. Transnet is not
10 going to approve the confinement unless we agree to the revised MOU.

ADV SEGEELS-NCUBE: Okay and so when you refer to the advised MOU, you are referring to the addendum that Mr Padayachee and Mr Reddy gave to you at this meeting?

MR BESTER: I cannot recall that they actually gave it to me at the meeting or they emailed it to me after the meeting.

ADV SEGEELS-NCUBE: Okay. But you are referring to the addendum that needs to be revised?

MR BESTER: That is correct.

20 **ADV SEGEELS-NCUBE**: Because we have the initial MOU. Then we have the Hatch revised MOU. And then we have the addendum.

MR BESTER: That is correct, Chairman.

ADV SEGEELS-NCUBE: Okay and you then received the addendum from them?

MR BESTER: I did receive... by email I received the addendum, yes.

ADV SEGEELS-NCUBE: Okay. Can we go to the addendum? That is to be found on page 89 of the bundle, eight, nine.

MR BESTER: [No audible reply]

ADV SEGEELS-NCUBE: Do you confirm that that is the addendum that you received from Mr Padayachee and Mr Reddy?

10 **MR BESTER:** I confirm this is the addendum, yes.

ADV SEGEELS-NCUBE: Okay. Can you read the addendum for us, please?

MR BESTER: The addendum is dated the 2nd of August 2013. Addendum 1 as a heading. It says: Projects.

“This addendum refers to the above MOU between Hatch Goba and DEC PMA JV.”

And then paragraph.

20 “The first project identified that the parties will engage on within the purposes and scope of the MOU is recorded as the Transnet EPCM FER 3-4 for the Manganese line upgrade.

Hatch Goba will engage DEC PMA JV as the primary SD partner in the project.”

ADV SEGEELS-NCUBE: Okay so here for the first time we

now see that the Manganese Project is specifically mentioned by them.

MR BESTER: That is correct.

ADV SEGEELS-NCUBE: What was your reaction when you received this addendum and what did you do with the addendum?

MR BESTER: Well, what my hair stand ...[intervenes]

CHAIRPERSON: I am sorry, Mr Bester. Maybe before that. Did this addendum come alone or did it come with the MOU
10 that you had sent to them? And if so, was the MOU that you had sent to them un-amended by them ...[intervenes]

MR BESTER: Chair, I understood that this ...[intervenes]

CHAIRPERSON: [Indistinct]

MR BESTER: ...addendum came on its own without the addendum that we proposed to them.

CHAIRPERSON: Yes. At that stage, had they indicated what their attitude was, that is now Mr Padayachee and Mr Reddy to the revised memorandum that you sent to them?

Had they indicated to you prior to you receiving this
20 addendum what their attitude was to the amendments that you had made?

MR BESTER: yes, I can recall that they indicated that they were not happy because they needed to be part of the Manganese Phase 1 Project. And it needs to be clearly articulated in the MOU.

CHAIRPERSON: Yes. Now, the... is the position that the MOU that you sent to them did not articulate that? It was general?

MR BESTER: That is correct?

CHAIRPERSON: And they wanted specific reference to this particular project?

MR BESTER: That is correct.

CHAIRPERSON: Did that appear to be their only issue?

MR BESTER: No, the other issue was also the non-
10 exclusive basis.

CHAIRPERSON: Okay. Yes, they wanted to be exclusive?

MR BESTER: They wanted to be included on an exclusive basis.

CHAIRPERSON: Yes. Okay. At that stage, your stance remained the same, namely that you did not want reach on an exclusive basis?

MR BESTER: No. Yes.

CHAIRPERSON: Yes.

MR BESTER: Our stance stayed the same. That is correct.

20 **CHAIRPERSON:** Okay. So when you received this addendum, what was your reaction to the content of the addendum? Did you think it seemed to be fine or there was a problem?

MR BESTER: Well, I had two reactions. I was very upset because it was clearly stated in this addendum by them that

they wanted to be included as a primary SD partner which was absolutely the priority point that we highlighted to them, we will not sign for.

And then, also they indicated the FER 3-4 Manganese Project which was a very loose description of the Manganese Expansion Project of Transnet in general. It does not refer to the specific project that we were talking about.

CHAIRPERSON: Yes.

MR BESTER: In this case, the 16 million tons Manganese
10 Expansion Project. This was a very loose term that they used.

CHAIRPERSON: So it seemed to be much wider.

MR BESTER: Much wider, yes.

CHAIRPERSON: Yes, okay.

ADV SEGEELS-NCUBE: Thank you, Chair. Mr Bester, at this stage, you have already had the meeting with Mr Basson where he told you what him and Mr Bierman had told Mr Singh about the fact that they cannot do it. Transnet cannot dictate.

20 At any stage after that meeting and when you met with Mr Padayachee and Mr Reddy, did you say to them: I had a meeting with Transnet and they say that this matter is closed. They told Singh that this cannot happen.

MR BESTER: To be honest, I cannot recall sharing that type of detail with them. I cannot recall it was actually

necessary to share that information with them.

ADV SEGEELS-NCUBE: Okay. So you never told them what you were told by Transnet via Mr Basson?

MR BESTER: No, I... at the time, I would not have thought necessary to share that type of detail with them.

ADV SEGEELS-NCUBE: Okay thank you. Chair, I see that it is quarter past eleven. Is this a convenient time?

CHAIRPERSON: Yes, let us take the tea-adjournment. We will resume at half-past eleven.

10 **ADV SEGEELS-NCUBE**: Thank you, Chair.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS:

INQUIRY RESUMES

CHAIRPERSON: Okay, let us continue.

ADV SEGEELS-NCUBE: Thank you, Chair. Mr Bester, just before the adjournment we dealt with the addendum 1 that you received from Mr Padayachee and Mr Reddy. We were at the point where we were dealing what your reaction was to it and what you did with the addendum.

20 **MR BESTER**: So yes, we were not -, myself and Mr Gray, I immediately discussed it with Mr Gray at Hatch and very unhappy about the situation that was now unfolding and later that evening I also phoned Mrs Deidre Strydom from Transnet Freight Rail who was the project manager for the manganese expansion project. I told her about how the

events unfolded and we were now looking towards Transnet of what we need to do.

ADV SEGEELS-NCUBE: Can I just ask why did you not ask Mr Basson who told you to sign the initial MOU what had transpired, why Ms Strydom and not Mr Basson?

MR BESTER: Can you just repeat that question?

ADV SEGEELS-NCUBE: Why did you feel it appropriate to approach Mrs Strydom to tell her what had transpired with the first - with the addendum and not Mr Basson who
10 was the person that told you to sign the initial MOU?

MR BESTER: It was a purely a matter of the reporting system within the project that was set up so I had more an easier access to the project director and project manager from Transnet Freight Rail than from Transnet Capital Projects so for that reason I escalated the matter to her as my sort of direct client interface.

ADV SEGEELS-NCUBE: And what was her response?

MR BESTER: She indicated to me that she will come back to me on what to do next and she will also look for some
20 advice within people that she knows within Transnet of what we need to do next.

ADV SEGEELS-NCUBE: Okay, at paragraph 31 of your statement on page 34 – are you there?

MR BESTER: Yes.

ADV SEGEELS-NCUBE: You say that at this stage you

were very fearful that physical harm would come to you and to other executives at Hatch. What gave you that impression?

CHAIRPERSON: Uhm...

ADV SEGEELS-NCUBE: Sorry, Chair.

CHAIRPERSON: It is better to ask the question differently, it is an important question. How did you feel about this whole thing that was happening at that stage?

MR BESTER: I can clearly remember at that stage it was
10 a very uncomfortable situation.

CHAIRPERSON: Did you have any fears?

MR BESTER: Yes, I had ...[intervenenes]

CHAIRPERSON: What fears did you have?

MR BESTER: You know, I had fear of physical harm that was going to be imposed on myself because of just of the tone of the meetings that took place and our conversations by phone and for me it was an indication that I should be very careful.

CHAIRPERSON: Yes, okay, alright. So, just there
20 because it is important part, be careful about leading.

ADV SEGEELS-NCUBE: Thank you, Chair.

CHAIRPERSON: Leading him, ja, let him just tell the story.

ADV SEGEELS-NCUBE: Now on page 35 of your statement which is a continuation of paragraph 31. You

deal Mr Reddy again referring to number 1. What was the context of that?

MR BESTER: Oh sorry, can you just repeat that?

ADV SEGEELS-NCUBE: Page 31.

MR BESTER: Yes?

ADV SEGEELS-NCUBE: And page 35 and continuation of paragraph 31 of your statement. You again reference Mr Reddy referring to number 1 who was not happy. How did that come about that that he said to you that number 1 was
10 not happy?

MR BESTER: Well, I phoned Mr Reddy and I indicated to him that we will not sign the MOU, at least the revised MOU that they sent to us and then he indicated to me that number 1 will not be happy with this development.

CHAIRPERSON: And what did you say in response to that? What did you say to him in response to this?

MR BESTER: I indicated – I said to him – I cannot clearly remember exactly what my words would have been but something in the direction of that is our final decision.

20 **CHAIRPERSON**: Yes.

MR BESTER: And, you know, we cannot care if number 1 is happy or not.

CHAIRPERSON: Okay, please continue.

ADV SEGEELS-NCUBE: Thank you, Chair. And at paragraph 33 you again referred to a call that Mr Reddy

made to you and an email that you and Mr Gray prepared to respond to Mr Padayachee and Mr Reddy. Can you just take us through how that came about and what the email contained?

MR BESTER: Yes. So remember I phoned Mr Reddy in the morning and I indicated to him that we will not sign the MOU and I indicated – and it was during this conversation that he said to me that number 1 would not be happy which I indicated to him that is our final decision.

10 But I did indicate to him that obviously it is very important for us to make this formal and that we will be sending him an email to reflect exactly our decision, which we did.

ADV SEGEELS-NCUBE: Okay, if we can go to page 92 of the bundle?

MR BESTER: Ja.

ADV SEGEELS-NCUBE: Can you identify this document?

MR BESTER: Yes, that is the email I sent to Mr Padayachee.

20 **ADV SEGEELS-NCUBE:** And can you read to us what you say in the email?

MR BESTER: Yes, it is an email from myself, Henk Bester, sent Wednesday 7 August quarter past six in the evening to both Mr Nailan Padayachee and Mr Dave Reddy, the subject is Addendum 1 to MOU:

“Dear Nailan and Dave, further to my telephone conversation yesterday evening (with Dave) I wish to confirm that we are not comfortable signing the addendum 1 to our MOU which you gave us to us for consideration on Monday the 5th which would confirm the DEC PMA JV as a primary SD partner for the Transnet FER 3/4 phases of the manganese upgrade project. As you seem to be aware, the EPC in appointment for the project had at this stage not been awarded to us and may yet go out to tender should the confinement not be approved. Our SD plan...”

Supply development plan.

“...still needs to be finalised around the specific requirements set for the project and needs to embody all of the various aspects of SD in the broader definition. We have other organisations who will also need to be considered in a transparent manner as appropriate in the rollout of the SD plan which will require client alignment, Transnet, and endorsement prior to implementation. The MOU recently signed per yourself does not cater for exclusivity. As I have explained to you in our first meeting Hatch, as a global company, has fully embraced the principles of SD and will ensure

through the project that should we be successful in any other project we maximise opportunities for skills development, localisation, technology transfer and other targets set to support Transnet in its SD targets as a state owned company. We are therefore not in a position to agree to your appointment as the primary SD supplier for this project. Thank you for your understanding in this matter. Regards, Henk Bester.”

10 **ADV SEGEELS-NCUBE:** Did you receive a response to this email?

MR BESTER: I had several calls from Mr Dave Reddy which I did not answer.

ADV SEGEELS-NCUBE: But no written correspondence from him after that.

MR BESTER: No.

ADV SEGEELS-NCUBE: Okay, now on page 36 of your statement at paragraph 34 you speak about a meeting on the morning of the 7 August. This would have been before
20 you sent the email that we have just looked at.

You had a meeting with Mr Gray and with Ms Strydom. Can you explain to us who that meeting came about and what transpired at that meeting?

MR BESTER: Yes. So when we received the addendum 1 to the MOU from Mr Reddy and Padayachee obviously

there was discussion within Hatch and it was decided that we will have a meeting with Mrs Deidre Strydom and inform her about how unhappy we are, the situation that we found ourselves in, and we looking towards her for some advice on what we need to do next and to whom we should escalate this matter within Transnet.

ADV SEGEELS-NCUBE: And what did Ms Strydom do?

MR BESTER: At the time I understood from her that she has spoken to Mr Johan Bouwer, which was also a senior
10 person within Transnet at the time.

I cannot hundred percent recall his designation, also to look towards advice from his side but then I also understand that she said she will speak to Ms Cleopatra Shiceka which was the counsel within Transnet working in – as a General Manager working in the office of Mr Siyabonga Gama.

ADV SEGEELS-NCUBE: Okay and are you aware of whether she did speak to Ms Shiceka?

MR BESTER: Yes, in fact she did and she advised us that
20 Ms Shiceka would like to see us for a meeting which was set up, if I can recall, in the Wimpy in the Carlton Centre.

ADV SEGEELS-NCUBE: Okay. And can you explain to us what transpired at that meeting and who was present at the meeting?

MR BESTER: Yes, so myself, Mr Allan Gray, Mrs Deidre

Strydom, we met – I am not sure if was Mrs or Ms, Cleopatra Shiceka at the Wimpy in the Carlton Centre. We told her everything, what transpired to date with the gentlemen Mr Dave Reddy and Nailan Padayachee.

We explain all the MOUs, the revisions and at the time also why we did not feel comfortable signing it and now we are looking for some advice from herself and people within Transnet of what we should do and to whom within Transnet we should escalate this matter.

10 **ADV SEGEELS-NCUBE:** And what did Ms Shiceka say?

MR BESTER: If I can recall what happened at the meeting, she took – we would have taken hard copies of documentation like the MOU to the meeting. She had her iPad there with her and she took pictures of all the MOUs and she requested that we send her an email to her private email, there was a Gmail account, of exactly what transpired with all the details of the individuals involved and then we should not do anything further, we should leave it with her.

20 **ADV SEGEELS-NCUBE:** And did you do as she requested you to do, to send a statement to her private email?

MR BESTER: Yes, we did send an email to her private email.

ADV SEGEELS-NCUBE: Okay. Do you know what came of this matter?

MR BESTER: I do not know, I did not have direct access to Ms Cleopatra Shiceka so I was enquiring through Mrs Deidre Strydom about feedback and the feedback I got at the time was Ms Cleopatra Shiceka indicated to Mrs Strydom that told Hatch everything is resolved, they should not do anything further.

ADV SEGEELS-NCUBE: Sorry, she said that tell Hatch that the matter is resolved and you should not do anything further?

10 **MR BESTER:** We should not do anything further.

ADV SEGEELS-NCUBE: Okay. And after that were there any further discussions with Mr Reddy and Mr Padayachee?

MR BESTER: No.

ADV SEGEELS-NCUBE: Okay. Now we know that in August 2013 the confinement was approved, is that correct?

MR BESTER: Yes. So ultimately the confinement was approved, yes.

20 **ADV SEGEELS-NCUBE:** Okay. So I would like to take you to your statement where you deal with the tender sub where you deal with the tender submission that then took place following the confinement award. Can you just tell us why there was a need for the submission of a tender?

MR BESTER: Yes. So the confinement process is we do

need to submit a formal let us call it a tender. So Transnet would issue to us what they call a request for quotation with the detailed scope of work which we need to price as if it is a formal tender complete with the conditions of tender attached to that, all the Transnet conditions within and then there was a deadline set for that as per the formal tendering process and we would have submitted a tender before the deadline stated by Transnet.

ADV SEGEELS-NCUBE: Okay. At page 38 of your
10 statement, paragraph 41, you speak about a tender declaration form that was part of the tender document. Can you just tell us what the tender declaration form was?

MR BESTER: Yes. So it is standard practice for Transnet to include in their tender documentation a tender declaration form basically indicating that, you know, we were not approached by Transnet personnel, then the tendering process or we were not influenced by Transnet people at the time for awarding this contract. So obviously for us it was a serious matter at the time, we needed to
20 understand the legal implications for us to sign it or not and that was a matter that was referred within Hatch to our legal counsel to understand the legality of that specific document.

ADV SEGEELS-NCUBE: And what was Hatch's approach in response to the questions contained in the tender

declaration form and specifically related to what had transpired with Padayachee and Reddy?

MR BESTER: If I can recall, at this stage our legal counsel at Hatch in South Africa was Mrs Xandra Blacklaws. So we handed that matter over to her. She looked at it from a perspective of what is required to be signed and what transpired to that date. We also had a meeting with our managing director of Hatch in South Africa at the time, Mr Rory Kirk, where this whole matter
10 was discussed and it was found that we can actually sign a declaration because we were not in conflict of interest as stated in that specific declaration.

ADV SEGEELS-NCUBE: Okay, so if we can go to paragraph 42. Here you say, it is on page 39:

“To the best of my recollection Hatch’s position was the following...”

And, as I understand it, this was Hatch’s position vis-à-vis the tender declaration form, is that correct?

MR BESTER: That is correct.

20 **ADV SEGEELS-NCUBE:** Okay. So you set out at the first subparagraphs there that:

“Hatch had acted correctly during the process and that Padayachee and Reddy’s behaviour is a cause for concern and warranted the elevation of the matter to Transnet.”

What I would like to ask you about is on the next page on page 40 at paragraph 42.7 where you state in your statement:

“Any influence Padayachee and Reddy claimed to have had with Transnet regarding the award of the contract appears to have had no basis especially in view of the fact that the confinement had been approved without Hatch having to conclude the MOU on Padayachee and Reddy’s terms.”

10 My question, Mr Bester, is how could you think that there had been no basis when Basson had told you that Singh specifically told him and Gerhard Bierman that he wanted DEC to be a preferred SD partner on this project?

MR BESTER: Ja, you must remember that all the discussions and the feedback we had from the Transnet employees was not in writing, it was verbally communicated to us and even in our insistence to give us something in writing to nominate a subcontractor, nobody was prepared to do so. So on that basis considering the
20 fact that we actually then did receive the confinement request for quotation, we came to the conclusion, you know, they probably did not have the standing within Transnet as they indicated.

ADV SEGEELS-NCUBE: So was it your basis that as long as it was not on paper they did not really have any

influence because it is quite evident that Mr Basson told you that Mr Singh had given a direction as to what he wanted to happen. When Mr Reddy and Padayachee meet with you, they basically tell you the same thing, that they have been sent by people high up and you must make them the SD partner on this project. So it is just from my side a bit peculiar that Hatch would take the approach that there was no – that they did not have any influence. I am just trying to understand what specifically are you referring to
10 as being the influence? How do you understand influence to be?

MR BESTER: Yes, so what was important for us at a stage from that perspective is that none of the individuals at the prices actually had an influence in how we actually determined the price for our submission. So how we determined the price and eventually came to the conclusion of the supply and development percentages was a pure Hatch and calculation, we were not influenced by anybody outside Hatch to change or amend the percentages or
20 make other amounts. So based on that, you know, we were happy that we were not influenced and impacted by somebody else outside Transnet.

ADV SEGEELS-NCUBE: Okay, so that was your understanding of what...[intervenes]

MR BESTER: That is correct.

ADV SEGEELS-NCUBE: ...the requirement was from the tender document.

MR BESTER: That is correct.

CHAIRPERSON: Did it not require you to disclose if somebody within Transnet had done something or seemed to be doing something wrong in connection with this project and your getting it or not getting it?

MR BESTER: Chair, if I understand you correctly, there was no doubt in our mind that there was a lot of – I do not
10 know what the correct word is for that but ...[intervenes]

CHAIRPERSON: If what you had been told was true about Mr Singh then he was doing something.

MR BESTER: Yes, I mean, there was a lot of – no doubt in our minds that there was a lot of things happening behind the scene that we could not put our finger on but from the actions that we choose from a Hatch perspective was purely our decisions and, you know, I – if you ask me now the question, remember we also had a meeting with Mr Gary Pita.

20 **CHAIRPERSON:** Yes.

MR BESTER: Where we insisted that they put whatever they wanted to in writing and he was procurement lead of Transnet at the time.

ADV SEGEELS-NCUBE: Thank you, Chair. Okay, Mr Bester, at paragraph 46 of your statement on page 41 you

10 speak about various meetings between Hatch and Reddy even after the confinement was awarded and you say that it culminated in a meeting with the Chief Procurement Officer at Transnet Mr Gary Pita. Can you explain to us what Mr Pita's involvement was in this matter, how the meeting came about and what transpired at that meeting?

MR BESTER: Yes, so subsequent to our formal regret, email letter that we sent to Mr Reddy about not signing the MOU there was various attempts by Mr Reddy to contact us and, you know, there were various discussions with him where he tried to influence us to sign the agreement with them.

So the decision within Hatch – and that culminated in a meeting with Mr Gary Pita. In fact we were invited to a meeting with Mr Anoj Singh, not Gary Pita. It happened that we have seen Mr Gary Pita but the meeting was actually set up by Mr Anoj Singh in the Carlton Centre.

ADV SEGEELS-NCUBE: Okay. And what transpired at that meeting and who was present at the meeting?

20 **MR BESTER:** So we were invited to a meeting with Mr Anoj Singh in the Carlton Centre – I can clearly remember that. Myself and Mr Allan Gray from Hatch went to this meeting, I cannot recall the time of day, it was somewhere in the afternoon.

ADV SEGEELS-NCUBE: Sorry, Mr Bester, can I just

interrupt you to maybe give you some direction on the timing? If you go to page 121 of the bundle you have provided us with a meeting invite.

MR BESTER: Ja.

ADV SEGEELS-NCUBE: Is this in respect of that meeting?

MR BESTER: That is correct.

ADV SEGEELS-NCUBE: Okay, can you just say what the meeting is about, subject and location.

10 **MR BESTER:** It says subject ...[intervenes]

CHAIRPERSON: And I am sorry, the date, the intended date of the meeting was to be what date?

MR BESTER: 22 October 2013.

CHAIRPERSON: Okay, alright. Ja, when it comes to meetings I want to know when, who was there, what was discussed, who said what, what was the conclusion.

MR BESTER: Yes, Chair.

CHAIRPERSON: Okay, alright.

20 **MR BESTER:** So this meeting, in what came from Mr Gary Pita, to Gary Pita, Melodi Batoya, I never know that person, Mr Anoj Singh, Carol Perie and the subject was:

“Discussion with Allan Gray from Hatch”:

The date of the meeting was the 22 October 2013, quarter past one in the afternoon to – quarter to two, it was scheduled in the afternoon. Where? Anoj’s office. That

would have been in the Carlton Centre.

ADV SEGEELS-NCUBE: Okay, continue with what the Chair asked you. Who was at the meeting, what was the meeting, what transpired?

MR BESTER: Myself and Mr Allan Gray from Hatch went to this meeting. As I said, I can clearly recall this meeting, it was on the top floor of the Carlton Centre. We were told to wait at reception for Mr Singh as he was busy so Mr Gray and myself were sitting at reception waiting for Mr
10 Singh. His office was open and we could see him sitting inside the office very casually. People were coming and going out of his office. You know, we had now been waiting for an hour or so for the meeting to start so we were already an hour overdue. We were very annoyed. We were seeing him walking in and out of his office talking casually to people, going to bathroom, passed us without acknowledging us so we found it very strange, the situation that we were in, myself and Mr Gray, sitting in front of his office waiting for him at a meeting that he scheduled and
20 treating us like that.

ADV SEGEELS-NCUBE: Okay and what transpired at the actual meeting?

MR BESTER: So eventually, I think it was after an hour or so, Mr Gary Pita came to us and said sorry, Mr Anoj Singh is not available to see us, Mr Anoj Singh asked that he, Mr

Gary Pita himself see us. So at the meeting was Mr Gary Pita, myself and Mr Allan Gray from Hatch.

So what transpired at the meeting is that we told Mr Pita everything what transpired to date about the gentlemen, Mr Reddy and Padayachee, their requirement that they had that we must include them and it was a very heated discussion that we had with Mr Pita at the time.

I can remember, you know, we were insistent that if it is indeed Transnet wanting us to include these gentlemen or these companies in our submission they need to do it in writing and we will not act in verbal communication or indirect communication.

I can remember Mr Pita was very aggressive at one stage and he was even leaning over the table towards me at some stage in a very aggressive nature.

ADV SEGEELS-NCUBE: What was Mr Pita saying, what were his exact words, if you can remember?

MR BESTER: It was something to the effect of I must do as he tells me and he will not put it in writing and I will act what he is telling me.

ADV SEGEELS-NCUBE: And what was he telling you to do?

MR BESTER: He was telling me to include the gentlemen in our submission.

ADV SEGEELS-NCUBE: By the gentlemen you mean?

MR BESTER: Mr Dave Reddy and Nailan Padayachee, the two companies.

ADV SEGEELS-NCUBE: Okay.

CHAIRPERSON: Just for the transcribers, the reference to Mr Pita is the reference to Mr Gary Pita, I think, is that right?

MR BESTER: Mr Gary Pita.

CHAIRPERSON: Yes and Pita is P-i-t-a for the transcribers.

10 **MR BESTER:** Yes.

CHAIRPERSON: Okay, thank you.

ADV SEGEELS-NCUBE: Thank you, Chair.

CHAIRPERSON: Continue?

ADV SEGEELS-NCUBE: Yes. And what – how did you conclude the meeting with Mr Pita?

MR BESTER: Well, for us it was a very unfortunate situation because, you know, the relationship that we had with Transnet at the time was a very formal relationship of respect, I would say.

20 Also, it was strange for us that Mr Gary Pita himself will get involved in matters like this because Mr Pita at the time was the procurement lead of Transnet and the projects that we were doing were dealt with by the procurement leads of Transnet Capital Projects and not Transnet themselves so, you know, it was very bizarre for

us to talk to the procurement lead of Transnet and not understanding why this project will receive such high attention.

ADV SEGEELS-NCUBE: Okay. And ultimately did Hatch sign an agreement with either Mr Dave Reddy or Mr Padayachee for them to be part of the project?

MR BESTER: No, we did not.

ADV SEGEELS-NCUBE: Were any of those companies part of the project for phase one?

10 **MR BESTER:** No.

ADV SEGEELS-NCUBE: Okay. I would like to take you to the approval of the confinement award which is at HB15 and that is on page 123, for us to conclude this aspect of the SD partners.

MR BESTER: Ja.

ADV SEGEELS-NCUBE: Now you will see that this is a memorandum to Mr Brian Molefe who at the time was the Group Chief Executive of Transnet and it is from Mr Charl Möller who was the Group Executive of Transnet Capital
20 Projects dated the 12th of November 2013 regarding the PFEL for EBCM Services for Phase 1 of the Manganese 16million tons per annum TFR project to Hatch Goba Confinement and award status update for noting.

On page – the following page, page 124, I would just like us to deal with what is set out in paragraph 7 at

the top of the page, if you can read that into the record, and then also explain to us what this table is that we see here.

MR BESTER: Must I read that for you?

ADV SEGEELS-NCUBE: Yes, paragraph 7.

MR BESTER: Paragraph 7 states:

“Further negotiations led by Mr Gary Pita, Mr G Pita, Group Chief Supply Chain Officer followed, wherein Transnet requirement that Hatch Goba subcontract 30% of their EPCM bid price to emerging black owned companies was met by Hatch Goba on the 31st of October 2013 as follows.”

And then it has got a table with all the requirements and all the names of the companies.

ADV SEGEELS-NCUBE: And what were the names of the companies that Hatch had as their FD partners?

MR BESTER: So there were five companies that were identified in our submission, the first company was Assen, which is a multi-discipline engineering, consulting and project management company, 100% black-owned and then the second company was EDS ...[intervenes]

ADV SEGEELS-NCUBE: Sorry Mr Bester, sorry to interrupt you, the transcribers have asked if you could just move a bit away from the mic, it is affecting their transcribing. My apologies, continue.

MR BESTER: Apologies.

ADV SEGEELS-NCUBE: Continue.

MR BESTER: The second company was EDS, EDS Office Unique Combination of service designed to provide customised solutions to the renewable energy, mining, and corporate sectors. The third company was MMQS, which is a Quantity Surveying and Contract Admin company, and let me just also say the second company, EDS, was 100% black owned and 80% black women owned, the third
10 company as I said was MMQS which is a quantity surveying and contract admin company, 100% black-owned, the 4th company was ZD Projects, Engineering & Project Services, 100% black-owned and also 100% black women owned, and the 5th company was Aspire, which was also an engineering and project services company 100% black-owned and 100% black women owned company.

ADV SEGEELS-NCUBE: Okay and just to confirm those were the companies that Hatch had selected to be its SD partners.

20 **MR BESTER:** That's correct.

ADV SEGEELS-NCUBE: Okay now if we can go back to your statement at page 41, still continuing with the SD partners that were part of the hatch submission, at paragraph 44 at the end of the paragraph we talk about the companies that were already included were Assenge,

Aspire, EDS and MMQS for Phase 1 and I would like us to go to the correspondence which is 8B 13 to be found on page 111 of the bundle, and at the foot of the page if you can just tell us what this document is from Mr Gray.

MR BESTER: It is an email from Mr Greg Tue from Hatch to – I might not get this word right, ja, so this is an email to Thobolka Thoko from Transnet Corporate, Komolengo Mashange, Ms Zonjane Sidaan-Yana, and also Mr Vic Best and I was copied in, Mr Craig Simmer, Mr Gary Pita, Khola
10 Sithola, Allan Gray and Craig Sampson.

ADV SEGEELS-NCUBE: Okay now the subject says Hatch Goba response to 6 November FD clarification request. If we can go to the next page, it would appear that what was being requested was for Hatch to be specific as to who the FD partners would be and what their role would be. I want to focus on what the response was from Mr Tue of Hatch in respect of each one, you will see he says,

“Name and address of proposed sub-consultant, the nature and extent of the work or service, the previous
20 experience with sub-consultant, the BBBEE level and percentage black ownership”.

The first entity that he refers to is Assenge and if you look at the last line dealing with Assenge before you see the number 2, he says,

“Yes, we have worked with Assenge on two projects,

Massaroni and Transnet Energy Management Project”,

You see that?

MR BESTER: That’s correct yes.

ADV SEGEELS-NCUBE: And then at the foot of the page he deals with EDS and he says the same on the next page,

“Yes, we have worked with EDS on four projects”,

When we get to number 3 MMQS he doesn’t mention whether Hatch had, previously worked with MMQS and the
10 ZD Projects, he says,

“Yes, we have worked with ZDP on various public infrastructure projects and Aspire, he says, yes we have worked with ZDP on various public infrastructure projects”.

MR BESTER: That’s correct, I see it yes.

ADV SEGEELS-NCUBE: My question is, how did MMQS become a SD partner of Hatch Consulting on this project?

MR BESTER: I cannot recall 100% the details but if I can recall, to the best of my ability, MMQS was a quantity
20 surveying company and that was one of the requirements of the project that quantity surveying skills be used and it was a requirement for quantity surveyors to be used in the – to estimate as we go with the capital of the project to certain accuracies. That was a skill that Hatch didn’t have at the time, in South Africa. So, I would – I can only

speculate, at this stage, that at the time MMQS would have come to us as one of the recommendations from one of the other SD partners but I can clearly recall, we did do a check and a background check on MMQS at the time. At the time they did work a lot for Anglo American, the Kumba Iron Ore Mine at Sishen and we did some background checks because we were also involved in some projects for Kumba at that time and the quality of work and the references that we got back at the time was to our
10 satisfaction and for that reason, I think, they were also included in the project.

ADV SEGEELS-NCUBE: Did you know anybody from MMQS?

MR BESTER: I didn't personally know him but the owner of the company was a person called Mandla, if I can recall, I can't recall his surname now but over time, obviously working on the project, I became familiar with this person, Mandla, which was the owner of MMQS yes.

ADV SEGEELS-NCUBE: And you personally didn't have
20 any involvement in his appointment as a SD partner for Hatch?

MR BESTER: No.

ADV SEGEELS-NCUBE: Did you have any involvement in the other SD partner's appointment?

MR BESTER: No, I mean the SD partners at the time, as I

recall, obviously as I said earlier in my statement, SD for us at Hatch and obviously for Transnet and South Africa, to be fair, was a new concept. So, obviously in our Monday meetings at Hatch this is a topic that we discussed about projects that other Directors within Hatch would have done, like energy, mining etcetera and there would have been a sharing of information about companies which we could consider for, for instance, Manganese Phase One, and I would assume at that meetings it was decided most of
10 these companies where the names came out from other projects that we were doing with them, as can be seen from this email from Mr Greg Tue.

ADV SEGEELS-NCUBE: Okay, Chair, you would remember that at the beginning I indicated that I would be referring to other statements. I beg leave to refer to one of those statements now which is in Bundle 4B.

CHAIRPERSON: Okay.

ADV SEGEELS-NCUBE: Mr Bester could you please go to Bundle 4B, Chair this statement was supplemented
20 yesterday, if I understand, into the Bundle.

CHAIRPERSON: Whose statement is it?

ADV SEGEELS-NCUBE: It is for Mr Gerhard Bierman, it is BD21, it is the last builder in 4B.

CHAIRPERSON: Tell him the page number.

ADV SEGEELS-NCUBE: The page number, Chair, is page

921.

MR BESTER: Excuse me?

ADV SEGEELS-NCUBE: Page 921, do you have it?

CHAIRPERSON: This is – is this the statement of a witness who is going to give evidence in due course, or not?

ADV SEGEELS-NCUBE: Chair it is a witness but has submitted a statement, he is available to give evidence, but he is currently located in...[intervenes].

10 **CHAIRPERSON:** Just raise your voice.

ADV SEGEELS-NCUBE: Sorry Chair, he's currently located in Australia, so we do not foresee that he will give evidence anytime soon, but he is available to give evidence and has submitted the statement.

CHAIRPERSON: Yes, okay let's admit the statement for now, provisionally.

ADV SEGEELS-NCUBE: I'm indebted to you Chair.

20 **CHAIRPERSON:** And then in due course we can see whether it should be admitted, finally but there should be no problem.

ADV SEGEELS-NCUBE: Thank you Chair, with your leave Chair, may it be admitted, page 921 to page 926...[intervenes].

CHAIRPERSON: I think your voice is competing with the aircon.

ADV SEGEELS-NCUBE: I'll raise my voice Chair.

CHAIRPERSON: But I don't want everybody to – if it's hot, I don't want everybody not to have the – maybe if you raise the – raise your voice, maybe it's fine, if it's possible for the aircon not to make as much noise as it does, while it's still on, that would be helpful. Okay you'd like me to provisionally admit this affidavit by – statement by Mr Gerhard Bierman as Exhibit?

ADV SEGEELS-NCUBE: BD21, Chair.

10 **CHAIRPERSON:** The statement by Mr Gerhard Bierman is provisionally admitted as an Exhibit and will be marked Exhibit BD21.

ADV SEGEELS-NCUBE: Yes, indeed Chair, BD21.

CHAIRPERSON: Ja, okay, it starts at page 923.

ADV SEGEELS-NCUBE: Indeed Chair.

CHAIRPERSON: Okay, alright.

ADV SEGEELS-NCUBE: Thank you Chair. Mr Bester, this is a statement that was prepared by Mr Gerhard Bierman who's the former Chief Financial Officer of Transnet
20 Capital Projects and you will remember you had given evidence about what Mr Basson told you about a discussion he had with Mr Bierman and Mr Singh.

MR BESTER: That's correct.

ADV SEGEELS-NCUBE: Okay, at paragraph 15, I think we should start at paragraph 14 of the statement, on page

926 I want to read to you what Mr Bierman says about the meeting he had with Mr Basson and Singh, he says at paragraph 14,

“On or about 15 July 2013 during the period leading up to the final approval, in one of many internal review sessions where I was present, Singh and he’s referring to Mr Anoj Singh, requested that a company known as DEC Engineering be profiled for capacity and skills. He also made a request for
10 DEC to be a designated sub-contractor on Phase One. I considered this request highly inappropriate for various reasons. 14.1 I had never heard of DEC. 14.2 It was inappropriate for Transnet to impose a sub-contractor on the principal contractor which would have been Hatch in this instance. 14.3 If Transnet could impose a sub-contractor it should be done by way of a competitive and fair process where other potential sub-contractors would also be considered and 14.4 In order for a sub-contractor
20 to be considered for a project of this magnitude, I would have to have – it would have to have a proven track record within the rail industry and in particular in respect of railway tracks. The fact that I had never heard of DEC was a clear indication to me that they were not experienced in railway tracks

and certainly didn't have a proven record".

Now at paragraph 16, we'll skip 15, at paragraph 16 he says,

"Singh also asked Basson to consider MMQS as a designated sub-contractor. Singh told Basson to obtain a copy of an introduction presentation from MMQS which Basson subsequently obtained. This presentation outlined the skills and capacities of MMQS".

10 And then if we go to paragraph 19 on page 928, he speaks about his response that he gave...[intervenes].

CHAIRPERSON: Maybe you should – by the time you ask him to comment he might have forgotten some of the things, you should ask him in manageable proportions, take one at a time.

ADV SEGEELS-NCUBE: Chair, my question really relates to – just to identify to him that MMQS was one of the entities that Singh also asked to be part of the SD programme, which Mr Bester wouldn't know about but I just
20 want to show him the link between MMQS on their final SD list and the request that was made by Mr Singh in that meeting.

CHAIRPERSON: But what are you going to ask him to do about it?

ADV SEGEELS-NCUBE: Yes, just for him to acknowledge

that this is what Mr Bierman says about MMQS insofar as there was a request by Mr Singh for MMQS to also be included.

CHAIRPERSON: Did Mr Bierman talk to him about this?

ADV SEGEELS-NCUBE: No Chair.

CHAIRPERSON: Yes.

ADV SEGEELS-NCUBE: It's in relation to – Chair would remember that MMQS now ends up as an SD partner of Hatch. Mr Bester says he doesn't know how they were
10 appointed even though they had never done work with them.

CHAIRPERSON: Are you going to ask him to comment on it?

ADV SEGEELS-NCUBE: Yes, Chair.

CHAIRPERSON: Well just tell him what Mr Bierman says, the gist and then ask him whether he's able to comment on that.

ADV SEGEELS-NCUBE: Okay.

CHAIRPERSON: Ja, you don't have to read the whole
20 thing.

ADV SEGEELS-NCUBE: Thank you Chair. Insofar as paragraph 14 is concerned on page 926 that I had read into the record, were you aware that – and paragraph 16, that Mr Singh had also asked Mr Basson and Mr Bierman to have MMQS profiled for purposes of being an SD partner

on the project?

MR BESTER: No, I was not aware.

ADV SEGEELS-NCUBE: Okay, and you indicated that you didn't know how MMQS came to be a SD partner for Hatch?

MR BESTER: Yes, I can only speculate that, being the specific skill that they had, of quantity surveying, that might have come through one of the other SD partners that we had, that's only my speculation.

ADV SEGEELS-NCUBE: Well, insofar as there was a
10 prior request by Mr Singh and MMQS then ends up being
an SD partner of Hatch, do you find it to be coincidental or
since you were not involved in the appointment of MMQS
that there are people within Hatch who would know how
MMQS, an entity they had never worked with before,
became a partner?

MR BESTER: I'm not sure what you want me to answer
but I would say it's very coincidental yes and I don't know
the details.

ADV SEGEELS-NCUBE: And had you ever been
20 approached by anybody about MMQS being a SD partner in
the same way you were approached by Padayachee and
Singh before the confinement award?

MR BESTER: No, I have not been approached, no.

ADV SEGEELS-NCUBE: And now that you know that
there was this prior request from Mr Singh, what is your

comment insofar as MMQS is concerned being an SD partner of Hatch on Phase One?

MR BESTER: Well, now that I have seen the details and heard the details, and unfortunately it's a long time ago but I remember that there were discussions with MMQS afterwards about other projects in Transnet where the gentleman of and the owner of MMQS at the time, did have a lot of information about Transnet and their projects yes.

ADV SEGEELS-NCUBE: And, when you say had
10 discussions about the projects, what do you mean by that?

MR BESTER: As I said, unfortunately I can't remember the detail as it was a very long time ago but I remember subsequent to the Manganese project there would have been other projects, obviously now, having concluded the Phase One project and being part of the project these companies like MMQS obviously would have been now in contact with us at Hatch for future work at Transnet or other State owned companies and I can recall there was some discussions with the owner of MMQS where he
20 indicated future projects coming up from Transnet and the budgets and the detail which was discussed with us, yes, so that is a coincidence.

ADV SEGEELS-NCUBE: That is a?

MR BESTER: Coincidence.

ADV SEGEELS-NCUBE: Okay, now what was your

experience of MMQS on the Phase One?

MR BESTER: Well, I can tell you, MMQS as with all the other SD companies, if you know Hatch, they were controlled. Companies were appointed in a very controlled manner where we, as Hatch, would have had full control of the type of work that they do, the quality of work and of course the invoicing. If you understand the systems within Hatch it's a project management company with systems set-up to measure progress, actual progress and time
10 spent on project. So, there is no deviation from, let's say, the truth. So, my experience with all the companies that we actually then used on Phase One, was that it was a good performance and in line with the Hatch expectations.

ADV SEGEELS-NCUBE: Okay, can we then, now move on to Phase Two which starts on page 43 of your statement.

MR BESTER: Page?

ADV SEGEELS-NCUBE: 43 and that is in 4A, my apologies.

CHAIRPERSON: You said 43?

20 **ADV SEGEELS-NCUBE:** Page 43 Chair.

CHAIRPERSON: Okay.

ADV SEGEELS-NCUBE: Paragraph 52.

CHAIRPERSON: We are now back in the Bundle 4?

ADV SEGEELS-NCUBE: Bundle 4A, yes Chair.

CHAIRPERSON: Okay.

ADV SEGEELS-NCUBE: Mr Bester can you tell us what transpired and how Phase Two came about and then what transpired during the Phase Two procurement process?

MR BESTER: Yes, so if you can recall where I started off my statement is that we always knew that there was going to be a Phase Two, a much bigger project than Phase One and then Phase Two was a competitive bidding process, International that was advertised in the newspapers by Transnet meaning that any International company that
10 complied with requirements as set out in the tenders could, basically, tender. So, we always knew there was an opportunity for us then to tender on Phase Two.

ADV SEGEELS-NCUBE: Okay, and so you did tender on Phase Two and at page 44 of your statement at paragraph 54 you speak of you making contact with Mr Reddy prior to Transnet advertising the tender for Phase Two. Can you tell us why you made contact with Mr Reddy and what transpired?

MR BESTER: Ja, so it was during that time and the
20 timeframe would have been a few months, if I can recall, but on every Monday we would have had, within Hatch, a weekly meeting where we discussed the clients and the progress on projects and we had a review of each and every project and one of the things that was discussed at this specific meeting, I recall, was that we were also

involved with other Transnet projects and the one of our other projects was the National Multi Product Pipeline project of Transnet where Transnet did not pay our invoices. It was a big problem for Hatch because – I can't remember the detail of the quantum of the invoices, but it was a lot of million rands that would have been outstanding for months which was, obviously unacceptable. So, I recall at the meeting there were comments made by our Chief Financial Officer and our management team that, you know,

10 we need to try to get to Mr Anoj Singh and have a meeting with him to discuss our options because contractually one of the options that we had was just to stop work, something that we don't like doing because it can cause a lot of damage and harm to clients and the projects. Other options would have been just to charge interest on outstanding invoices which is just another invoice that will collect outstanding days or we need to have a meeting with him and understand exactly what is the problem with Transnet why they do not pay our invoices. So we were talking and

20 debating options of getting access to Mr Singh as it was mentioned in the meeting that various emails had been sent to colleagues within Transnet requesting to have a meeting with Mr Singh or there would have been emails directly sent to Mr Singh, asking for a meeting to talk about the outstanding invoices. So, it was at one of these

meetings that I made a suggestion, I think at the time, why don't we speak to Mr Dave Reddy because he seemed to have access to Mr Singh and ask him to arrange a meeting with Mr Singh so we can have discussion about our outstanding invoices.

CHAIRPERSON: The outstanding invoices, did they relate to Phase One or was it related to Phase Two?

MR BESTER: No, that relates to other projects that we were doing for Transnet at the time as I indicated that
10 specific project was called the NNBP which was a major project of Transnet where Hatch also had a role and did invoices every month.

CHAIRPERSON: By this time, what had been finalised was it the award of Phase One – of the Phase One project to you or was the actual work finalised for Phase One...[intervenes]?

MR BESTER: By that time Phase One was already awarded and we were already busy with the project in the execution.

20 **CHAIRPERSON:** Okay, alright.

ADV SEGEELS-NCUBE: Thank you Chair. I'm just trying to understand, what gave you the impression that Mr Reddy would have access to Mr Singh in order for him to arrange this meeting?

MR BESTER: Well, from the various meetings I had with

Mr Reddy at the time, you know, where he loosely mentioned number one and he also spoke about Mr Singh, it did give us the impression that he somehow knows Mr Singh and that he has access to him.

ADV SEGEELS-NCUBE: Okay, and what was Mr Reddy's response to your request for him to set up the meeting?

MR BESTER: I recall he said to me, no problem I will arrange a meeting for you and I think it was almost – I can't remember the timeframe but let's say it was almost –
10 within the next day he said to me, Mr Singh said he will see you.

ADV SEGEELS-NCUBE: And did that meeting happen?

MR BESTER: Yes, that meeting happened yes it was arranged for – I didn't have, or we didn't have access to Mr Singh directly, so Mr Reddy indicated Mr Singh said he will see us in a restaurant in Melrose Arch.

ADV SEGEELS-NCUBE: Do you remember how long after he said to you the meeting is good to go that the actual meeting actually took place?

20 **MR BESTER:** It was very quick, I can't remember the details but let's say it was one or two days.

ADV SEGEELS-NCUBE: Okay, so again, you go to the meeting, who was present, what transpired, what was discussed, what was the conclusion of the meeting?

MR BESTER: Yes, so now you must remember this wasn't

actually my meeting, this was a meeting that came about from a management of Hatch and most specifically from the Chief Financial Officer of Hatch to talk about the outstanding invoice and why Transnet is not paying us. So, I went to the meeting at the time we decided that from Hatch it would be myself, being just a representative for rail, it would be our Chief Financial Officer Mr Craig Sampson and it would be one of Engineers for an infrastructure Mr Craig Simmer and so we decided we all
10 three would go to the meeting. I remember I went on my own and it was agreed that we – I will meet the other gentlemen there in front of the restaurant at a certain time as agreed to meet Mr Singh.

ADV SEGEELS-NCUBE: Okay and what transpired?

MR BESTER: So on this specific day of the meeting I remember I arrived a little bit early at the restaurant purely because I was not sure where the restaurant was and I need to just make sure I have got enough time to find it.

And as I walked towards the restaurant I was – I was
20 met by a gentleman who stopped there and start talking to me. And so the gentleman introduced himself as Mr Salim Essa. You know I – I can recall it because I was – I did not know who he was. I remember the discussion.

I ask him who are you? He said I am just somebody I am here to talk to you. I said no we have a meeting with Mr

Anoj Singh. He said yes he will call Mr Singh when he is ready and when we are ready. He just want to make sure everything is okay.

So it was a very strange – I ask him so what is your business? What are you doing? He said I must not worry about that he has got lots of odd businesses but he is here to attend the meeting.

I must also say the other thing that striked me at the time was you know his dress code. He was – he was
10 wearing an old jean and looked like he was sleeping in the street somewhere. So I was not impressed.

ADV SEGEELS-NCUBE: Okay. And did he explain why he was at a meeting that was essentially a Transnet meeting?

MR BESTER: At the time he did not explain but it sort of unfolded in front of me because it was clear that he was in control of the situation or in control of this meeting. He said to me, wait here outside the restaurant. He walked in – I was standing outside looking inside and he was walking in as if he wants to make sure everything is okay inside the
20 restaurant. You know he was walking around it was strange. It was almost as if he wants to make sure everything is safe for us to go inside – everything is set up and arranged.

He came outside and I said I am waiting for Anoj. He said I will now call Anoj and he was talking on his phone and it was literally a few seconds later and Anoj arrived.

So very strange.

ADV SEGEELS-NCUBE: Okay now you say in your statement if you look at paragraph 58 page is as guidance if you can take us through what was discussed at the meeting itself?

MR BESTER: So by that time my other two colleagues also arrived. We walked inside. It was a very strange meeting you know because we were now not – we were now not sure what is happening because we actually had the meeting with
10 Mr Anoj Singh. He was dressed as usual to the teeth with his suit and tie.

And this gentleman Mr Salim Essa sitting there doing most of the talking. And we listening. So it was a very superficial meeting. Nothing was said really. It was talking about nothing and you know I can remember my feeling was I just want to get this meeting over and leave. Because we are not achieving anything.

Anoj – I remember said a few words. It would not have been any comfort to us. No commitments were given of
20 invoices and you know I think we all left the meeting not knowing exactly what happened.

CHAIRPERSON: Did – did you ultimately get a chance to tell Mr Singh what your complaint was namely your invoices were not being paid.

MR BESTER: Yes.

CHAIRPERSON: And it was – the delays were too long contrary to the agreement did you get a chance to actually say this is why we wanted a meeting with Mr – with you Mr Singh?

MR BESTER: Yes Chair I have to tell you that this was a very strange meeting as I said because Mr Singh was sitting there as if he was on a ledge so to say. Ja we started off the meeting by saying to him exactly why we asked for this meeting because of the amount of money that was owed to
10 us and what it cost us, what our options are. And you know I clearly remember the answer that he gave us was it – it did not give us any comfort that he was actually addressing our concerns.

And all three of us from the – from Hatch side clearly wanted to leave this meeting because you know we were – I think we – we saw that we are not going to achieve something. Plus the presence of Mr Salim Essa was for us something that we could not understand.

CHAIRPERSON: And at that stage or at any stage did you
20 any stage during the meeting come to understand what Mr Salim Essa's role was in relation to Transnet matters?

MR BESTER: Not at all. It was – in fact a very quick meeting. We were sitting at a dinner table – a lunch table in the restaurant. Our plan was actually to have lunch with Mr Singh but as it unfolded unknowingly we decided not to have

lunch. Mr Singh did not – as I say Mr Singh did not give us any comfort. I could not even remember what Mr Essa was talking to us about. But it was a very short meeting and then we said thank you and we left.

CHAIRPERSON: Was there somebody who was like chairing this meeting?

MR BESTER: Just come again Mr Chair?

CHAIRPERSON: Was there somebody who seemed like chairing this meeting?

10 **MR BESTER:** Mr Salim Essa was in charge of this meeting it seemed to us yes.

CHAIRPERSON: Ja. Okay alright. What was the name of the restaurant in which you were? Can you remember or is it mentioned in your statement?

MR BESTER: I cannot remember if you – if I can see the name?

ADV SEGEELS-NCUBE: Chair it is not...

CHAIRPERSON: Was it JB or J&B?

20 **ADV SEGEELS-NCUBE:** No it is – Chair it is not mentioned at this meeting. There is a subsequent meeting.

CHAIRPERSON: Oh there is another meeting.

ADV SEGEELS-NCUBE: That was at J&B.

CHAIRPERSON: Oh okay alright.

MR BESTER: Okay.

CHAIRPERSON: Okay you cannot remember the name?

MR BESTER: I – I know the location in my head but I cannot recall the name. I apologise for that Chair.

CHAIRPERSON: Yes okay alright. Okay continue.

ADV SEGEELS-NCUBE: Thank you Chair. Now what was your impression of Mr Essa and Mr Singh's relationship at this meeting?

MR BESTER: It was the most bizarre introduction I would say. You must also recall that this is the first time that I actually had the – the privilege to be with Mr Singh in a
10 meeting situation because he was just a name that mentioned to us and it was just a name thrown around. Previously we were supposed to have a meeting with him which Mr Pita chaired and he did not even pitch. So – you know so I – for me in my head it was anti-climax because Mr Singh was sitting there as I said very well dressed in a suit and tie and Mr Essa was controlling him. And you know he was sitting there as if he can – almost as if he can only talk to us when he is allowed to talk. It was very strange.

CHAIRPERSON: Did it – did you get the impression that
20 there was some subtle message that was being sent to Hatch in one or another

1. By the delay in paying the invoices and
2. By the way this meeting was being handled and if so what was the impression or your impression of what message was being sent? Or is that something that

you did not get an answer [speaking over one another].

MR BESTER: Chair I can only speculate but – so afterwards we had a meeting within Hatch to now debrief ourselves about this meeting. And I think the conclusion was that we were very confused about the presence of this gentleman Mr Salim Essa which I also met for the first time and did not from a bar of soap.

What also confused us a lot was his dress code which was very funny. As I said previously and he sort of –
10 he did not have the sort of – you know it does not – it did not look like he sort of fitted in – into that discussion. And we were confused about what message it actually was now going to – to be conveyed to us as Hatch people.

CHAIRPERSON: But in terms of what Mr Singh said are you able to remember whatever it is he said to say well during the meeting this is what he said? Is there anything that you remember quite well that he said?

MR BESTER: Yes I can recall some information. It was about Hatch embarking – ag Hatch apologies – Transnet
20 embarking on this major projects. The importance of supply development and – you know there was a perception at Transnet at the time that we did not agree with supply development. That they – Hatch had the resistance to supply development which was not the case. It was hard supply development was introduced to us by other

individuals. So it was what we thought it was to – to tell us that we need to accept the supply development and this is going to be a major thing going forward for Transnet.

CHAIRPERSON: Okay.

ADV SEGEELS-NCUBE: Thank you Chair. Mr Bester on page 46 of your statement at paragraph 59 you then speak of a call that you received from Mr Reddy after – soon after this meeting. Can you tell us about this call and what transpired thereafter?

10 **MR BESTER:** Yes. So not long after this meeting that we had with Mr Singh and Mr Essa in Melrose Arch I got a call from Mr Reddy informing me that Mr Essa would like to see me again as a follow up meeting to the meeting that we had if he can call it a meeting. Which I discuss with Mr Allan Gray and Mr Sumption, Craig Sumption of Hatch at the time. And it was agreed that I would like – that I can attend the meeting just to listen what this gentleman was going to tell me because as I said at the time we had absolutely zero knowledge about this individual, his role. All we knew is that
20 it was a strange relationship with Transnet but it was agreed that no harm in just going to listen to what he was going to say.

ADV SEGEELS-NCUBE: And do you remember when this meeting was?

MR BESTER: I cannot remember exactly the exact date but

I can remember exactly where the meeting was set up. It was also in Melrose Arch at the restaurant. If I can recall the restaurant's name was JB's corner I think.

ADV SEGEELS-NCUBE: Okay. I just want to focus on trying to pin down an approximate date of this meeting. If you go – you say that soon after this meeting which was the initial meeting and the initial meeting you said happened before Transnet advertised the phase 2 tender. And if you look at page 43 at paragraph 53 we see that Transnet
10 advertised the tender on the 24 April 2014. Now would this meeting have been after the advertisement?

MR BESTER: From what I recall definitely this meeting was after the tender was advertised yes.

ADV SEGEELS-NCUBE: Okay so it would have been after April 2015?

MR BESTER: Yes.

ADV SEGEELS-NCUBE: Okay continue.

MR BESTER: So this meeting was set up at – and by the way I got notice of this meeting or request for this meeting
20 through Mr Dave Reddy who phoned me and said that Mr Salim Essa would like to see me as a follow up. And it was at a certain time and date was set and I went to this meeting at – at this location in Melrose Arch where I meet – I was met by Mr Dave Reddy and Mr Salim Essa.

ADV SEGEELS-NCUBE: Was there anybody else in

attendance?

MR BESTER: No. Again it was just a little bit of a funny setup. It is – I went into the restaurant and everybody knew Mr Salim Essa. You know he was like a celebrity. Everybody greeting him. There was a table set out for us on the stage if I can recall. So it was only the three of us.

ADV SEGEELS-NCUBE: Okay and what transpired at that meeting? What was being discussed?

MR BESTER: It – it was again a very irritating meeting for
10 me personally because Mr Essa had a lot of cell phones with
him that was ringing the whole time and he was talking and
standing up and walking around and I was sitting there very
irritated I remember. But when he was sitting down he told
me that I – that we need to include him in our phase 2 tender
for the manganese and he was talking about I recall asking
him and what are you going to do? And he – I remember
recalling he told me I must not worry about that I must just
include his company he will give me the name. And if I –
from what I can recall he also told me that I need to include
20 him for R80 million to which I laughed or told him something
to – that he is – it is ridiculous. I told him about – it is a
competitive process. I know exactly what the budgets and
affordability of the project is you know how tight the budgets
are – the business case that we have done and you know
there is no error – room for errors to be made in the money.

And he just laughed at me he said, do not worry you include me for R80 million and I will grow that to something ridiculous I can recall over R300 million. And he was loosely talking to me about money. I – also when I spoke to him about the budget for the project he said to me I do not know what I am talking about. He knows what – he know what the budget is and he will decide what the budget is going to be and where the project will end up. And I basically know nothing.

10 **CHAIRPERSON**: This was Mr Essa saying this?

MR BESTER: That is correct.

CHAIRPERSON: Now when he talked about you including his company was he talking about his company separate from Mr Reddy's company and Mr...

MR BESTER: Yes.

CHAIRPERSON: Mr Padayachee's company?

MR BESTER: Yes.

CHAIRPERSON: Was it a different entity?

20 **MR BESTER**: Yes it was – he made it clear to me that it is his company. He will give me the name. There is various companies to choose from and I must not worry about what they are going to do. I must just invoice.

CHAIRPERSON: Oh okay. And Mr Reddy was there?

MR BESTER: Mr Reddy was there he did not say a word he was just listening.

CHAIRPERSON: Yes okay alright.

ADV SEGEELS-NCUBE: Now if we can just go to your statement because this is a very important meeting and I just want you to set out the full contents of what transpired. At paragraph 63 you say that – which is on page 46 of your statement. You say that – and this is now Mr Essa.

“He insisted that we should include his company and said that they have a lot of power.”

10 When did he say this during the meeting?

MR BESTER: It would have been at the time when I told him he does not know what he is talking about and he was now trying to tell me that I do not know what I am talking about.

ADV SEGEELS-NCUBE: And did he say who this “they” was that he was referring to?

MR BESTER: He did not go into the detail. But he said to me I must not worry about the detail or about budgets. I recall for instance he told me that they had already decided who is going to be the next CEO of Eskom. And I will clearly
20 see it when it happens that – what the power is that they have and how they make decisions if I do not believe him.

ADV SEGEELS-NCUBE: And who did he say that person would be?

MR BESTER: He said it is going to – they decided Mr Brian Molefe will be the CEO of Eskom.

ADV SEGEELS-NCUBE: And this was all during that meeting?

MR BESTER: That is correct.

ADV SEGEELS-NCUBE: Okay now this ...

CHAIRPERSON: I am sorry.

ADV SEGEELS-NCUBE: Sorry Chair.

CHAIRPERSON: We – we – this would have been after April 2014 you said? Did you say this meeting would have taken place after April 2014? Mr Bester.

10 **MR BESTER:** That is correct, yes.

CHAIRPERSON: Was Mr Brian Molefe not already Group CEO of Transnet at that time?

ADV SEGEELS-NCUBE: He said Eskom Chair.

CHAIRPERSON: Hm.

ADV SEGEELS-NCUBE: He said Eskom. That Mr Brian...

CHAIRPERSON: Oh Eskom.

MR BESTER: Eskom.

CHAIRPERSON: Oh he said they already knew who was going to be...

20 **MR BESTER:** Yes so at that time if I can recall Mr Brian Molefe was the CEO of Transnet.

CHAIRPERSON: At the time of the meeting?

MR BESTER: At the time of the meeting.

CHAIRPERSON: Ja but what was the remark that Mr Salim Essa said about Group CEO or something?

MR BESTER: He was convincing me that I do not know what I am talking about and he was trying to indicate the power that they have. If I can recall at the time I could not recall the situation at Eskom. But said to me, “you will see we have already decided that Mr Brian Molefe will be the next CEO of Eskom and when it gets announced you will see the power that we have.”

CHAIRPERSON: Yes. Okay. Okay. Yes thank you.

ADV SEGEELS-NCUBE: Thank you Chair. Now the R80
10 million that he initially spoke about was that part of the SD component or would it be over and above the SD component according to your understanding?

MR BESTER: Well so his indicated was that we need to include the R80 million as part of the SD but what I – when I ask him what he is going to do for the R80 million

CHAIRPERSON: I am sorry. I am sorry.

ADV SEGEELS-NCUBE: My apologies Chair.

CHAIRPERSON: Well I have been sitting here listening to evidence from different work streams so I am just thinking
20 about this evidence that you are giving.

ADV SEGEELS-NCUBE: No problem Chair.

CHAIRPERSON: Because Mr Brian Molefe ended up being seconded to Eskom was it 2015 – 2014? Well I was hearing this evidence two weeks ago and so on. So I am just wondering Mr Essa knows sometime while Mr Brian Molefe is

at Transnet that Mr Brian Molefe is going to end up being CEO of Eskom and he is mentioning this to you kind of in passing and just to show you that he and whoever he was talking about had a lot of power.

MR BESTER: That is correct. That is correct.

CHAIRPERSON: Had a lot of power. And we all know that ultimately Mr Molefe did end up being Group CEO of Eskom.

MR BESTER: That is correct.

CHAIRPERSON: Yes.

10 **MR BESTER**: He also mentioned to me if I can say?

CHAIRPERSON: Yes.

MR BESTER: At the meeting that with the power that they have they can do anything.

CHAIRPERSON: Yes.

MR BESTER: Because I told him that we are going to tender for this project. It is a competitive bidding process so you know each and every cent counts. And he said to me, no it is not the case. If I – or Hatch at that stage include him in our submission they can change all the prices, they will
20 make sure we get the job, they will grow the budgets and they are in control.

CHAIRPERSON: That is what he said?

MR BESTER: That is correct.

CHAIRPERSON: Yes. Yes continue.

ADV SEGEELS-NCUBE: Thank you Chair. On the R80

million that you were referring to you say he then said it was going to increase to R350 million and then eventually to R2 billion. Was this in relation to phase 2 or the entire project – the entire MEP?

MR BESTER: So let me explain this to you. So this specifically relates to phase 2. So his R80 million that he referred to was what he wanted or his company. And if I recall at the meeting he said over time he will make sure that they grow the R80 million to something like R350 million
10 which was part of the SD let us say services. But the overall budget of the project at the time for let us call it the Engineering Procurement Construction Management as we call – refer to it EPCN was something like just over R1 billion and he mentioned to me they have already decided that they are going to grow that amount to over R2 billion.

ADV SEGEELS-NCUBE: So you – so they would double it?

MR BESTER: Yes.

ADV SEGEELS-NCUBE: For the entire project?

MR BESTER: That is correct.

20 **ADV SEGEELS-NCUBE:** The entire.

MR BESTER: So obviously they had other plans as well outside the R80 million that he was talking about.

ADV SEGEELS-NCUBE: And what was...

CHAIRPERSON: I am sorry. At that stage what was your reaction to what this man was saying to you which if true

would show you to have – would show him to have quite some very strong power?

MR BESTER: Chair I was disappointed and shocked so I told him – listen I did not say he is an idiot but I said to him he does not know what he is talking about.

CHAIRPERSON: Hm.

MR BESTER: And I have – I know what is going on in the project he does not know what he is talking about.

CHAIRPERSON: Yes. Okay.

10 **ADV SEGEELS-NCUBE**: And just to put the R2 billion in context. At that stage what was Hatch's proposal on phase 2?

MR BESTER: Our phase 2 overall submission I think was just over R800 million.

ADV SEGEELS-NCUBE: Okay. And do you know what it would have been in respect of – is that for rail and port on phase 2?

MR BESTER: Just the rail.

ADV SEGEELS-NCUBE: Just for rail?

20 **MR BESTER**: Just...

ADV SEGEELS-NCUBE: And on port?

MR BESTER: If I can recall the budget for the port was something in the region of R750 million if I can recall.

ADV SEGEELS-NCUBE: Okay. Now what did you do after that meeting this [00:25:12] meeting that you had attended?

MR BESTER: Well I left the meeting obviously shocked. Went back to Hatch and I informed the management of Hatch of the meeting that transpired that would have been my immediate supervisor Mr Allan Gray at the time. Mr Craig Sumption which was our Financial Officer in infrastructure. And then we also went to see out Managing Director Mr Rory Kirk.

ADV SEGEELS-NCUBE: Okay and what was decided would Hatch – what would Hatch approach be to this matter?

10 **MR BESTER:** Well it was important obviously that we share this information with whoever in Hatch – our biggest – our management in Canada CEO as well. So that information was also shared with our legal counsel which suggested everything that happened and transpired must be in a form of an affidavit and filed with our auditors. And then we also informed Transnet and that would have been Ms Deirdre Strydom at the time.

ADV SEGEELS-NCUBE: Okay and did you get any responses from them? What were their reactions to you reporting this to them?

20

MR BESTER: At the time I cannot recall the detail for our reporting to Transnet it was thank you for the reporting and I remember the feedback from Ms Strydom at the time was they will continue to look for avenues for us to share this information in the bigger Transnet but we should be careful

to whom we share this information with.

CHAIRPERSON: Did you follow that advice of Hatch's counsel of deposing to an affidavit?

MR BESTER: Yes. So Chair I did a complete affidavit.

CHAIRPERSON: Yes which detailed what had been [Speaking over one another].

MR BESTER: If I recall the details it would have been filed with Ernst and Young.

CHAIRPERSON: Yes.

10 **MR BESTER:** Our auditors at the time.

CHAIRPERSON: Yes. But it recorded what had transpired at that meeting, is that right?

MR BESTER: So what – I went to the office. I did a complete affidavit which I shared with our legal counsel and everybody had their input that that information and from the previous meeting with Mr Anoj Singh, Salim Essa. And we were looking at our legal counsel to ensure that you know the information everything is above board for future purposes if it might be required in future. So that was the
20 advice that we got.

CHAIRPERSON: Hm. Yes but what I am interested in is whether if one were to find that affidavit and I do not know if it is here.

ADV SEGEELS-NCUBE: No.

CHAIRPERSON: If one were to find that affidavit it would

corroborate that you have told me in terms of what was discussed or what was said by Mr Essa at that meeting.

MR BESTER: Chair if I can recall and my understanding is that there was a request put to Hatch to get that copy of that affidavit and the information. I am not sure if a copy could have been obtained.

CHAIRPERSON: Hm. Do you what the position is?

ADV SEGEELS-NCUBE: Yes Chair the affidavit was not finalised and was never filed with Ernst and Young. That is
10 what we – the information that the commission's investigators received from Hatch when they enquired about the affidavit. It was in draft form and never finalised and filed.

CHAIRPERSON: Hm. Is that your recollection Mr Bester that you never signed the affidavit or could that be a mistake?

MR BESTER: I would not have insight into that type of information for me I would have submitted that information to our legal counsel and then they would take care of it.

CHAIRPERSON: Ja no but an affidavit ultimately you have
20 to sign.

MR BESTER: I have signed my affidavit.

CHAIRPERSON: You did sign it.

MR BESTER: I did sign. Yes.

CHAIRPERSON: Yes. So I think that somebody needs to follow up maybe there is some misunderstanding.

ADV SEGEELS-NCUBE: We will Chair.

CHAIRPERSON: Ja.

ADV SEGEELS-NCUBE: We will get the investigators to follow up.

CHAIRPERSON: Because it would be important. That was an affidavit that was signed while everything was fresh I guess in your mind, is that correct?

MR BESTER: That is right. That is correct.

CHAIRPERSON: Yes. Do you have recollection of how long
10 after this meeting you may have signed this affidavit or you might not be able to say? A few days, a few weeks, a few ...

MR BESTER: Chair I think it was a very urgent matter for us.

CHAIRPERSON: Yes.

MR BESTER: So it would have been in that week at most.

CHAIRPERSON: That few days ja.

MR BESTER: After the event that we have... this affidavit.

CHAIRPERSON: Okay alright. If there is in – there is a way
20 in which you can assist and facilitate obtaining that affidavit that would be appreciated Mr Bester. Okay alright.

ADV SEGEELS-NCUBE: Thank you Chair. Chair I see that it is one o'clock. It is an opportune time to take the lunch adjournment?

CHAIRPERSON: Yes let us take the lunch break we will resume at two o'clock.

ADV SEGEELS-NCUBE: Thank you Chair.

CHAIRPERSON: We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES:

CHAIRPERSON: Okay. You may be seated Mr Bester. Let us proceed.

ADV SEGEELS-NCUBE: Thank you, Chair. Mr Bester, just one more thing on the meeting that you had with Mr Essa
10 where he had mentioned that Mr Molefe would in due course be appointed the new CEO of Eskom.

I know we were trying to pin down a date for that meeting but I think there is some more significance to it now. So if we could just try and get a better date other than...

Because we know that the tender goes out on the 27th of April 2014 for Phase 2. You say at that stage Hatch had already decided on its submissions. Correct?

MR BESTER: [No audible reply]

ADV SEGEELS-NCUBE: And it would have been before the
20 award was made in November 2014. But you know whether it was more or less closer to April or November or somewhere in between?

MR BESTER: Chair, from what I can recall. I think it was closer to the later date or the later date because Mr Essa mentioned that from the submitted tenders they can change

the amount.

And I cannot recall exactly the detail but it was an indication of it was near the date that we either already had submitted or it was close to the date that the tenders were supposed to close.

CHAIRPERSON: So would that mean it was closer towards the end of 2014 or closer?

MR BESTER: That is correct.

CHAIRPERSON: Closer to the end of 2014?

10 **MR BESTER**: That is correct, Chair.

CHAIRPERSON: Okay, okay. Is there a possibility that after that meeting with Mr Essa you might have sent emails to somebody within Hatch in which you talked about what had transpired.

MR BESTER: Yes, we can do that.

CHAIRPERSON: Ja, you can find that or find those?

MR BESTER: That is right. We can.

CHAIRPERSON: Ja, we would appreciate that. So apart from the affidavit if there are emails that you might be able
20 to find which you sent to somebody within Hatch to say this is what happened in my meeting with Mr Essa. This is what he said. That would be very helpful.

MR BESTER: Chair, we will try and do that, yes.

CHAIRPERSON: Okay alright. Well, the remark by Mr Essa that Mr Molefe would be made Group CEO or CEO of Eskom

is interesting because the CEO of Eskom would have left or his contract would have ended sometime during 2014 and with effect from 1 October 2014.

There was a new Group CEO, Mr Matona who prior to that had been Director General of the Department of Public Enterprises. But he did not stay long because in March, he and other executives of Eskom were suspended under circumstances that raise a lot of questions, to say the least.

And he sought to go to court to challenge his suspension
10 and wanted to come back. But according to his evidence, he was told by a board member of Eskom who was delegated together with two others to negotiate with him.

That the question of him going back to his job at Eskom was out of the question. So they could talk about money but not him going back. That was March 2015.

And he in a part been offered money and he left. And two other executives, ultimately, also left and were offered some money.

And Mr Brian Molefe was seconded to Eskom around
20 April 2017. April 17, 2015 from Eskom to ... from Transnet to Eskom to be acting Group CEO.

A few months later he was permanently appointed. Okay. I was just mentioning that. So it is interesting that in 2014, towards the end of the year, Mr Essa said to you Mr Molefe would be the next group... CEO for Eskom. Okay.

ADV SEGEELS-NCUBE: Thank you, Chair. Now Mr Bester, what ultimately happened with Hatch two tenders that they had submitted for Rail and Port for Phase 2?

MR BESTER: So specifically relating to Phase 2. At the time, Hatch decided to not tender on their own but form a joint venture with two other major companies, called Arecon and Mott Macdonald.

And strategically that was a decision made purely because looking at the size of the project, the number of
10 people that would have been required to execute the project, the skills that were available in South Africa at the time, specially relating to the Rail and Port, and understanding, you know, the amount of work that needs to be done of the two projects.

It was best to just... for us and the strategy taken to go into a joint venture with two other companies which was a massive joint venture as you can imagine.

And we tendered for both, for the rail and the port which was separately advertised. But we were only informed that
20 we were the preferred bidder for the rail.

ADV SEGEELS-NCUBE: Were you informed as to why you were not awarded the port contract?

MR BESTER: At the time, we have been told by some of the Transnet employees that although we were also the cheapest on the port project, Mr Anoj Singh decided that he is not

going to award both projects to us.

ADV SEGEELS-NCUBE: And do you know who was awarded the port contract?

MR BESTER: Yes. The port project was awarded to a consortium called FLAG which also a three-way joint venture between Fluor, AECOM and GIBB.

ADV SEGEELS-NCUBE: Okay and insofar as Mr Reddy's company is concerned. What ultimately happened to his company?

10 **MR BESTER:** So for the Phase 2 what was decided because Hatch now had this experience of the supply and development and we were now busy with Phase 1 executing and understanding how a supply and development works a little bit better.

So the first thing, obviously, that Hatch did was to inform the other partners, the other two partners about what transpired during Phase 1 in terms of specific supply development partners.

20 And it was decided that we will supply development slightly different in Phase 2 with the other companies involved in that we are going to appoint what we called the LEAD Supply Development company and request that this company also form a joint venture of supply development companies.

And they must manage themselves within our bigger

contract as a supply development companies. So Mr Dave Reddy and his company, DEC, was included in that joint venture.

That joint venture was led by Mr Silo... I cannot recall his surname now. But it was also an SD company that we asked that they have a similar contract.

Obviously, a contract with themselves as a joint venture and then also a contract with us in terms of the scope of the work, the skills, the personnel and exactly how we are going
10 to execute the works.

ADV SEGEELS-NCUBE: Well, what I am trying to understand is how a company, Mr Reddy's company that you were forced by Transnet to include in Phase 1 and you successfully resisted that would end up on Phase 2.

Was it at the behest of Hatch or how did it come about that his company ended up there, knowing the history of the introduction and him being told and him telling you under Phase 1 that he will participate in the project?

MR BESTER: No. So what has happened. So obviously as
20 Hatch, we were hesitant to contract with this company. But what we did and as promised during Phase to Mr Dave Reddy, we will consider him for future work on our terms for a specific scope, et cetera.

So one of our directors at Hatch at the time did a complete due diligence on this company, DEC which meant

that they went to visit their office, understand their personnel, look at their skills, resources, et cetera.

So that information was conveyed to the other partners in our joint venture. Everything was above board and transparent and how we communicated that.

So it was obviously within a controlled environment that we said that under the terms under the guidance of this LEAD supply development company, they could include Mr Dave Reddy but it was under their control.

10 And it was for a specific scope and conforming to the fees as per the percentages agreed with Transnet. So we were comfortable with that arrangement.

ADV SEGEELS-NCUBE: So when the due diligence on Mr Reddy's company was done, what was it found was the skills that his company would be able to contribute on this project insofar as the rail phase is concerned?

MR BESTER: Well, the due diligence was basically such that firstly establish that he has got an office. Secondly that he has got some personnel in the office. And then looking at
20 the type of projects that they were doing at the time and the type of personnel.

And then, obviously, because our projects was so big. You must understand that our total tendered amount for Phase 2 was in the order of, let us say, R 800 million.

Now 30% percent of R 800 million is between R 200 and

R 300 million rand. To find companies at that time to do that amount of work was quite a big task.

So for that reason it was decided that we collect all the names that we have available, aware of at the time that is in the market and the skills that the companies had.

And that, if I can recall for Mr Reddy's company at the time, the specific skills that his company had was for pure civil engineering.

So we decided that we can include him and his
10 personnel under that SD umbrella to execute that scope.

ADV SEGEELS-NCUBE: Okay. So in the period of less than a year, his company went from not having the required skill set to participate in Phase 1 to now Hatch being comfortable under Phase 2 that he had the skill set or was there other factors taking into consideration?

MR BESTER: No. No, remember, it was never because of his skill sets that we not included him in Phase 1. It was the manner in which they arrived at our offices and perceived intel information that they have form Transnet.

20 And on the exclusive basis that they wanted us to use them on the Phase 1 Project. So it was never about the actual skill sets that they had that we did not include them.

ADV SEGEELS-NCUBE: So insofar as he had indicated under Phase 1 ...[intervenes]

CHAIRPERSON: I am sorry.

ADV SEGEELS-NCUBE: Sorry, Chair.

CHAIRPERSON: I am sorry. You were uncomfortable previously with them partly because they appeared to have information that you considered they should not be having?

MR BESTER: That is correct.

CHAIRPERSON: And they appeared to have a relationship with Mr Singh. Is that correct? That did not sit comfortable with you. Is that right?

MR BESTER: That is correct.

10 **CHAIRPERSON**: Why had that discomfort gone away now?

MR BESTER: No, Chair I think the discomfort was always there. We have shared now that information to our two other partners which was Mott Macdonald and Arecon.

And they indicated that they would be comfortable if he was included under a controlled environment because there was nothing untoward at that stage, you know, that was not above board for him to be included.

20 So we still had as Hatch, obviously, we still had that history and nothing has gone away in terms of the feeling that we had and the perception that we had about the intel and the events that played off before that time.

Everything was shared with the other partners but it was decided because of the quantum of the work, the amount of people that we need we will probably needed all those smaller companies to participate and it will be in a very

controlled environment.

CHAIRPERSON: Of course, you would have been aware, would you not, that anyone who knew that you had not included them before because of this discomfort but now you had included them even though the discomfort may still have been there, might have had the perception that ...[intervenes]

MR BESTER: Ja, Chair I have to tell you. In tendering for Phase 2 and that was quite a lengthy process in which we
10 would have sat every day with our partners in a boardroom environment, calculating what our fees would be, the number of people that we are going to use, what we can pay them in terms of an hourly rate, et cetera.

So when it came to the final amount, exact amount, which I do not have the moment but it was in the order of R 800 million.

And when you calculate that supply and development component of that. That is a fixed amount. There is no room for manoeuvre to do anything other than execute work
20 for that and add the value to that percentage.

So we felt comfortable that we got that under control, at least from the Hatch perspective. That information was shared and everybody felt with the contract and the people that we have got for management, that everything was above board.

CHAIRPERSON: In the meantime, your outstanding invoices had they been paid?

MR BESTER: Chair, I think it was a continuous struggle to get money out of Transnet. I cannot say, sitting in the meetings with Hatch that invoices were paid then promptly as per contract. I remember it was a continuous struggle.

CHAIRPERSON: Well, I was saying that somebody who got to know what your attitude had been before towards them, towards including them and so that subsequently that you
10 included them in this one, may have thought or may have the perception that you might have decided to say: Let us work with them because maybe...

MR BESTER: Ja, Chair I do not, honestly, our think process would not have been in that range.

CHAIRPERSON: H'm.

MR BESTER: For us it was about the project, the value add and the manner to which we had control over these people.

CHAIRPERSON: H'm.

MR BESTER: And it was very ...[intervenues]

20 **CHAIRPERSON:** You remember I asked you before lunch at some stage whether you had any impression of what message Mr Salim Essa and Mr Singh may have been...

Well, Mr Singh may have been trying to convey with the delays in paying your invoices and with the manner in which the meeting, which involved Mr Essa, was handled.

It may be that it was not this but it may have been a way of saying: Well, if you do not accommodate us, we will make things difficult for you. Getting payment from us, from Transnet might be difficult.

Did you think about that or anybody within Hatch?

MR BESTER: Chair, I am pretty much within Hatch, no. It might have been from the other companies. And at the time, you know, Transnet was quite a major client and provider of work. So it might have been. I do not know. It is difficult
10 ...[intervenes]

CHAIRPERSON: Because even, from what you have described to me in terms of the meeting with Mr Singh and Mr Essa. You have used the word in your statement. It was a bizarre meeting.

It does look quite strange. It does look like there is a subtle message that was being sent to you. What it is might be something else but you ask for a meeting with Mr Singh.

You come to this meeting. Somebody else that you have never met and you have never spoken to take charge of the
20 meeting. And Mr Singh has very little to say.

MR BESTER: Yes, I agree with you. There was
...[intervenes]

CHAIRPERSON: You get the impression that this person that you do not know is in charge.

MR BESTER: For sure.

CHAIRPERSON: And then that person follows up after that with a request to have a follow-up meeting with you. Now Mr Singh is no longer there but he, he comes, I think with Mr Reddy.

He comes with Mr Reddy. So you have kind of seen what relationship he seems to have with Mr Singh at that meeting.

Now he comes with somebody else and he makes certain demands to you. Payment of your invoices continues to be a
10 struggle.

It may be that there was no message but when one analyses the whole behaviour, it may well have been there was a message.

So when you begin to bring Mr Reddy in or to bring them in, somebody might think that they were succeeding in getting you to get in, even if deep down in your heart, it actually would prefer to do without them, you know. So. But it might be an unfair suspicion.

MR BESTER: Chair, I can understand what you are saying.
20 I agree. For us, clearly in hindsight, there was a message from Mr Singh as to why he felt comfortable that a person from outside Transnet would sit in a meeting with us which was totally not acceptable.

CHAIRPERSON: Ja.

MR BESTER: And then also some of the events that

followed, if I can mention that, when we were successful with Phase 2 on the rail, we had a small function that we arranged where we invited some of the senior people at Transnet just to celebrate this big award to us.

And Mr Singh was also invited and he was very aggressive with us.

CHAIRPERSON: Is that so?

MR BESTER: Yes.

CHAIRPERSON: Ja, ja, ja. Yes, you may continue.

10 **ADV SEGEELS-NCUBE**: Thank you, Chair. Mr Bester, at the time when Hatch had now satisfied itself that Mr Reddy's company could be included in Phase 2 as an SD partner. What projects were you aware of at the time that his company had been involved and then successfully executed?

MR BESTER: I cannot recall that detail. All I can recall is that one of our colleagues at Hatch would have been looked at his offices and the skill sets and the type of projects that they were involved with at the time.

20 Because remember, many of these, if not all these supply development companies did not necessarily have the skills at the time or none of them would have had the skills. All the people, neither the people at the time.

So it was up to us, the bigger consultants and contractors and suppliers as the objective of supply and development to grow the skills and resources of these

companies and transfer a mentor that those people of those companies.

So it was merely to understand if the companies exist. If there were offices. And in fact, if they either have or had access to people to do some work.

CHAIRPERSON: Hold on one second. Please continue.

ADV SEGEELS-NCUBE: Now if I remember correctly when we were dealing with Phase 1, you said that in your discussion with Mr Reddy he said: Do not worry. We have
10 got engineers. We can get them from India.

And your response to him was, supply development is not about empowering companies in India. It is about a South African initiative.

So at that stage had you under Phase 2, had you satisfied yourself that he now had the necessary skill set that was going to be within South Africa? Because we are talking about less than a year between the two.

MR BESTER: That is correct. So I must just remind you also that for Phase 2 and the supply development companies
20 that we had. I would doubt it that Mr Reddy's company had to supply more than one or two resources. I would think and thinking back, I think most of the resources came from the other companies that I can recall.

CHAIRPERSON: Did that arrangement mean that Reddy's company could be getting paid for doing very little? Maybe

being paid more than what it was doing in terms of being able to supply resources or not necessarily?

MR BESTER: Mr Chair, no that would have been impossible because people were paid to the resources that were in the office and the actual worked performed and how the project was set up and recorded and the work that they did. The output was related to the value add. So it... there was no inflated values managed.

CHAIRPERSON: Okay.

10 **MR BESTER**: It was not possible at all.

CHAIRPERSON: If anybody did little work, they would be paid little, effectively.

MR BESTER: Yes, they would.

CHAIRPERSON: Ja, okay alright.

ADV SEGEELS-NCUBE: Thank you, Chair. Just following on the Chair's question. Out of the amount that was allocated to the SD partners. Do you know what proportion went to Mr Reddy's company?

MR BESTER: I do not know.

20 **ADV SEGEELS-NCUBE**: Okay. Would it be fair to say that it is difficult Mr Bester to reconcile your reluctance under Phase 1 to work with Mr Reddy's company and him ultimately ending up in your Phase 2 tender submissions? Would it be fair to say that it is difficult to put the two together?

MR BESTER: I cannot agree with that statement because,

you know, from our perspective we would have made hundred percent sure that how we do business and who we contracting with, was totally above board.

So yes. What happened in Phase 1, as I said again, how the individuals arrived at our offices and the perception that was created was not acceptable to us purely from how we do business.

And then recovering from that position onto Phase 2 where we had a better understanding of supply development, 10 having done our own due diligence and how we can control the payments to these supply development companies.

I mean, we were comfortable that everything was above board.

ADV SEGEELS-NCUBE: Okay. Now when one goes back to the 15 July 2013 meeting between Mr Basson, Mr Bierman and Mr Singh, where Mr Singh makes the request to Mr Basson and Mr Bierman to profile MMQS and DEC to participate in this project.

At the end of the day, what we then have is that MMQS 20 does participate via Hatch on Phase 1 and DEC does participate via Hatch on Phase 2.

So when one looks at it, Mr Singh actually got what he had asked Mr Basson and Mr Bierman to investigate right at the outset. Would you agree with that?

MR BESTER: No, I... purely from your statement, I would

agree from what you are saying on face value. But I think having... or you have to understand what the original intend was from Mr Singh to profile his companies or create the impression that they have been profiled.

And what his reason would have been to include them and having had the meeting with Mr Salim Essa, understanding how he wanted to inflate the contract value. I think that would have been, you know, are not...

That would have been the wrong decision to include
10 them on that basis but we did not include them on that basis.

I mean, we include them purely for the resources and the work that needed to be done. There was a total different agenda behind it in the first place to include these companies which was different towards the end why we included them.

ADV SEGEELS-NCUBE: But you will also accept that they were both companies that you had never previously worked with. And in fact, when you were dealing with Phase 1, I took you through all the FD companies that participated on
20 behalf of Hatch as SD partners. And MM was the one company that Hatch had never worked with before.

MR BESTER: That is correct.

ADV SEGEELS-NCUBE: Do you agree with that? And similarly, under phase 2, DEC was not a company that you had previously worked with.

MR BESTER: Not as Hatch but one of our other partners have worked with DEC before.

ADV SEGEELS-NCUBE: Okay, so between what period? After phase one? After July 2013 when Padayachee and Reddy approach you and between the award of phase two did one of the companies work in that period that year?

MR BESTER: Not necessarily in that period. It might have been before that period because when the issue was raised with the other companies there was a comment
10 made by one of the directors of Mott MacDonald that they know this individual and they had worked with them before. So before might mean a long time before or recently.

ADV SEGEELS-NCUBE: Oh, okay, so when you say one of the companies you mean one of the JV parties?

MR BESTER: That is right.

ADV SEGEELS-NCUBE: Okay, which would have been Mott MacDonald.

MR BESTER: That is correct.

ADV SEGEELS-NCUBE: Okay. So Mott MacDonald has
20 worked with DEC.

MR BESTER: That is correct.

ADV SEGEELS-NCUBE: Okay. And do you know what that project was?

MR BESTER: No, I cannot recall. You have to do some research on that but if I can recall a discussion that took

place at the time and if you understand the history of Mott MacDonald in South Africa, it was - Mott MacDonald is an international company that had actually acquired a local company called PD Naidoo and Associates at the time and from what I understood from one of the directors from Mott MacDonald at the time is that Mr Dave Reddy was actually in fact part of PD Naidoo and Associates at that time prior to the acquisition from Mott MacDonald of PD Naidoo and Associates.

10 **ADV SEGEELS-NCUBE:** Okay but Mr Reddy's company was not introduced as an SD partner on phase two via Mott MacDonald, it was via Hatch.

MR BESTER: No. So what happened, is the JV came together, three companies, and they would have shared between the three companies all the names of SD companies that they were aware of, so obviously Hatch was aware of DEC with the interactions that they had during phase one and that name would have been shared with the other companies and in one of those meetings the
20 decision would have been mainly to find we can work with this company or his company because we know those individual and we have worked with him before.

ADV SEGEELS-NCUBE: Yes, that is what I am trying to drive at. Who put his name on that list? Was it on the Hatch list or the Mott MacDonald list as one of the

companies that would be considered?

MR BESTER: Unfortunately I cannot recall exactly if it was because of Hatch or because of Mott MacDonald, it was one of the two companies, I cannot recall, sorry.

ADV SEGEELS-NCUBE: Okay and what happened to MMQS on phase two?

MR BESTER: I do not think at the end they were part of the SD companies that was considered. It might have been that one of the supply development companies, maybe this
10 specifically this company Sello, which was the lead person for this prior development which was put forward by Mott MacDonald. I might have been that they are in fact a quantity surveying company and felt that they do not need another quantity surveying company to help.

ADV SEGEELS-NCUBE: But do you know if MMQS was suggested by any one of the JV partners as being on the list to be considered?

MR BESTER: I speak under correction but that would have been one of the names that obviously that Hatch has
20 put forward because at the time it was one of the companies that worked with us on phase one.

ADV SEGEELS-NCUBE: Okay. Now when we get to the contract negotiations on phase two at page 50 of your statement from paragraph 72, can you just tell us about what transpired during the contract negotiations and in

your statement you specifically deal with McKinsey's involvement.

MR BESTER: Yes. So we were informed by Transnet officially that we are the preferred bidder on the rail portion of the 60 million tons expansion project and we were invited to attend tender or contract finalisation negotiations at a site away from the Transnet offices.

So the purpose of these negotiations was to clarify some of the assumptions made in the tender or the
10 uncertainties that was there for either us or Transnet because we would have had a cover letter where certain assumptions were made and that needed some clarification prior to the contract signature.

And every day - the contract negotiations properly went on for one month where every day we would go to this venue and then there would be a representative at least of each of the JV companies from Hatch, Mott MacDonald and Orecon plus support people like planners, cost estimators and other commercial people with us. Myself, I was the
20 project director designate and then there was the project directors from the Transnet side, the project managers from Transnet Freight Rail side, the supply development leads from Transnet, their commercial people and every day we had a full agenda of discussions about items that needed to be clarified.

So yes, it was during one of these meetings that myself noticed that there were some cables running from microphones like this on the carpet to underneath the door outside to another boardroom.

So I enquired about this, I think it was during the one of the lunch sessions that I asked a commercial lead from Transnet Capital Projects, Mrs Corli Janse van Rensburg, what are these cables? Where are they going? I am going to go and check what is going on in the other
10 boardroom and then she said to us I am not allowed to go in there because there is McKinsey people in the room.

CHAIRPERSON: She said there is McKinsey, doing what?

MR BESTER: Yes, so we enquired, I mean, we were upset because that was not – we were not informed about this. Firstly, we were not informed that all negotiations were taped or recorded which we had no problem with but we were not informed that that is in fact happening and secondly, we were not informed that there is a room full of McKinsey people sitting next door. So we asked what is
20 the purpose of McKinsey people? So if I can recall, at the time we were told that McKinsey was appointed separately from us to oversee independently the contract, that was an appointment made directly by Mr Anoj Singh, they did not have full insight into exactly what their scope of work was and exactly what they do and how they do it but every day

there was apparently a debrief of themselves to McKinsey and McKinsey to them about what happening during the day, the negotiations and then discussion about the next day, what should be asked and how it should be asked. So that was told to us.

ADV SEGEELS-NCUBE: And had that previously happened to you in any negotiations with Transnet previously?

MR BESTER: Well, previously not during negotiations. In
10 fact, that was the first time that we had this intense negotiations with Transnet because of the pure size of the contract and the value that was involved but McKinsey was always involved in projects that we were doing for Transnet, yes.

ADV SEGEELS-NCUBE: Okay. And at some point in your statement at paragraph 73 you talk about Mr Edward Thomas. Who was Mr Edward Thomas and can you just tell us what transpired with him?

MR BESTER: So Mr Edward Thomas, I could not exactly
20 understood his role but we understood that he reported to Mr Gary Pita and that he had to do with supply development and I recall during one of the meetings he was very aggressive with us about our percentages and the partners that we use or do not use and it was ...[intervenes]

CHAIRPERSON: Who was that who was aggressive?

MR BESTER: Mr Edward Thomas.

CHAIRPERSON: Oh, okay.

MR BESTER: And in fact it was during this meeting that I decided that we should pack our bags and leave the negotiations.

ADV SEGEELS-NCUBE: Okay, why did you decide that?

MR BESTER: Because the attitude of Mr Thomas was very negative and he was very aggressive. You know in fact I think he stood up and shouted at us and I said to the other members of my team and the directors or the other companies that, you know, we should not listen to this unprofessional behaviour, let us go and we packed our bags and we left.

ADV SEGEELS-NCUBE: And you also speak in your statement during the contract negotiations of an encounter with Mr Vilele Sikusane(?). Can you tell us about that?

MR BESTER: That is correct, yes. So, as I understood it at the time he was newly appointed to Transnet specifically for this project and he was also one of the individuals that was very aggressive and vocal during negotiations and he also at one of the negotiations made a very funny remark. I cannot recall the exact details, it was something to the effect of give us 25% discount and then we will consider your contract and, you know – so at the time we thought it

was an insult because we spent literally millions preparing this document and tender for Transnet. We know each and every cent how it is going to be spent and then requesting that type of discount from us had no respect for the input that we made.

So I recall he actually phoned me that evening and he was very aggressive, he used very bad words, told me I had better do as they say. Ja.

ADV SEGEELS-NCUBE: And what was Mr Pita's
10 demeanour in these negotiations?

MR BESTER: Mr Pita was actually not involved in negotiations, Mr Pita only became involved in the negotiations after we actually left the negotiations. We got a phone call from a procurement lead from Transnet Capital Projects at the time, Mrs Corli Janse van Rensburg, I think that is after we had – I cannot recall the exactly details but let us say we were not present there for a few days. She called me and said can we please come back and then when we arrived there Mr Pita was there.

20 **ADV SEGEELS-NCUBE:** Okay. And did you have any interactions with him?

MR BESTER: The interactions there was – he asked us just to calm down because we told him that, you know, we are quite prepared to walk away from this contract the way it is going, the demands that is being made, the phone

calls that we get, the unprofessional behaviour and we were quite prepared to walk away.

And the discussion at the time from us would have been in the vein of, you know, we also then knew at that stage that our tender amount for the rail alone was something R150 million cheaper or less than the second bidder so we knew that it is going to be - you know, there is going to be some big explanations in Transnet if we walk away for some or other reason that they cannot explain
10 and why they need to then go and award the contract to the second highest bidder. So he was trying to calm us down.

ADV SEGEELS-NCUBE: Okay, you also speak about Mr Singh's attitude towards the JV. Can you just give us more detail on that?

MR BESTER: Yes, as I explained to you – so eventually we got to a point where we agreed on most of the terms and Transnet decided to award the contract to us. They gave us a letter that – I cannot remember the detail of the
20 wording of the letter but it would have been something that the contract is now concluded and it is the intention to award the contract to our joint venture.

It was during that time that we had two interactions with him. The one was where we arranged a small function to celebrate the success and I can clearly remember that

also during that time we had a new managing director for Hatch in Africa which would have attended the meeting with myself or the function and Mr Singh came and he made a short speech and it was very aggressive and negative towards our consortium.

It was a very short speech and strange and then he walked out and, you know, even our newly appointed MD asked me what is this about because we came here for celebration and then we go this very negative words from
10 the CFO from Transnet.

ADV SEGEELS-NCUBE: What did you think his attitude towards you was about?

MR BESTER: At the time I think it was a mixed bag of feelings from his side because obviously what happened during phase one was not to his liking and the fact that we met with him and Mr Essa in Melrose Arch where has sort of, in my words, reporting to Mr Essa. You know, I think in his own head he was trying to think what I think or what we think of the situation and he was just very aggressive I
20 think if things did not go his way and he did not like it.

ADV SEGEELS-NCUBE: Okay. Now ...[intervenes]

MR BESTER: Oh sorry and then of course there was a - then a second interaction with him is where he invited myself and the two other directors from the other two companies to the Carlton Centre where we actually signed

the contract and again he – I cannot remember the exact words but it was foul language that he used, you know, it – the language and the moment did not add up. It was a time to say congratulations, we are looking forward to work with you, type of thing, and it was definitely not like that.

ADV SEGEELS-NCUBE: Okay and then during the execution of the phase two project what was your impression of McKinsey and your interactions with them?

MR BESTER: You see, ja, I mean prior to the manganese
10 and even in the studies leading up to the manganese project there was a lot of interactions with McKinsey. As I indicated to you, all the projects that we did McKinsey was present and always we would ask the Transnet people what they were doing and nobody could answer us indicating that McKinsey was not appointed by them but – or a competitive tendering process, McKinsey was appointed directly by Anoj Singh. I remember one stage I was even told that the CEO of Transnet Freight Rail does not even
20 know about some of the appointments of McKinsey and at the time it was Siyabonga Gama and I was told that Mr Gama does not agree on some of these appointments with Mr Singh.

So the interactions was always a very strange interaction because we had no direct interaction with them but it was strange because we would have been the

technical people on the project requiring some feedback to Transnet and we were never invited to give feedback to Transnet it was always McKinsey that had to go and give feedback to Transnet on our behalf, we did not even know what the feedback is that they were given.

ADV SEGEELS-NCUBE: Did you know what role McKinsey was to play on the project?

MR BESTER: I was told that – well, first of all I was told that their appointment on this specific project was in
10 excess of R300 million. I was told that they have an oversight role and the exact scope of that detail and what they need to do for that money, the Transnet people could not tell us. In fact the Transnet people told us they were also not part of what McKinsey doing, they were only told that McKinsey is going to be on the project.

ADV SEGEELS-NCUBE: Now would you have expected from a company that is playing an oversight role on this project?

MR BESTER: Well, for us an oversight role would have
20 been to understand, you know, the work that we do, to understand our processes and procedures and to match the effort that we have in executing the project to the output, to have some involvement in our invoices and how that relates to the deliverables that we put on the table, the scope of work, the tracking of the project and the progress

with where we are in terms of the invoicing. And I can remember at some stage we did a value engineering exercise to see how we can further cut cost on the manganese in terms of the actual spending of the capital spending and we were assessing with McKinsey and I can clearly recall we were asked the most embarrassing simple questions about the project which we thought is of technical people that does not understand what the project was about. For us it was also a very – a big
10 disappointment at the time.

ADV SEGEELS-NCUBE: So, in other words, what you would have expected a company that is playing an oversight role to know?

MR BESTER: Yes.

ADV SEGEELS-NCUBE: Okay.

MR BESTER: So at least expect exactly to know the detail of the project and what needed to be done but, you know, it is – if you understand well engineering and the type of work that we did at the time, the [indistinct] 20.51
20 simulations and how that relates to the rolling stock which is the power and the amount that needs to be bought and how everything comes together and, you know, for us, McKinsey could not put those elements together.

CHAIRPERSON: Had you done similar projects before? Had you been involved in the same type of work before,

Hatch?

MR BESTER: We have done a lot of these projects.

CHAIRPERSON: Yes.

MR BESTER: Yes.

CHAIRPERSON: Was it normal for there to be somebody appointed to perform an oversight role while you were doing a job like this?

MR BESTER: No. It was the first time for us that we had...

10 **CHAIRPERSON:** Yes, to somebody supervising ...[intervenes]

MR BESTER: Other side consultants looking after us.

CHAIRPERSON: Yes. Do you know whether they had – McKinsey had the qualifications and experience to play that role in regard to this type of work or is that something you did not know?

MR BESTER: Chair, to be honest with you, the interactions that I personally had with the McKinsey people at the time during the execution of the manganese project
20 and what they told me their qualifications were was not technical, it was more financial and commercial. I recall at some stage they told us that they are going to use a rail expert, I could not recall from which company, but it was also not applicable to the South Africa rail conditions and the type of rail that we use.

CHAIRPERSON: Okay.

ADV SEGEELS-NCUBE: Thank you, Chair. That is the evidence of Mr Bester unless Chair has any further questions for him.

CHAIRPERSON: Thank you very much, Mr Bester, you do recall you have some homework to do for the Commission in terms of emails and the affidavit.

MR BESTER: Yes, I do.

CHAIRPERSON: And the legal team and the investigators
10 would also be following up but do have a look and see what you can find. There may have been some emails that you sent to colleagues soon after that meeting with Mr Essa and Mr Reddy and also, there may have been some emails that you may have sent to colleagues when you heard the announcement of Mr Brian Molefe as Group CEO of Eskom. You might have seen somebody messaged to say oh, so Mr Essa was right, or something like that. So do look for such emails and if they exist, they might assist. Thank you very much, you are now excused.

20 **MR BESTER:** Thank you, Chair. Thank you.

CHAIRPERSON: Okay.

ADV SEGEELS-NCUBE: Thank you, Chair. Chair, the next witness is Ms Deidre Strydom and Mr Myburgh will be leading her evidence.

CHAIRPERSON: Okay, thank you. Do you need five

minutes to move things around or not really?

ADV SEGEELS-NCUBE: Yes please, Chair. I am indebted.

CHAIRPERSON: Okay, we will adjourn for about five minutes. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let's continue.

ADV MYBURGH SC: Thank you Mr Chairman, this is
10 our next witness, Deidre Strydom. Her affidavit is found in
file 4A Exhibit BB20 immediately behind Mr Bester's
statement Mr Chairperson.

CHAIRPERSON: Thank you. Please administer the oath or affirmation.

REGISTRAR: Please state your full names for the record.

MS DEIDRE STRYDOM: Deidre Strydom.

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

MS STRYDOM: No.

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

MS STRYDOM: Yes.

REGISTRAR: Do you swear that the evidence you will give will be the truth, the whole truth and nothing else but the truth, if so please raise your right hand and say so help

me God.

MS STRYDOM: So help me God.

DEIDRE STRYDOM: [duly sworn, states]

CHAIRPERSON: You might wish to sit on the other chair Ms Diedericks for the convenience because that's the mic that works I think. Yes you may proceed.

ADV MYBURGH SC: Thank you Mr Chairman. Ms Strydom you have open in front of you Exhibit 20, could I ask you please to turn to page 133, do you confirm that
10 that is the beginning of your affidavit?

MS STRYDOM: Yes.

ADV MYBURGH SC: And could you then please turn forward to the end of that affidavit which you find at page 157, is that your signature?

MS STRYDOM: Yes.

ADV MYBURGH SC: And did you depose to this affidavit under oath on the 9th of October this year, 2020?

MS STRYDOM: Yes.

ADV MYBURGH SC: Attached to this affidavit are eight
20 annexures, commencing with Annexure DS1 at page 159 and ending with Annexure DS ...[intervenes]

CHAIRPERSON: I am sorry Mr Myburgh, I didn't hear Ms Strydom respond, I think her voice is very soft, did you confirm that it is your the first signature on page 157 is your signature?

MS STRYDOM: Yes.

CHAIRPERSON: Okay, alright try and raise your voice.

ADV MYBURGH SC: So Ms Strydom what you need to do, one is to raise your voice and secondly when you answer the questions don't look at me, look at the Chairperson, you are addressing him, I am just a bystander, alright.

So Annexure DS1 you find at 159 and Annexure DS8 you find the conclusion of your annexures at page 217, would you confirm that?

10 **MS STRYDOM:** Yes.

ADV MYBURGH SC: Alright let us go back to the beginning of your affidavit, I just want you to confirm that you testified here this afternoon under subpoena issued by the Commission?

MS STRYDOM: That is correct yes.

ADV MYBURGH SC: Now if I could take you please to paragraph 5, what is your current position at Transnet?

MS STRYDOM: I am currently an Executive Manager in Strategy and Planning, Group Strategy and Planning
20 Department within the Capital Development function

ADV MYBURGH SC: And it seems from paragraph 6 that you have been employed by Transnet for a long time, commencing in 1991, is that so?

MS STRYDOM: Absolutely.

ADV MYBURGH SC: You set out in paragraph

...[intervenes]

CHAIRPERSON: It probably was your first job?

MS STRYDOM: Yes.

ADV MYBURGH SC: You set out in paragraph 7 all 14 different positions that you have held at Transnet commencing as a researcher, if you look at page 136 paragraph 7.1 rising up as we see at paragraph 7.1 to the Executive Manager position that you have described.

MS STRYDOM: That is correct yes.

10 **ADV MYBURGH SC:** Paragraph 7.3 and 7.4 there you held the position of Programme Director Manganese Expansion and then Executive Manager Strategy and Long Term Planning Capital Expansion Project Are those the two positions that you held during the time that is relevant to your evidence, when you were involved in the Manganese Expansion Project.

MS STRYDOM: Yes.

CHAIRPERSON: Is there an error in that heading that refers to Expansion, Manganese Expansion Project.

20 **ADV MYBURGH SC:** Yes I see.

CHAIRPERSON: It should be Expansion, is that correct Ms Strydom, just above paragraph 9?

MS STRYDOM: Above paragraph?

CHAIRPERSON: Just above paragraph 9 of your affidavit.

MS STRYDOM: Yes, that is an error, it has to be.

CHAIRPERSON: Okay.

ADV MYBURGH SC: Alright, so let us deal – thank you Chairperson, let us deal with the Manganese Expansion Project which we know goes by the acronym MEP, and you start off by dealing with your role. Now you have already told the Chairperson that you were appointed as Executive Manager in TRF Strategy and Long Term Planning, that is a role that you held during the MEP is that so?

MS STRYDOM: That is correct.

10 **ADV MYBURGH SC:** And in a nutshell what did your responsibilities include, what did the role involve, what did position entail, things that you deal with in paragraph 9, 10 and 11?

MS STRYDOM: The position entailed scoping and development of various capital expansion initiatives for Transnet including the MEP or Manganese Expansion Programme, Waterberg Expansion Programme and Eskom Programme. In this role I was a Transnet Freight Rail owners representative as projects of this nature typically
20 was handled by Transnet Capital Projects, especially where there were multi-divisional project, so therefore Rail and Port projects involved.

I had no commercial delegation in this role as the commercial authority resided with TCP.

ADV MYBURGH SC: Then at paragraph 13 you deal with

the make-up of the MEP Steering Committee, who sat on that committee Ms Strydom?

MS STRYDOM: The Steering Committee comprised of Mr Anoj Singh, Mr Siyabonga Gama, who was the Chief Executive of TFR amongst others and then also the other operating division Chief Executives.

ADV MYBURGH SC: And you mention in that paragraph that the steering committee endorsed the creation of the position that you then came to hold, that of programme
10 director. Is that correct?

MS STRYDOM: That is correct yes.

ADV MYBURGH SC: You mention over the page that you were then appointed into that position and we know from your CV set out at paragraph 7 that that was during November 2014, do you confirm that?

MS STRYDOM: Yes I confirm that.

ADV MYBURGH SC: And in that position of programme director to whom did you initially report?

MS STRYDOM: I initially reported to Anoj Singh and was
20 subsequently reassigned to report Mr Mohamed Mohamedy who was heading up Group Capital Information and Assurance at that stage, which was a department that Anoj Singh created roundabout end of 2011.

ADV MYBURGH SC: And essentially what was your role in this position of programme director, was it different to

the one that you had occupied before?

MS STRYDOM: It was similar in that I had to finalise the preparation of the integrated business case, and then also prepare the business case for approvals through the necessary approving committees, through to the Department of Public Enterprises which was the approving authority according to the delegation of authority framework that Transnet had from a ...[indistinct] perspective at that point.

10 **ADV MYBURGH SC:** And that we know goes by the acronym of DPE.

MS STRYDOM: That is correct yes.

ADV MYBURGH SC: At paragraph 15 you deal with McKinsey, could you describe please to the Chairperson your involvement and experience with McKinsey and it is a topic that we return to later in your affidavit.

MS STRYDOM: Yes McKinsey right throughout my involvement in the Manganese Expansions was heavily involved in the project, in all elements of scrubbing the
20 project, so looking at the costs of the project, they also were involved in describing the role of the programme director, which was a new role in Transnet and then they were also involved in assisting with the development of the business case. Ja, so all aspects of the project, commercial execution, they were involved in.

ADV MYBURGH SC: And who was McKinsey appointed by, to whom did they report?

MS STRYDOM: They were appointed by Anoj Singh, they reported into the Group Capital, the GCIA Structure at that stage, and it was very clear to us that the reporting lines through GCIA was directly to Mr Singh.

ADV MYBURGH SC: Did you feel at liberty at this time to question the work of McKinsey?

MS STRYDOM: No, not at all.

10 **ADV MYBURGH SC:** Why do you say that?

MS STRYDOM: They were basically in charge of the development of the business case, they vetoed or approved anything that we did, any assessment was vetoed by them. They put their reports for Mr Singh on a weekly basis, we had to prepare our own reports and then I used to call it truth and reconciliation on a Friday because what they contained in their reports was always contradictory to ours, so we had no authority to work outside, almost no authority.

20 **CHAIRPERSON:** Sorry, did you say whatever they did was not - was contrary to what you did or what?

MS STRYDOM: Ja, they would – yes, it happened.

CHAIRPERSON: They would go a different direction, if you were going that way they would go that way or something like that, on whatever document or issues you

were dealing with?

MS STRYDOM: Often on reports in terms of project progress we would prepare a report, based on evidence and they would put a different view on the table, that to some degree discredit the work that the team did.

CHAIRPERSON: Oh they were critical of your ...[intervenes]

MS STRYDOM: Very critical of ...[intervenes]

CHAIRPERSON: ...work.

10 **MS STRYDOM:**... and distrust of the team

CHAIRPERSON: Yes, okay alright.

ADV MYBURGH SC: Thank you Chairperson. Then you go on to say at paragraph 16 that in May of 2014 the then Minister of Public Enterprises, Mr Malusi Gigaba approved the business case, is that the business case that you had been working on together with McKinsey?

MS STRYDOM: That is correct yes.

ADV MYBURGH SC: And you make a comment that with hindsight you felt this strange. Why do you say that?

20 **MS STRYDOM:** The business case was approved within two months, compared a similar major expansion where the approval was in excess of two years.

ADV MYBURGH SC: And you refer to that not as strange as I said but as suspicious, why did you consider that suspicious?

MS STRYDOM: Approval of – for an approval of this value to receive that in such a short time first of all was suspicious, ja it begged the question in terms of was – did everybody apply their minds to the information in such a short period. I was also informed by the General Manager : Head of Commercial, Mr Divesh Collin at that stage, whom I worked with in terms of pricing and a commercial strategy for the business case that the business case will be approved, we shouldn't worry as the project team
10 because it was close to elections, elections that year was May 2014, I think scheduled for that and there was a risk that if this business case is not approved there might be a change of Minister or Cabinet or personnel, so his view was that it will definitely be approved.

ADV MYBURGH SC: You then at paragraph 18 talk about the recommendation to centralise all delegations for capital execution within the programme structure, could you deal with that please and the significance of it.

MS STRYDOM: Ja, McKinsey developed a standard for
20 capital execution for Transnet called the Platinum Standard, which recommended for a programme of this nature and size that all the expenditures, the capital expenditure for rail and port should be centralised so there should be from a Group perspective a central authority who is the responsible for the management of the capital

oversight of the capital expenditure reporting etcetera.

This was in contradiction to the practice at Transnet at that stage where all of the operating divisions were respectively and individually accountable for the management of the capital expenditure associated with projects.

The operating divisions resisted this change because effectively it would have meant that they would have lost control of the capital expenditure from an
10 operating division perspective if that would have been centralised, so therefore although the Platinum standards recommended that as Programme Director I should have control over capital expenditure that did not happen, therefore in the Programme Director role I eventually did not have any financial delegation.

ADV MYBURGH SC: You go on to mention then at paragraph 19 that there was a change in your reporting lines, so you have explained how you reported first to Mr Singh, then to Mr Mahomed, who did you land up reporting
20 to?

MS STRYDOM: I finally ended up reporting into Group Planning, directly to Mr Krish Reddy who was the General Manager of Group Planning at that stage. They established similar roles to the Programme Director roles for multi-divisional programmes especially for the concept

and feasibility phases of those programmes so it was a natural thing.

ADV MYBURGH SC: Ms Strydom you then deal with the motivation for the MEP and you do that over pages 140 and 141. Could you just give the Chairperson a thumbnail sketch of the motivation of the MEP?

MS STRYDOM: We concluded an investment in expanding manganese export capacity to the Port of PE, Baltimore in PE, to 5.5million tons in 2009, and despite that capacity
10 that we offered there was just an increase, an exponential need for export capacity from industry. South Africa at that stage had developed China as a very lucrative market because our manganese, the quality of our manganese was very suited to their smelters and furnaces, so we immediately started with a project, we validated demand with customers, with industry and then commenced with a project to understand where are we going to create additional export capacity in South Africa.

At that stage the PE bulk terminal reached, the
20 footprint so the site of the terminal could not be expanded further, so we knew that we reached a capacity cap there. It was also a very old terminal, I think it was built in the sixties and there were many environmental issues with the terminal and commitments to vacate the terminal, at some point close the terminal, and therefore we commenced with

feasibility studies to look at where do we create the next export channel for manganese in South Africa.

ADV MYBURGH SC: And what decision was made, where was that expansion to take place?

MS STRYDOM: On conclusion of the feasibility studies a decision was made to proceed with an expansion through the port of Coega, comparisons were – there were studies done looking at Saldanha as an option, a heavy ore line through to Saldanha. From a timing perspective, so from
10 a completion date perspective Coega was the better option, we could lead or provide capacity to industry ahead of demand, much earlier than what Saldanha would have offered at that stage, and on that basis and Saldanha also had many environmental issues that they were facing, we recommended with feasibility studies for the Port of Coega.

ADV MYBURGH SC: And how many million tons per annum were you looking then to expand to?

MS STRYDOM: 260million tons based on the validated demand from industry.

20 **ADV MYBURGH SC:** From how many in Port Elizabeth?

MS STRYDOM: From 5.5million tons in a bulk terminal to a total of 16.

ADV MYBURGH SC: If we have a look at paragraph 23 you talk there about the Transnet market demand strategy, known by the acronym MDS, could you address that

please?

MS STRYDOM: Transnet Market Demand Strategy was in response to economic growth plans, and it was aimed at expanding, modernising rail and port infrastructure in South Africa in order to meet the requirements to support economic growth.

The main pillar of the MDS, the market demand strategy, was a R300billion investment programme associated with the delivery of assets.

10 **ADV MYBURGH SC:** And was then the MEP was it part of that programme?

MS STRYDOM: The Manganese expansion was the anchor programme in MDS, it was the biggest expansion that Transnet was going to undertake in the MDS yes.

ADV MYBURGH SC: You go on to say that in May of 2014 Transnet received approval in accordance with the PFMA to proceed with the investment. From whom did you receive that approval?

20 **MS STRYDOM:** We received the approval from the Minister of Public Enterprises, so the Department of Public Enterprises, our shareholder, in accordance with the PFMA, the delegation of authority framework.

ADV MYBURGH SC: And you attach that approval as Annexure DS2?

MS STRYDOM: That is correct yes.

ADV MYBURGH SC: Could we then please go to the various project phases, and again if I could just ask you to outline this and perhaps to focus on those phases that are relevant to the balance of your evidence.

MS STRYDOM: Transnet adopted given the quantum of investment that we were envisaging a process to standardise the execution of capital projects and to create a consistent approach to that execution was developed. This process is called the Project Life Cycle Process,
10 known as the PLP in Transnet.

The notion of the PLP is the more work you can do in the early phases of the project, and we call that front-end loading. The more work you can do to develop a solution, refine the cost estimate etcetera, and reduce risk therefore, the higher the likelihood is that you will deliver a successful project at the end of it, so on that basis the PLP has five phases, FEL 1 or frontend loading 1 is where you have a business need that you have to address and you identify all the options, that could solve it.

20 Once that are then ...[indistinct] then put aside. FL2 is a pre-feasibility where you do further work on the potential options, so you start doing early engineering work around it, and based on the outcomes of the FL2 you recommend a go forward option.

In FL3 which is your feasibility phase you then do

detailed engineering after that, so you do your detail costing, you do your environmental authorisations, so all the necessary work that needs to go into informs your business case so that the estimates in your business case are accurate, and then in FL4 any element that has a design component, a remaining design component so you finalise there. So you finalise your designs early in FL4 and then you execute the project, which is then the capital execution construction aspect of the project.

10 FL5 is when you close it down. So once the asset has been delivered you close it down.

ADV MYBURGH SC: Alright, and then you deal with something that, as I understand you have already touched on the Platinum for capital execution, is there anything there you want to reiterate or expand upon?

MS STRYDOM: No I think only to mention that in supporting the capital expansion programme attempted also to make sure that the capital portfolio and the delivery of projects meet the business needs as they were set out.

20 It was to manage the risks associated with the execution of the capital portfolio appropriately so the finding or the standards and frameworks required.

ADV MYBURGH SC: Now Ms Strydom you mentioned at the beginning of your affidavit that MEP was split into two different phases, is that right?

MS STRYDOM: That is correct yes.

ADV MYBURGH SC: And you then, that's phase one and phase two, you at page 12 commence dealing with Phase one, and you have described already what your role was in that, is that correct?

MS STRYDOM: That is correct yes.

ADV MYBURGH SC: Now can you then pick up at paragraph 32 and deal with Hatch Goba, their appointment and what they did, and how they came ultimately to be
10 appointed.

MS STRYDOM: In 2011 Transnet Capital Projects appointed Hatch Goba, it was under the Hatch Mott McDonald Goba contract at that stage, which was a Transnet contract, to proceed with the pre-feasibility studies for the manganese expansion to the Port of Coega, so Hatch was involved in finalising those studies and they were concluded towards the end of 2012.

ADV MYBURGH SC: Yes, please carry on.

MS STRYDOM: The full 60million tons expansion was a
20 material expansion, it – the value in excess of R27billion and much higher so given the quantum of the investment it was recommended that we need to subject the full expansion to further scrubbing to see if we could potentially bring some of the costs down, and on that basis the Transnet Capital Investment Committee then in 2012

supported the ring-fencing of aspects of the full expansion, specifically on the rail side, there were projects that would have been executed that had safety and operational capacity implications that couldn't stand over for the duration of this scrubbing period, especially from a safety perspective and we also had the environmental authorisations in place for those projects.

That was approved, or they supported that – the splitting of the scope and the project then was renamed
10 Rail Phase one.

ADV MYBURGH SC: So that is how Phase One came about?

MS STRYDOM: Yes.

ADV MYBURGH SC: And you mention at the end of paragraph 33 the project was named Rail Phase One of MEP Phase One.

MS STRYDOM: That's correct yes.

ADV MYBURGH SC: And then you go on to mention that there was a confinement of the engineering, procurement
20 and construction management scope, known as EPCM, please address that.

MS STRYDOM: That is correct, a risk review was conducted by TCP and based on the risk review a motivation was prepared to confine the EPCM scope of work to Hatch and the request to confine was then

submitted for approval. A confinement is done under certain circumstances and the confinement – the motivation dealt with those circumstances.

ADV MYBURGH SC: Can you recall why the decision was made to opt for consignment in relation to Hatch?

MS STRYDOM: Yes, the main decision being that Hatch had completed all the pre-feasibility studies so they were familiar with the detailed designs and engineering designs required for the rail scope of work at that stage. It was
10 extension of loops mainly, or rail passing loops mainly and it would not make sense to bring another company on board at that stage who has to basically start from scratch, so from a timing perspective given the safety and operational criticality of the specific projects in Phase One a motivation to confine ...[indistinct – audio cut off]

ADV MYBURGH: What was the value of that transaction – the Hatch confinement?

MS STRYDOM: The value of the transaction was below R250 million.

20 **ADV MYBURGH:** And in those circumstances who – who had approval authority?

MS STRYDOM: When a confinement according to the delegation of authority was below R250 million the Group Chief Executive at that stage Mr Brian Molefe had full authority to approve the confinement.

ADV MYBURGH: And was anything in that regard reported to you by or mentioned to you by any of your colleagues?

MS STRYDOM: Yes. Mr Rudi Basson was General Manager TCP overseeing the manganese expansion at that stage told me that they had to reduce the estimated costs or the estimated cost or value of the confinement of the confinement to fit in with the delegated authority limit of the GCE at that stage. So therefore it meant that he had the full delegated authority to approve it. It did not have to go to the
10 board's Acquisition and Disposal Committee for approval which would be the next authority.

ADV MYBURGH: You go on to say at the end of that paragraph

“I annex hereto marked DS3 the approval of the confinement to phase 1 to Hatch with an approved contract value of R220 million as well as the delegation of authority”

Can I take you to those documents please? Could you turn to page 179 – 179?

MS STRYDOM: 179.

20 **ADV MYBURGH:** And that is a memorandum from Mr Charl Moller who was he?

MS STRYDOM: Mr Charl Moller was the head of or Group Executive Head of Transnet Capital Projects at that stage.

ADV MYBURGH: And he is writing to Mr Molefe.

MS STRYDOM: Yes.

ADV MYBURGH: And the subject is confinement and award of the FEL Fluor EM EPCM service to Hatch Goba for phase 1 of the manganese 16 MTPA TFR Project, is that right?

MS STRYDOM: That is correct yes.

ADV MYBURGH: And the purpose is stated as being to obtain approval from the Group Chief Executive Transnet SOC Limited for confinement and award of the EPCM services for FEL for phase 1 and then the project is described. So this is a memorandum where the approval of
10 Mr Molefe was sought?

MS STRYDOM: That is correct yes.

ADV MYBURGH: If we then go to the end of this memorandum at page 185 we will see that it is recommended by a series of persons Mr Gerhard Bierman we will come to him in some time. Mr Moller you have mentioned and Mr Gama, Mr Mohamedy, Mr Garry Pita, Mr Anoj Singh and then finally Mr Brian Molefe, is that correct?

MS STRYDOM: That is correct yes.

ADV MYBURGH: And he appears to have signed on the 19
20 August 2013?

MS STRYDOM: Yes.

ADV MYBURGH: And then if we go to the next annexure which you mentioned that being Annexure DS4 at page 187 you want to point out to the Chairperson the TCE's approval authority in terms of this matrix?

MS STRYDOM: If you follow the matrix where you see and the heading being the approval to approach market for confinement if you look at – under the GCE’s delegation it will be for up to but not exceeding R250 million and the limits are per transaction.

ADV MYBURGH: I am sorry I should have pointed out if you go back to page 185 under the heading Recommendation. There is a series of bullet points. The first is:

10 “Value of the contract not to exceed R220 million.”

MS STRYDOM: That is correct yes.

ADV MYBURGH: Could we then please go back to your affidavit page 14 paragraph 36. And this is the first time Ms Strydom that you mention and begin and to deal with the concept of supplier development targets which...

MS STRYDOM: That – that is correct.

ADV MYBURGH: I refer to by the acronym SD..

CHAIRPERSON: I am sorry Mr Myburgh you said we go back to what page?

20 **ADV MYBURGH:** Page 146 paragraph 36 Mr Chair.

CHAIRPERSON: Of her statement?

ADV MYBURGH: Yes I beg your pardon.

CHAIRPERSON: Okay thank you.

ADV MYBURGH: Here you deal with the concept of supplier development SD targets. Could you please just explain in

the first instance to the Chairperson what they involve before we get to the detail of the target set in this instance?

MS STRYDOM: Transnet had adopted the supplier development program which was part of the competitive supplier development program of DPE. And I think to create capacity capability and grow their – the supplier base. And also to a very large degree transform the supplier base to Transnet and other SOC's. They do – do this through their procurement programs or procurement initiatives and for a
10 specific type of project – so for instance this in engineering EPCM Professional Services there would be a – an acceptable target depending on the size of the market etcetera. So market research done. So the introduction of SD targets in this project was therefore based on the EPCM project and what the supplier development initiatives are that Transnet wanted the EPCM to focus on.

ADV MYBURGH: So what was the SD target for phase 12?

MS STRYDOM: The initial target the – so the first document that I took through for approval as per my role to Siyabonga
20 Gama was 40% which is the first document that he signed. In such a [00:07:00] document so the final document that was submitted for approval to the Group Chief Executive the SD value was increased to 50% which was very high.

ADV MYBURGH: We will come to those documents. But practically speaking what did it mean a 50% SD target?

MS STRYDOM: 50% of the contract value had to be earmarked for supplier development which is a – can be a combination of contracting specific earmarked companies.

ADV MYBURGH: Right. Now you say at the end of paragraph 36 that you refer to Annexure DS5 and then back to Annexure DS3. Can we turn please to Annexure DS5 at page 189. Now this is a memorandum dated the 31 July and if I could take you please to page 185 at the end. You see that it is signed by Mr Gama. Is this the document that you

10 say you took to Mr Gama to sign?

MS STRYDOM: That is correct yes.

ADV MYBURGH: And could I please direct your attention to paragraph 29 at page 194 it says:

“SD will be implemented in the form of a pre-qualification criteria as well as a threshold and 30 – the minimum pre-qualifying criteria of 40% of contract value will be allocated to SD related initiatives.”

MS STRYDOM: That is correct yes.

20 **ADV MYBURGH:** That you say bears out your evidence that initially the target was 40%?

MS STRYDOM: That is correct.

ADV MYBURGH: And then if we go back to DS3 that you find at page 184 – 184. There you will see in the subsequent memorandum that was approved by Brian Molefe

at paragraph 30 the minimum pre-qualifying criteria of 50% of the contract value will be allocated to SD related initiatives. So between these two memorandum it was increased by 10%.

MS STRYDOM: That is correct yes.

ADV MYBURGH: And then perhaps if I could ask you also to look at page 185 under the heading Recommendation at paragraph 35 the second bullet point under the contract value is SD pre-qualification of 50% be met.

10 **MS STRYDOM:** Yes.

ADV MYBURGH: Confirm that?

MS STRYDOM: I confirm that that was in the final recommendation yes.

ADV MYBURGH: And incidentally Ms Strydom what is this pre-qualification that term what does it mean?

MS STRYDOM: The contractor or the EPCM contractor had to have evidence of projects, partners or contracted work to the value of 50% of the value of the total contract to be considered. So the SD pre-qualification that is the primary
20 qualification before you go forward and then consider technical – the technical aspects of any bid. So they had to have – be able to provide evidence of initiatives, contracts etcetera to the value of 50% of the – of the total contract value of R220 million at that stage.

ADV MYBURGH: At page 37 of your affidavit you then talk

of a meeting that you held. Do you recall that meeting?

MS STRYDOM: Yes.

ADV MYBURGH: In late July.

MS STRYDOM: Yes. I can recall the meeting ja.

ADV MYBURGH: In late July were the contract negotiations underway?

MS STRYDOM: Yes.

ADV MYBURGH: In respect of phase 1?

MS STRYDOM: Yes. So it was in the – the contract negotiations were underway and it was in the process of concluding the final price for the EPCM work that had to be done.

ADV MYBURGH: And that is with Hatch?

MS STRYDOM: That is with Hatch yes.

ADV MYBURGH: Now who attended this meeting that you speak of?

MS STRYDOM: At the meeting it was myself, Mr Henk Bester from Hatch, the Hatch Project Director for Rail at that stage and as well as Rudi Basson.

20 **ADV MYBURGH:** Just remind us of Mr Basson's position please?

MS STRYDOM: Mr Basson at that stage was General Manager in Transnet Capital Projects and he was responsible for the manganese execution. It was – it was his responsibility.

ADV MYBURGH: How did this meeting come about – how did you come to participate in this meeting?

MS STRYDOM: I cannot recall specifically we would have either been invited by Mr Bester to attend the session. We were working fairly closely with Hatch at that stage with – on completing the feasibility studies. So it would have either been a phone call to attend a meeting or we would have been together with Rudi we would have been in – in Woodmead for other meetings.

10 **ADV MYBURGH:** Alright well just as I understand it. Where were your offices at the time?

MS STRYDOM: In Woodmead.

ADV MYBURGH: And where were Hatch's offices?

MS STRYDOM: In Woodmead as well.

ADV MYBURGH: Alright. So you attend this meeting together with Mr Basson and Mr Henk Bester?

MS STRYDOM: Yes.

ADV MYBURGH: And what transpired during the course of that meeting?

20 **MS STRYDOM:** At the meeting Mr Bester indicated to us that he was approached by persons one of them being Mr Dave Reddy and Mr Reddy indicated or was quite adamant that Mr Bester had to appoint his company as the SD partner for phase 1. I did not know Mr Reddy. It was news to me.

ADV MYBURGH: And when did you first meet Mr Reddy?

MS STRYDOM: I met him the following year in June 2014 at a client function that Hatch Goba arranged.

ADV MYBURGH: Now you have said in your evidence that Mr Bester explained that he had been approached by persons one of whom was Mr Reddy. Can you remember the names of any other persons that he mentioned?

MS STRYDOM: No unfortunately not. I can – I can recall Mr Reddy's name because I met him the following year. Unfortunately not the other – the other persons.

10 **ADV MYBURGH:** And can you recall insofar as it may have been mentioned the name of Mr Reddy's company who was put forward as a SD partner?

MS STRYDOM: Unfortunately not. I cannot recall the detail. I can recall the name of the person but not the details of the company.

ADV MYBURGH: Did you come – we will come further to that in your affidavit but did you come to learn of the name of that company later on?

MS STRYDOM: Mr Reddy's the name [inaudible].

20 **ADV MYBURGH:** Did you subsequently come to learn of the name of his company?

MS STRYDOM: Yes later on.

ADV MYBURGH: But you did not know about it at this time?

MS STRYDOM: Not at this time. I did not know who he was and I did not know which company he represented. It was

[inaudible].

ADV MYBURGH: So you say that Mr Bester explains to you that he had been approached by persons including Mr Reddy and he was adamant that he should be appointed as a SD partner? What else if anything did Mr Bester tell you?

MS STRYDOM: Mr Bester indicated to us that Mr Reddy claimed to know very important people. He spoke about Number 1 and whoever Number 1 was. People very high up in Transnet. And of concern was that he knew everything
10 about the project at that stage.

ADV MYBURGH: Yes.

MS STRYDOM: He all – and given that it was a confinement that was quite strange that information would be available externally. He then also said to us that following this meeting with Mr Reddy well Hatch's meeting with Mr Reddy they were sent an MOU which they were then asked to sign to the effect that you know they should be the SD partner on phase 1.

ADV MYBURGH: Was Mr Bester at all concerned about
20 this?

MS STRYDOM: Yes.

ADV MYBURGH: What gave rise to the meeting? Why did he want to meet?

MS STRYDOM: He was very concerned about it because first of all as said it is a confinement so the information

about the project should not be available in the public domain. And secondly the assertions that – that Mr Reddy made that he knew important people in Transnet and that he was acting with the authority basically. So acting with the authority of – of Anoj Singh in executing this. So it was highly concerning.

ADV MYBURGH: Now what did – perhaps I can start off by asking you did Mr Basson then respond to this once he – he heard this report?

10 **MS STRYDOM:** Yes. He was very surprised. He said that he...

ADV MYBURGH: Ms Strydom please speak up a little I am struggling to hear you.

MS STRYDOM: Mr Basson was surprised he said that Gerhard Bierman and himself had a meeting with Anoj Singh the Chief Financial Officer at that stage and Anoj basically wanted them to include this company or Dave Reddy's company in the confinement documents as SD partners so to prescribed it. And they basically said to Anoj that cannot be
20 done, you cannot prescribe who the SD partners must be. And because of that advice to Anoj they thought that the matter was dealt with. So he was very surprised that despite this Dave Reddy then approached Hatch directly.

ADV MYBURGH: You have now mentioned the name of Gerhard Bierman who was he?

MS STRYDOM: Gerhard Bierman was the Chief Financial Officer of TCP – apologies of TCP at that stage. Thank you. Of Capital Projects ja.

ADV MYBURGH: So perhaps I – you could just assist and paint the picture for us. Here we have a – you have got yourself, you have got Mr Basson, you have got Mr Bierman. How did those three positions fit in – how were they connected? So you the Project Director.

ADV MYBURGH: I am the Transnet – because it is a rail
10 project.

ADV MYBURGH: Yes.

MS STRYDOM: I am the Transnet Freight Rail I am the owners representative from the operating division perspective so Transnet Freight Rail. Rudi Basson is appointed as General Manager Capital – Transnet Capital Project to execute the project for and on behalf of the operating division. So the capital execution...

ADV MYBURGH: As you have explained that is where the Capital comes from?

20 **MS STRYDOM:** Yes.

ADV MYBURGH: Alright yes.

MS STRYDOM: And Gerhard Bierman was the Chief Financial Officer of TCP. And if I can recall...

ADV MYBURGH: So the Chief Financial Officer of Capital Projects?

MS STRYDOM: Of Capital Projects.

ADV MYBURGH: So did Mr Basson report to him?

MS STRYDOM: No.

ADV MYBURGH: They performed different roles?

MS STRYDOM: They performed different roles. Gerhard looking after the – obviously the finances of TCP and I think to a large degree also oversight of procurement.

ADV MYBURGH: And as I understand your evidence Mr Basson mentioned to you that he and Mr Bierman had held
10 this discussion with Mr Singh that you have described.

MS STRYDOM: Yes. That is correct they were called by Mr Singh to discuss this and they indicated to him that you cannot do this.

ADV MYBURGH: And on what basis then was this meeting concluded?

MS STRYDOM: We concluded and I know my recommendation – our recommendation was that Hatch should not sign that MOU that was my specific advice to them. I suspected that something was going on.

20 **ADV MYBURGH:** What do you mean?

MS STRYDOM: Twofold the fact that there was this approach from – from Dave Reddy requesting to be appointed as SD partner outside a process and then the fact that the SD targets were manipulated in my view prior to the – the completion or the order signing of the final

memorandum from 40 to 50% which is a very, very high SD target for a project of this nature.

ADV MYBURGH: You say now that you thought that something was going on in your affidavit you talk about having suspected that corruption was at play?

MS STRYDOM: Correct yes.

ADV MYBURGH: Now I had asked you how the meeting concluded and you say that your advice was that Hatch should not sign the MOU?

10 **MS STRYDOM:** Yes. As the Freight Rail owners representative and it being Rail Capital my recommendation was do not sign the memorandum or the MOU.

ADV MYBURGH: Yes. It was driving at another point and that is what if anything was Mr Basson's recommendation?

MS STRYDOM: I cannot recall. I know given that he was surprised that Dave Reddy approached them despite the discussion with – with Anoj. I think based on my view as being the owner's representative Rudi agreed with us that Hatch should not sign that MOU.

20 **ADV MYBURGH:** Alright. So that is a meeting that you say you participated in late July of 2013. You go on at paragraph 38 to speak of a telephone call that you received on the evening of the 6 August 2013.

MS STRYDOM: That is correct.

ADV MYBURGH: Can you recall that telephone call?

MS STRYDOM: Yes.

ADV MYBURGH: Who phoned you?

MS STRYDOM: Mr Henk Bester called me that evening and he advised me that after the meeting we had where we concluded that they should not sign Mr Basson called him and requested Hatch to sign the MOU. Hatch then signed a version that they amended which was a more general broad MOU despite that they were then requested to sign an addendum to that MOU. So the – there was a back and
10 forward of documents and I – the response from Dave Reddy continuously was to reintroduce.

ADV MYBURGH: But what gave right to Mr Bester phoning you on the evening of the 6 August? Was he concerned at all?

MS STRYDOM: He was concerned. In my opinion the fact that we concluded that he should not sign and then received a call from Mr Basson who was from TCP responsible for execution instructing him to sign the MOU.

ADV MYBURGH: Yes. So he signed an amended version
20 and now they were being required to sign an addendum?

MS STRYDOM: To sign an addendum.

ADV MYBURGH: Was he concerned about that?

MS STRYDOM: Yes.

ADV MYBURGH: Why was he concerned?

MS STRYDOM: Because the addendum again instructed

them to include Dave Reddy's company or this company as SD partner on phase 1. So the – the – whereas they wanted to keep the MOU as a broad MOU the addendums continued to be brought back to SD.

ADV MYBURGH: And what would the consequences be of not signing the addendum? Was that something that he raised with you?

MS STRYDOM: He indicated to me that the tone of this discussion the toing and froing of the addendums got to a
10 point where it was being – it was fairly aggressive and – that they were being threatened to – to tow the line effectively and sign the revised addendum.

ADV MYBURGH: Could you please look at the last two or three lines of your affidavit?

MS STRYDOM: Ja. Yes. And I think the specifically the fact that they did – the amendments to the addendum to include the SD partner was linked to the fact that the confinement will not be approved if they did not sign that. So the confinement documents that were with Anoj Singh at that
20 stage because he was one of the main signatories would not be approved if they did not sign the amendment to include Dave Reddy's company into the project as a SD partner.

ADV MYBURGH: And who would have been or we have seen the signatures but who was the ultimate approval authority for the confinement?

MS STRYDOM: It would be Mr Brian Molefe in line with delegation of authority at that stage.

ADV MYBURGH: So that he reported to you that Hatch was now being required to sign an addendum to it against as you put the thinly veiled threat by Reddy of the confinement otherwise not being approved by Transnet?

MS STRYDOM: That is correct. An approval being Anoj Singh and Mr Brian Molefe at that stage.

ADV MYBURGH: What impression Ms Strydom did you form
10 when you were told that despite the events of the July meeting that you had held with Mr Basson Mr Bester was now reporting to you that Mr Basson had in fact requested Hatch to sign the MOU.

MS STRYDOM: Hm. I understood that Hatch initially signed a MOU or Hatch was approached by – by Dave Reddy and a MOU was put forward and in that MOU it indicated that they have already have – they have established a JV – a JV to work with Hatch. Hatch then prepared...

ADV MYBURGH: You say – I am not driving at that. We
20 know the facts.

MS STRYDOM: Ja.

ADV MYBURGH: But what impression did you form of Mr Basson?

MS STRYDOM: I – what concerned me was the facts that he agreed to jointly with us that Hatch should not sign that

MOU.

ADV MYBURGH: Yes.

MS STRYDOM: And then later that evening that same – or after that meeting instructed Mr Bester to sign the MOU.

ADV MYBURGH: Yes.

MS STRYDOM: Which could in my opinion mean that there was undue pressure put on him to sign the MOU from someone. Now I do not have that detail about who that someone could be.

10 **ADV MYBURGH:** So that is a telephone call on the 6 August.

MS STRYDOM: Yes. Yes.

ADV MYBURGH: What happened the next day the 7 August?

MS STRYDOM: So after what transpired the telephone call I met – the next day I met with Henk Bester and Allan Gray who was his boss at that stage to discuss the matter.

ADV MYBURGH: Why did you have this meeting?

20 **MS STRYDOM:** Because of the concerns raised by Hatch with the pressure being put on them to sign a MOU which they were no comfortable with and I think because of the fact that clearly with the instruction to Rudi to sign a document someone could have been compromised.

ADV MYBURGH: So that is why you had the meeting?

MS STRYDOM: Yes.

ADV MYBURGH: Did you come then and perhaps you can

have a look at paragraph 39 of your affidavit to learn of further information at this meeting?

MS STRYDOM: Yes.

ADV MYBURGH: Would you explain that please?

MS STRYDOM: Ja. At the meeting Hatch indicated to me that they were now requested to sign this revised MOU. So they – they prepared a broad one – there was a revised one they were requested to sign a revised MOU. Hatch then – Hatch...

10 **ADV MYBURGH:** Sorry I thought they were being required to sign an addendum?

MS STRYDOM: Ja.

ADV MYBURGH: Please get the terms right.

MS STRYDOM: Hatch – correct Hatch...

ADV MYBURGH: There was a MOU.

MS STRYDOM: Which Hatch prepared which was a broad MOU.

ADV MYBURGH: There was a MOU there was then a revised MOU.

20 **MS STRYDOM:** Yes.

ADV MYBURGH: Which they signed.

MS STRYDOM: Yes.

ADV MYBURGH: They were now being as I understand your evidence being required to sign an addendum?

MS STRYDOM: Addendum to the revised MOU yes that is

correct.

ADV MYBURGH: So you say in the second sentence:

“During the course of the meeting they mentioned to me that they had signed the revised MOU and were now being required to sign an addendum.”

Correct?

MS STRYDOM: That is correct yes.

ADV MYBURGH: Carry on what else did you come to learn?

10 **MS STRYDOM:** They were being asked to sign the addendum and in the addendum the JV had to be appointed by Hatch as their SD partner in Phase 1.

ADV MYBURGH SC: Alright. What did you then do after then come to learn of this?

MS STRYDOM: I was very concerned about what was going on and what transpired. Specifically, as indicated, Rudi Basson’s response and instruction to sign the MOU. I discussed the matter with one my colleagues at TFR, Johan Bouwer He was the Executive Manager in the Finance
20 Division in TF ...[intervenes]

ADV MYBURGH SC: Sorry. Can you please speak up.

MS STRYDOM: Sorry. So I discussed the matter with Johan Bouwer. He was Executive Manager at TFR in the Finance Division at that stage and responsible for governance related to Capital management.

ADV MYBURGH SC: Alright. And what caused you to approach Mr Bower?

MS STRYDOM: That fact that Hatch was asked or there was... almost being forced to sign a document that prescribed who they must appoint and the FD partner.

ADV MYBURGH SC: Sorry. Ms Strydom ...[intervenes]

MS STRYDOM: Ja.

ADV MYBURGH SC: What I am driving at. We know of the concern. But why in particular did you approach Mr Bower?

10 **MS STRYDOM:** Ja. I trust his judgment and I trust him as a colleague and especially in role in terms of Capital governance.

ADV MYBURGH SC: So did you raise the issue with him?

MS STRYDOM: Yes, I discussed the matter with him. Yes.

ADV MYBURGH SC: And what, if anything, was his advice to you?

MS STRYDOM: Ja. His advice to me was that I have to escalate it to my line manager at that stage.

ADV MYBURGH SC: And who was your line manager?

20 **MS STRYDOM:** My line manager Ms Cleopatra Shiceka. She was General Manager for Planning and she was General Counsel for DVR at that stage.

ADV MYBURGH SC: So as General Counsel, do you... would I be correct in my understanding that she was also a lawyer?

MS STRYDOM: That is correct, yes.

ADV MYBURGH SC: And she was your line manager?

MS STRYDOM: Yes.

ADV MYBURGH SC: Did you then raise the issue with her?

MS STRYDOM: Yes. Henk Bester, Alan Grey and myself met with Cleo in the Carlton Centre on the 7th of August.

ADV MYBURGH SC: Is that the same day?

MS STRYDOM: Yes.

ADV MYBURGH SC: Alright.

10 **MS STRYDOM:** She indicated we need to meet immediately and we met with her in the Carlton.

ADV MYBURGH SC: You travelled from Woodmead to the Carlton Centre?

MS STRYDOM: Yes, that is correct. Ja.

ADV MYBURGH SC: And can you remember where in the Carlton Centre you held this meeting?

MS STRYDOM: We met her in a Wimpy downstairs.

ADV MYBURGH SC: Just remind us of who was present at this meeting?

20 **MS STRYDOM:** So at the meeting it was myself, Allan Grey and Henk Bester together with Cleo. Just ...[intervenes]

ADV MYBURGH SC: Miss?

MS STRYDOM: Miss, ja. Yes. Ms Shiceka.

ADV MYBURGH SC: What transpired during the course of this meeting?

MS STRYDOM: We shared what... we gave her a full briefing of what had happened to date. Of what transpired to date. She was very concerned. She took a photograph of the addendum which Hatch had with them, the addendum that they were not requested to sign.

And then she assured them that she would take the matter further and investigate it. Ja.

ADV MYBURGH SC: Alright. Did you later inform Mr Bester of anything further to this meeting?

10 **MS STRYDOM:** At a later point, and I cannot recall if it was feedback from Ms Shiceka or from Johan Bower that said, indicated the matter was dealt with. I informed Mr Bester that the matter was escalated to a Mr Singh and it was now considered closed and that no action would be taken on that basis.

ADV MYBURGH SC: You told him that the matter had been, as you put it, escalated to Mr Singh. That it was considered closed and no further action would be taken.

MS STRYDOM: That is correct, yes.

20 **ADV MYBURGH SC:** And you say that you told them that based on...

MS STRYDOM: Either discussion or feedback from Johan Bower or feedback form or a lack of feedback, potentially, from Ms Shiceka.

ADV MYBURGH SC: You cannot remember which of the

two?

MS STRYDOM: I cannot remember which of the two it was but it was the... it was clear that the matter was considered closed and should be left.

ADV MYBURGH SC: Yes, but just to make it clear. Were you told that by one or other of these two people?

MS STRYDOM: Yes.

ADV MYBURGH SC: It was not an inference that you drew?

MS STRYDOM: No.

10 **ADV MYBURGH SC:** Alright.

MS STRYDOM: No.

ADV MYBURGH SC: Then at paragraph 32. Oh, sorry 42. I beg your pardon. You deal with the involvement of Mr Gary Pita. Who was he?

MS STRYDOM: Gary Pita, at that stage was the Group Chief Supply Chain Officer of Transnet. He personally, and it was strange, managed the negotiation for Rail Phase 1 which was unusual because Transnet Capital Project had a procurement division and was equipped to handle
20 negotiations of this sort.

And especially, it is a very specialised type of negotiation, EPCM. It is not your normal business contract that you sign. So it was strange that he would lead that himself where TCP could have done that.

ADV MYBURGH SC: Did you ever receive any report from

Mr Bester about Mr Pita?

MS STRYDOM: I think following the negotiation, Mr Bester indicated to me that during the negotiations, Mr Pita was very, very aggressive with them and aggressive towards them, right throughout. Ja.

ADV MYBURGH SC: And then at paragraph 43, you deal with MMPS. Could you address that topic, please?

MS STRYDOM: Yes. In terms of the SD companies in Phase 1, I am not sure who the final companies were but
10 Mr Basson had at some point mentioned to me that MMQS was one of the preferred companies, in passing.

And I know that during the procurement process of Phase 2, the subsequent phase, Mr Basson indicated to me that Mr Herbert, Mr Masagala(?) was that stage appointed as the new Chief Executive of TCP.

Also told him to instruct the Rail JV H to NS. Or H to N. To appoint MMQS as an SD partner.

ADV MYBURGH SC: So that was on phase 2.

MS STRYDOM: That is correct.

20 **ADV MYBURGH SC:** So ...[intervenes]

MS STRYDOM: So they... I recall the name in both phases as being discussed.

ADV MYBURGH SC: So Mr Masagala had instructed him?

MS STRYDOM: Yes.

ADV MYBURGH SC: Who told him to instruct to J to NJ.

MS STRYDOM: Ja.

ADV MYBURGH SC: And we will come to that in a moment.
To appoint MMQS as one of the SD partners.

MS STRYDOM: That is correct, yes.

CHAIRPERSON: Do you know Ms Strydom whether it is pronounced as Msagala(?) or Mesagala(?)? Do you know what the correct pronunciation is?

MS STRYDOM: I ...[intervenes]

CHAIRPERSON: Msagala or Mesagala?

10 **MS STRYDOM:** I assume it will be Msagala. I
...[intervenes]

CHAIRPERSON: You do not know?

MS STRYDOM: I assume it will be Msagala.

CHAIRPERSON: Oh, ja. I thought you might not.

MS STRYDOM: Ja.

CHAIRPERSON: Okay alright.

MS STRYDOM: Ja. I was not present in those discussions
...[intervenes]

ADV MYBURGH SC: Did mister ...[intervenes]

20 **MS STRYDOM:** Ja.

ADV MYBURGH SC: Did Mr Basson tell you what he had told Mr Msagala, if that is the correct pronunciation, in response?

MS STRYDOM: Yes, he advised him that it was not appropriate. Transnet could not prescribe.

ADV MYBURGH SC: Alright. And then to end off on Phase 1. You say to complete the chronology of events, on 21 November 2013, Molefe approved the award of the confinement of Phase 1 to Hatch. And you have attached the relevant memorandum as Annexure SD6.

MS STRYDOM: That is correct, yes.

ADV MYBURGH SC: Perhaps I could just take you there for the sake of completeness. That you will find at page at page 197. Is that correct?

10 **MS STRYDOM:** Yes, that is correct.

ADV MYBURGH SC: Memorandum to mister ...[intervenes]

CHAIRPERSON: I am sorry. It is one hundred and...?

ADV MYBURGH SC: So, 190...

CHAIRPERSON: 190 ...[intervenes]

ADV MYBURGH SC: One 196 is the blank page. It is 197, Mr Chairperson.

CHAIRPERSON: Okay.

ADV MYBURGH SC: That is a memorandum to Brian Molefe from Charl Muller, dated the 12th of November. Is that right?

20 **MS STRYDOM:** That is correct, yes.

ADV MYBURGH SC: And let us go to the recommendation at page 200, paragraph 16.

“The GC note the status of the confinement and award of the Engineering and Procurement and Construction Management, EPCM. Services for deal

for Phase 1 of Manganese 16 MTPA TRF Expansion Project to Hatch Goba.”

MS STRYDOM: That is correct, yes.

ADV MYBURGH SC: Signed. Recommended by a series of people including Mr Bierman, Gary Pita, you have mentioned. Anoj Singh you have mentioned. And finally approved by Mr Molefe.

MS STRYDOM: That is correct, ja.

ADV MYBURGH SC: If we then go back please to your
10 affidavit. You now deal with Phase 2. And Phase 2 is dealt with under a number of cross-headings. The first of which is the Period up to award a Phase 2. That is January to November 2014. Is that correct?

MS STRYDOM: That is correct, yes.

ADV MYBURGH SC: Can you explain how Phase 2 of what happened during that period of time?

MS STRYDOM: I find the completion of the feasibility studies. If you can recall, Phase 1 was now in execution.

I lead the Development of the Integrated Business Case
20 for the remaining work. In the Integrated Business Case, the Phase 1 costs were included.

There were concerns with calculations related to the escalations in the estimate supporting the Business Case. So escalations and contingencies.

And a decision was taken to submit the Phase 2 to

mega-project or mega-programme scrubbing by the Group GCIA headed by Mr Mohammed Mahomedy. So it was the first of its kind.

ADV MYBURGH SC: So what does this term scrubbing mean?

MS STRYDOM: It means that every aspect of the Business Case and every aspect of the investment element of the Business Case, costs, expenditure, scope, et cetera will be reviewed and subject to questioning and validation.

10 **ADV MYBURGH SC:** So a thorough interrogation and review.

MS STRYDOM: Yes, very, very thorough.

ADV MYBURGH SC: And is this then what you deal with at paragraph 46?

MS STRYDOM: That is correct, yes.

ADV MYBURGH SC: Who was appointed to undertake that scrubbing exercise?

MS STRYDOM: McKinsey and Regiments were appointed by GCIA to undertake the scrubbing and on the basis of the
20 Platinum Standard that they recommended to Transnet.

In terms of the actual work done, the scrubbing work was predominantly done by McKinsey.

There was limited involvement from the Transnet, the GCIA Team at that stage.

ADV MYBURGH SC: Who headed up the McKinsey Team?

MS STRYDOM: The McKinsey Team was headed up by Mr Prakash Kapoor at that stage. He was heavily involved in the completion of the Business Case.

So not only the scrubbing but then also the subsequent completion of the Business Case which was outside the scope of what the scrubbing should be.

And we questioned that, the continuous and prolonged involvement following the scrubbing.

And Mr Singh explained it in the context of the Platinum
10 Standard to us that their involvement is to improve the quality of the Business Case as it goes through.

ADV MYBURGH SC: And what other impression did you form about McKinsey?

MS STRYDOM: For us, McKinsey was in charge of this Business Case. The business, the scrubbing process, the Business Case development process and they were acting with the mandate of Mr Singh, the Group Chief Financial Officer at that stage.

They were fully in charge in every aspect of the
20 Business Case. And maybe to elaborate on that and why this Business Case was important.

In the Business Case, it was not only about the numbers. We also had to detail the execution strategy. How are we going to execute this project.

We had to detail the sourcing strategies, your

procurement strategies, as well as, contract negotiations strategies.

So all of this was detailed in the Business Case and they were fully in charge of what had to... what went into the final Business Case.

ADV MYBURGH SC: Then at paragraph 48. It explains that TCP approach the market for the execution Phase 2 Rail and Port, EPCM. So was that then split, Phase 2 between Rail and Port?

10 **MS STRYDOM:** Yes, we split because of the fibre nature of specialisation. We split the Phase 2 in a rail and port element. The EPCM was also split in an FL-3-B which was a design completion element and FL-4 which was then the actual execution element.

We approached the market with those offers, expecting that it was going to take a bit longer to get approval and we received approval within two months.

So it was at the negotiation that we approached the or structured the tenders in that way.

20 **ADV MYBURGH SC:** Alright. Did this with hindsight raised any concerns in your mind?

MS STRYDOM: Yes. If you look at the timing, the fact that we submitted the Business Case in March. It was approved in May which was literally two months. It is unheard of to receive approval so quickly.

And in hindsight, given the public information available, it was at the same time that the letting(?) 64 locomotives served and was approved and payments made.

It was all in that period, leading up to May 2014. Between March and May 2014. So it begs the question. If DP had an role in accelerating the approval of the Business Case.

ADV MYBURGH SC: What was the contract, the estimated value of Rail and Port contracts?

10 **MS STRYDOM:** The value... the rail contract was about a billion rand as per the Business Case and the port contract was roundabout R 700 million.

ADV MYBURGH SC: Here you referred to R 700 million to one billion.

MS STRYDOM: To one billion. So the range was between seven and... R 700 million and one billion.

ADV MYBURGH SC: Was that for each of them?

MS STRYDOM: For each, ja.

ADV MYBURGH SC: Were there SD targets applicable, to
20 Phase 2 and the Rail and Port Contract?

MS STRYDOM: Yes. The SD targets for both were set at 45%. So of the total contract value. And an additional 30% of the value had to be sub-contracted to small businesses. EME is your qualifying small enterprises, black owned businesses, black woman owned businesses.

So you had an SD target of 45% of which 30% of that value were... had to be earmarked for specific businesses.

ADV MYBURGH SC: So it is 30% of the 45%?

MS STRYDOM: Yes.

ADV MYBURGH SC: It was not 45 plus 30?

MS STRYDOM: No, no.

ADV MYBURGH SC: Okay, yes. And this 45% target, if I understand correctly, was then down from the 50% in Phase 1?

10 **MS STRYDOM:** This was separate to Phase 1.

ADV MYBURGH SC: Yes.

MS STRYDOM: However, the SD targets initially who is set as high as 50% for the project. And then the link to the SD targets, there were significant performance bonds.

So there were two-fold construction performance bond, as well as SD performance bond.

And they were very owner risk and the targets were high and bidders, potential bidders complaint to DPE that it was impossible to perform against these, some of these requirements. So the bonds were reduced and the SD was then settled at 45%.

20 **ADV MYBURGH SC:** And that you deal with in paragraphs 50 and 51?

MS STRYDOM: Yes.

ADV MYBURGH SC: Then at paragraph ...[intervenes]

CHAIRPERSON: I am sorry. Did you say with regard to those percentages, 30% is 30% of the 45%?

MS STRYDOM: Yes.

CHAIRPERSON: Okay so it is not correct to say 30% of the contract value?

MS STRYDOM: [No audible reply]

ADV MYBURGH SC: So where you say ...[intervenes]

MS STRYDOM: No, I will have to... I must check the information to make sure that the facts are correct.

10 **CHAIRPERSON:** H'm? Can you see in paragraph ...[intervenes]

MS STRYDOM: Yes, I see that.

CHAIRPERSON: It says 30% of the contract value. That is not correct.

MS STRYDOM: 45% of the contract value to be assigned towards to ST... 30% sub... it would then be over and above that.

CHAIRPERSON: It would be...?

MS STRYDOM: It would then be over and above the 45%.

20 An additional 30%. I have the actual RFP ...[intervenes]

CHAIRPERSON: So there would be ...[intervenes]

MS STRYDOM: ...and annexure.

CHAIRPERSON: There would be ...[intervenes]

MS STRYDOM: Ja, 30% ...[intervenes]

CHAIRPERSON: ...an SD component?

MS STRYDOM: Yes.

CHAIRPERSON: Okay. There is a value, a total value relating to the SD component.

MS STRYDOM: That is correct, yes.

CHAIRPERSON: And then the 45% is the 45% of the total ST component value?

MS STRYDOM: The 45% of... is the total ...[intervenes]

CHAIRPERSON: Oh, the entire contract?

MS STRYDOM: So if the contract is a billion rand, 45% of
10 that value, so R 450 million will be earmarked for SD on top
of that, 30% of the total value. So another R 300 million will
then have to be sub-contracted to small businesses.

CHAIRPERSON: So all together it would be 45% plus 30?

MS STRYDOM: That is correct, yes.

CHAIRPERSON: Which would bring it to how much? Eight,
seven, five?

MS STRYDOM: Almost, ja.

CHAIRPERSON: It is 75.

MS STRYDOM: Ja, 75%.

20 **CHAIRPERSON:** 75%. Are you sure?

MS STRYDOM: Yes.

CHAIRPERSON: It sounds ...[intervenes]

MS STRYDOM: The information as I recorded it here is as
per the tender documentation which is annexed in this.

CHAIRPERSON: Mr Myburgh.

ADV MYBURGH SC: If we can go to that ...[intervenes]

MS STRYDOM: [Indistinct] annexure.

ADV MYBURGH SC: Ms Strydom, before we do that. Just bear with me, please.

MS STRYDOM: Okay.

ADV MYBURGH SC: At paragraph 50.

“Due to the owner’s SD...

And you talk about 45%.

10 “An additional 30% of the contract value had to be sub-contracted to small businesses.”

Alright?

MS STRYDOM: Correct.

ADV MYBURGH SC: And then in the middle of the paragraph, you say:

“Bidders were required to commit that in respect of the SD component, 45% of the contract value to be assigned towards SD. In addition, 30% of the contract value to be sub-contracted to small businesses.”

20 **MS STRYDOM:** Yes.

ADV MYBURGH SC: Yes.

“i.e. exempted micro enterprises and qualifying small enterprises. Start-ups and/or large significant black owned enterprises.”

MS STRYDOM: That is correct.

ADV MYBURGH SC: Now you then talk about or you make reference to Annexure DS7. That you will find at page 202. And could I take you please... let me start... this Annexure 202, what is this document?

MS STRYDOM: I just...

ADV MYBURGH SC: Annexure DS7 at page 202.

MS STRYDOM: This... the document is the request for proposal so that then the information was provided to the bidders.

10 **ADV MYBURGH SC:** Which is known as an RFP?

MS STRYDOM: An RFP, yes. Request for Proposal, ja.

ADV MYBURGH SC: Can I take you then to a portion of the RFP at page 206?

MS STRYDOM: H'm.

ADV MYBURGH SC: There is a heading at the top: Prequalifying Supply Development. Do you see that?

MS STRYDOM: Yes.

ADV MYBURGH SC: Could you go to the 1, 2, 3... the fourth paragraph under that?

20 **MS STRYDOM:** Yes.

ADV MYBURGH SC: Read that, please.

MS STRYDOM: Okay.

“45% of the contract value needs to be assigned towards ST and evident within the template provided in Annexure B.

In addition, 30% of the contract value shall be sub-contracted to small businesses.”

ADV MYBURGH SC: Alright.

MS STRYDOM: Yes.

“TME, GFE and start-ups, preferable black owned, black woman owned and people with disability.”

ADV MYBURGH SC: And it is effectively that provision, that paragraph that is the source then of paragraph 50 of your affidavit?

10 **MS STRYDOM**: Correct.

ADV MYBURGH SC: Could you please go back to your affidavit at page 151?

MS STRYDOM: [No audible reply]

ADV MYBURGH SC: You have already told the Chairperson that there were various complaints.

“The bond requirements were reduced notwithstanding the reduction, larger EPCM’s had to form JV’s and include smaller EPCM companies in their structures.”

20 Is that correct?

MS STRYDOM: That is correct, yes.

CHAIRPERSON: I just want to make sure I understand this. Going to back to para 50. Does that mean that the main contractor would end up with about twenty – what – 25%? My mathematics... 25% of the work?

MS STRYDOM: Mr Chair, if I may? I understand now where the confusion comes in. If I can explain it?

CHAIRPERSON: Ja.

MS STRYDOM: Supply Development Initiatives which is 45%. There are specific criteria for areas that we identified for supply development. That is a separate matter to subcontracting to small businesses.

So of that 45% earmarked for supply development, its skill transfer, technology transfer, et cetera. So of that 45%
10 - so of the total value of the contract, 45% of that had to be focussed on the Supply Development Initiatives.

The total contract value, 30% of the work in the total contract value also had to be subcontracted to small businesses. So it is not a percentage of a percentage.

You have your SD targets that you want to achieve and then there was a specific target to also subcontract 30% of the total contract value to small businesses. An SD partner could be a larger business as well.

CHAIRPERSON: Yes. I am just trying to check. If I get a
20 contract, as you have said for one billion rand. And I am required to make sure that 45% goes to supply development. Is that right?

MS STRYDOM: That is correct, yes.

CHAIRPERSON: So that is R 450 000,00?

MS STRYDOM: Ja.

CHAIRPERSON: Now that means I am left with about, what, 55. And then I must still take 30% and give to another sector, small business.

MS STRYDOM: Ja.

CHAIRPERSON: Then what do... then what I am remaining with to do?

MS STRYDOM: The way supply development is structured and I am not an expert in this, for EPCM – so for the professional services because it is professional services,
10 Transnet identified specific areas, SD areas that they – because they wanted to develop a supply base.

So for instance, technology transfer. You look at skills transfer. So the main contractors had to be able to indicate how they spend this money.

So it is in the project still. So let us say, they do design work to design a bus or a terminal ...[intervenes]

CHAIRPERSON: I think I understand that.

MS STRYDOM: Ja, ja.

CHAIRPERSON: I mean, I am in business. I want to make
20 money. I do not mind, you know, sharing the work with others and let them have part of the cake. But on this, it just looks to me like I am going to be left with 25% of the work. I am just wondering, is that viable in terms of business?

MS STRYDOM: It will not necessarily be 25% of the work. As I have indicated, the SD targets and that the... what

would... the percentage that had to be contracted to small businesses, have to be separated.

But it is a fact that the JV's, where in the past they would have had the full scope of the project, they enjoyed much less in terms of the actual scope of work.

So they had to bring in more partners and other businesses to assist them in completing the work.

CHAIRPERSON: Well, maybe at some stage, maybe another witness or some other document will explain it better.

ADV MYBURGH SC: Mr Chairman, I was going to suggest. Perhaps, like you did with the previous witness. We could ask Ms Strydom to provide a supplementary affidavit where she perhaps ...[intervenes]

CHAIRPERSON: Yes.

ADV MYBURGH SC: ...explains this practically.

CHAIRPERSON: Yes.

ADV MYBURGH SC: It seems that the technical jargon we have and we know where it comes from.

20 **CHAIRPERSON:** Yes.

ADV MYBURGH SC: Perhaps to answer your questioning particular.

CHAIRPERSON: I think so.

ADV MYBURGH SC: That how does this actually leave the ...[intervenes]

CHAIRPERSON: Yes, at a practical level. Ja, if she can do a supplementary affidavit, I think that would be helpful.

ADV MYBURGH SC: Thank you. So Ms Strydom, let us go then to paragraph 52. You talk about the fact that:

“In September/October 2014, TCP established an Integrated Tender Evaluation Team.”

Is that right?

MS STRYDOM: That is correct, yes.

CHAIRPERSON: Can you explain that, please?

10 **MS STRYDOM:** The Integrated Tender Evaluation Team had representation from TCP, from the Operating Divisions, from main disciplines such as Commercial Procurement, et cetera. So it was a representative Transnet team that was established.

ADV MYBURGH SC: Now if we go over the page, you have spoken about contractors forming JVs and here you deal with two of them. Which are they? Did Hatch form a JV?

20 **MS STRYDOM:** Yes, sorry, that would be on the next page. Apologies. Yes, so the - in terms of the size of the scope as well as the SD requirements, etcetera, most companies formed JVs. Hatch, Mott MacDonald and Oricon formed a JV for the [inaudible – speaking simultaneously]

ADV MYBURGH SC: Well actually there were four parties that formed that JV. Just have a look please at paragraph

53. It was Hatch...

MS STRYDOM: Oricon, Mott MacDonald and Theatuta(?) JV.

ADV MYBURGH SC: And in this affidavit you refer to that as H2N.

MS STRYDOM: H2N, yes.

ADV MYBURGH SC: And then was another JV formed?

MS STRYDOM: Yes, the other JV, main JV, FLAG, Fluor Aecom and Gibb.

10 **ADV MYBURGH SC:** And that is known by the acronym FLAG.

MS STRYDOM: FLAG, yes.

ADV MYBURGH SC: And you go on to say that they were identified as the preferred bidders for both rail phase two and Port phase two.

MS STRYDOM: That is correct, both parties were informed that they were preferred bidders for rail and port and that the negotiations would consider both, the submissions then for both.

20 **ADV MYBURGH SC:** Well, let us then deal with those negotiations and you deal with them at paragraph 54.

MS STRYDOM: The negotiation process was led by Ms Corli Janse van Rensburg from TCP, she was in the procurement department supported by the TCP project director for manganese at that stage, Velelisi Skosana and

Mr Edward Thomas who was in the Group Supply Chain office at that stage. McKinsey was heavily involved. The venue was set up in such a way that McKinsey had a back office right throughout the negotiation period where they could follow the proceedings. The intention with having them there, given that they were heavily involved in developing the negotiation on contracting strategies initially was to then debrief with a steering committee after the proceedings or closing the proceedings every day and
10 then agreed on a new negotiation strategy for the following day.

ADV MYBURGH SC: And who did that negotiation steering committee comprise of?

MS STRYDOM: Anoj Singh, Gary Pita, Herbert Nsigala and Mohamed Mohamedy.

ADV MYBURGH SC: Can you remember when these negotiations commenced?

MS STRYDOM: It commenced during late October/November. That was towards the end of
20 November, the end of 2014.

ADV MYBURGH SC: During the course of those negotiations can you recall having been contacted by Mr Bester?

MS STRYDOM: Yes, I can recall.

ADV MYBURGH SC: And was that a telephonic discussion

or did you meet with him in person?

MS STRYDOM: Telephonic discussion.

ADV MYBURGH SC: What did he convey to you during the course of this telephonic discussion?

MS STRYDOM: He indicated to me that he was asked by Mr Reddy, the same Mr Reddy, to attend a meeting with Mr Salim Essa on Mr Reddy's instance at a local restaurant.

ADV MYBURGH SC: Sorry, please can you speak up?

MS STRYDOM: Ja. He was requested by – my apologies,
10 he was requested by Mr Dave Reddy to attend a meeting with Mr Salim Essa at a local restaurant which would have been in Sandton area, thereabouts.

ADV MYBURGH SC: So he told you that he attends this meeting?

MS STRYDOM: yes.

ADV MYBURGH SC: Alright, with Reddy and Mr Essa?

MS STRYDOM: Mr Essa, yes.

ADV MYBURGH SC: Did he explain to you what happened during the course of this meeting? Did he report to you?
20 What happened?

MS STRYDOM: Yes, he indicated to me that Mr Essa spoke about his relationship with Mr Singh that they had a lot of power, a lot of influence, that they had access to any and all tenders. Ja, so he was very open about his relationship with Anoj and, you know, the power that they

wielded.

ADV MYBURGH SC: Yes and did he report anything else to you?

MS STRYDOM: Yes, he also indicated to me that Mr Essa then insisted on H2N, the JV, including his company. So, as a designated SD partner in the phase two project, the phase two rail project. So he also – it is my interpretation of what was said, he then proposed to H2N that they can pay what is tantamount to a bribe of about R80 million and
10 for that 80 million he can secure the contract for them. He has the ability to ensure that they will then get the contract.

ADV MYBURGH SC: I just want to take you to paragraph 55 because there seemed to have been some corruption with track changes. Three lines from the bottom:

“According to Mr Bester, at the meeting Essa spoke of him and Singh having a lot of power.”

That you have dealt with.

“Mentioned that they had access to all tenders.
20 Insisted on H2N including designated phase 2 tender submission.”

There seems to be some words missing there, would you confirm that?

MS STRYDOM: Yes.

ADV MYBURGH SC: How ought it to read?

MS STRYDOM: It should read:

“Insisted on H2N including his company...”

ADV MYBURGH SC: That being Essa’s company?

MS STRYDOM: That being Essa’s company.

ADV MYBURGH SC: Yes?

MS STRYDOM: “...designated ST partner in the phase 2 submission.”

ADV MYBURGH SC: But you recall Mr Bester saying that to you?

10 **MS STRYDOM:** Yes.

ADV MYBURGH SC: And then you go on to say:

“And propose that H2N pay a bribe of 80 million to secure the contract.”

MS STRYDOM: Yes, I can recall the value specifically, yes.

ADV MYBURGH SC: And did Mr Bester go into any detail about that?

MS STRYDOM: No, no, he did not indicate how that would be paid.

20 **ADV MYBURGH SC:** Could I ask you then please to deal with paragraph 56?

MS STRYDOM: On the matter of a bribe it is possible to create a surplus in a project of this nature and, you know, with the quantum of money that we are working with, either by increasing the contract value during negotiations

or post negotiations, after award. So you have to have access to the contract value in order to manipulate those values and that would have to be done internally in Transnet. That difference can then be paid out to an SD partner. By then in terms of this project and in terms of the dedicated authority for the management of contract value, that resided with Gary Pita and Anoj Singh.

ADV MYBURGH SC: So you say in this paragraph:

10 “On the issue of a bribe as experience has shown it is possible to create a surplus of 80 million.”

You are addressing that because you say he told you of a bribe of 80 million on a project of this nature either by increasing the contract value during negotiations or afterwards or by increasing the delegated contract value internally.

MS STRYDOM: That is correct, yes.

ADV MYBURGH SC: Those are terms of articles.

MS STRYDOM: Ja.

20 **ADV MYBURGH SC:** The increase could then be paid out to SD partner, and as you mentioned you say significantly Pita and Singh were in control of the approval of the contract value.

MS STRYDOM: That’s correct yes.

ADV MYBURGH SC: And you go on to say I annex hereto marked ES8 depicting the increase in value of the port

scope, now H2N you know were ultimately awarded the rail part.

MS STRYDOM: That's right yes.

ADV MYBURGH SC: So this Annexures deals not with rail but with port?

MS STRYDOM: It deals with port.

ADV MYBURGH SC: And it reflects the increase in value, and then you say there was no increase in respect of the rail scope.

10 **MS STRYDOM:** That's correct yes.

ADV MYBURGH SC: So let's go there and please to the table at VS8 which is at page 217. So what you are trying to show to the Chairperson is that on the basis of an analysis of this table and figures it would have been possible, on your view, to increase the rail component by R80million?

MS STRYDOM: Yes, that's correct.

ADV MYBURGH SC: Please explain then the table.

MS STRYDOM: The – in terms of the approved budget
20 initial that is the value as per the cost estimate in a business case, for the respective packages, contract approval before negotiation that is based on the value of the bid received from that bidder, so the table is an example of the actual numbers received, so 810 would be the rail – the value received from the Rail JV and 519

value received from the Port JV at that stage. DCV before negotiations is your delegated consent or contract value before negotiations, that is normally a percentage of your original budget estimate which is a value within which the negotiating team can negotiate, it gives them those parameters.

You then – you have a risk allowance so based on your original estimate plus your delegated value before negotiations you have some money left, based – which is
10 then a surplus of the risk allowance. You then negotiate. Following the negotiations the DCD after negotiations is then the final value as negotiated with this specific party and the value within which the project team can then manage that specific package. In this case the DCD after negotiation for rail went down and from 1063 to 776 and for port it went up from 519 to 751. So effectively the final surplus after risk allowance if you add the numbers back, effectively if you have your 751 and plus the 80 it should give you the original 832, so that's what you have left in
20 the project.

So the total saving on the port project, because that surplus after risk allowance is funds that have to be available in a project, with zero, and on the rail side there was a saving of – a significant saving made, so effectively all I am trying to illustrate is with these processes you are

able to manipulate, I am not saying this is what was done, you can change values for some or other means.

ADV MYBURGH SC: If we just go back to paragraph 57 because the lawyers and I amongst them are better with words than in figures, would you explain that in words at 56, you say you can create a surplus of 80 on a project of this nature, either by increasing the contract value during negotiations or afterwards or by increasing the delegated contract value. Is that right?

10 **MS STRYDOM:** That is correct.

ADV MYBURGH SC: I assume the delegated contract value is DCV.

MS STRYDOM: Yes.

ADV MYBURGH SC: And where do we find the contract value figure.

MS STRYDOM: So the contract value will be the final value.

ADV MYBURGH SC: Alright.

20 **MS STRYDOM:** And the way that you can play with the risk allowance is in both.

ADV MYBURGH SC: When you say final value which value is that?

MS STRYDOM: That will be the value at the bottom of the table, so that was the final value agreed to after negotiations.

ADV MYBURGH SC: Those are the figures that are highlighted in red?

MS STRYDOM: Correct. And it clearly indicates that for rail the DCV went down and for port the DCV went up after negotiations.

ADV MYBURGH SC: The point is though that on those figures in rail there was enough fat for want of a better description, to have paid out in some other way R80million and still one could balance the book so to speak.

10 **MS STRYDOM:** Correct yes.

ADV MYBURGH SC: Because ultimately there was a surplus of 177.

MS STRYDOM: Yes.

ADV MYBURGH SC: Alright. At paragraph 57 of your affidavit at page 153 you say there are other aspects of your interaction with Mr Bester that warrant mention, what are they?

MS STRYDOM: He also mentioned to me that following the first meeting with Mr Essa there was a subsequent
20 meeting with Mr Essa where Anoj Singh was present as well, I don't know the details of what was discussed during that session. He also informed me at some point that the PCP Project Director, Mr Sikosana, was fairly aggressive with him and used very foul language with him, at some point during the negotiation process.

ADV MYBURGH SC: You say Mr Bester told you about a subsequent meeting, are you sure it was a subsequent one with Essa and Singh if you have regard to the text at paragraph 57.

MS STRYDOM: It was a meeting, it could have been prior to the first one, I can recall that there was a meeting where Mr Singh was ...[intervenes]

ADV MYBURGH SC: But you don't know which side of the meeting with Essa that he reported to you ...[intervenes]

10 **MS STRYDOM:** Correct yes, I don't know the details of when these thinkings took place.

ADV MYBURGH SC: When you draw a conclusion in paragraph 58 what is That?

MS STRYDOM: Based on what was happening in the project it was very, very clear to me that there was a large network involved, inside and outside Transnet, and I mention McKinsey specifically as well who secured tenders to the benefit of a few, it was – apologies.

ADV MYBURGH SC: Please talk to the judge.

20 **MS STRYDOM:** Yes it was my view given the discussions that we had with ...[indistinct], the experiences with Mr McKinsey in the product that there was a network involved in properly securing tenders.

ADV MYBURGH SC: Alright anything else you want to mention under that heading?

MS STRYDOM: No, I think we have covered most of it.

ADV MYBURGH SC: Yes then let's deal with the next period, the period beyond the award, December 2014 to cancellation.

MS STRYDOM: Yes.

ADV MYBURGH SC: Now you deal in paragraph 60 with the fact that H2N was identified as the successful bidder for the rail scope and FLAG as the successful bidder for the port scope.

10 **MS STRYDOM:** That's correct.

ADV MYBURGH SC: And then you go on to deal with the award to flag, could you address that please?

MS STRYDOM: What was quite concerning about the award to FLAG was that the award was at an amount that was more than R200million higher than the H2N bid for the same work, if you can recall both parties – we indicated to both parties that we will negotiate for rail and port with both. This was in conflict, to award to another company when you have an offer on the table that is R200million
20 lower was totally against the Platinum standards where ideally you would want to do the opposite, you would want to reduce costs as best you can and use every opportunity in your project to keep costs as low as possible, so it was very, very strange.

ADV MYBURGH SC: Were you opposed to that?

MS STRYDOM: Yes.

ADV MYBURGH SC: Did you voice that opposition at any time?

MS STRYDOM: Yes, we were invited to a meeting, Corli van Rensburg and I, to discuss this matter prior to submitting the final recommendations for the scopes. The meeting was attended by Garry Pita, Mohamed Mohamedy and Prakash Kapoor from McKinsey where they put a case forward based on business risk to award the phase to – the
10 port scope to FLAG at a higher price, so there was a risk mitigation discussion and reasons given why the project had to be awarded at R200million in excess of H2N's offer to FLAG.

ADV MYBURGH SC: And what stance did you adopt?

MS STRYDOM: We were against this because it wasn't consistent with the procurement processes which after you have done your ST and technical qualification then price becomes the next qualifier.

ADV MYBURGH SC: And when you say you are referring
20 to you and who else?

MS STRYDOM: Corli van Rensburg.

ADV MYBURGH SC: During this period beyond the award did McKinsey remain involved?

MS STRYDOM: Yes.

ADV MYBURGH SC: Could you deal with that please?

MS STRYDOM: So despite the contract negotiation with the EPCM companies they remained involved in amendments to the contract documentation and it was a continuous process, it was as if Anoj Singh continuously tried to seek opportunities for McKinsey to improve and amend the contracts. Obviously this was very difficult for the EPCM's, the last change that McKinsey introduced to the contracts resulted in the EPCM's never signing the contract, both EPCM's never signed the contract, and this
10 exposed Transnet to future litigation, so the fact that they continuously made changes unilaterally at the end of the – of concluding the negotiations unilaterally made changes resulted in contracts that were unsigned effectively.

ADV MYBURGH SC: You then go on to deal with the cancellation of the contract when did that happen, and how did it come about?

MS STRYDOM: We cancelled the contract in March 2017, the prevailing market conditions, both for Transnet from a financial perspective as well as for the manganese industry
20 at that stage led to us questioning the or the industry questioning the affordability of this expansion and we then put forward a recommendation to the Transnet Exco, Capital Investment Committee, that the contract be terminated, put on hold and with the view that we need to terminate. So it was for reasons stated in the contract, the

contract made provision for situations such as these from a business environment perspective.

So that was effectively two and a half years after, not even, three years after the work started on the contract.

ADV MYBURGH SC: You say at paragraph 67 that you personally managed the cancellation of the contract?

MS STRYDOM: That is correct. I took over if you can recall I was with Group Planning, Programme Director
10 there, and PCP was executing the project, at that stage I took over the manganese expansion programme in full, PCP was restructured to form a new unit called Transnet Group Capital and Mr Kris Reddy was heading it up then appointed me to take care of the manganese expansion and Mr Sikosana was moved to other projects, so I personally led the cancellation of the contract together with Ms Andra du Toit who was from the legal team.

ADV MYBURGH SC: Then finally you deal with the reporting of irregularities did you at a point in time report
20 your suspicions and concerns?

MS STRYDOM: Yes.

ADV MYBURGH SC: When was that?

MS STRYDOM: Towards the end of 2014, so specifically on Phase 2 I reported what transpired on Phase 1 and Phase 2 to Mr Brandy May, he was head of forensics, the

forensics at Transnet Freight Rail at that stage. I met with him at TFR's lawyers' offices, lawyers that they use in Oxford Road, and following it was a more than five hour conversation, following that meeting I had no feedback from him until such time as the – in 2018 the forensics department in PGC approached him to request copies of the recording of the meeting from him, he indicated to them that he destroyed it as he felt the matter wasn't relevant to TFR at that stage.

10 So I reported it because it was the right thing to do.

ADV MYBURGH SC: You had also previously just remind us you had reported it to your line manager?

MS STRYDOM: Correct.

ADV MYBURGH SC: When you were dealing with Phase 1?

MS STRYDOM: Yes.

ADV MYBURGH SC: And then you say that you raised that with Mr Reddy?

MS STRYDOM: That's correct, I reported to Mr Reddy in
20 Group Planning, he was appointed as the new Head of Transnet Group Capital, this matter was raised with Mr Reddy and he immediately referred it to the SIU for investigation.

ADV MYBURGH SC: And are you aware of what the status of that investigation is?

MS STRYDOM: Not at all.

ADV MYBURGH SC: Mr Chairman subject to the witness providing the Commission with the affidavit that we spoke about, and I suppose for the sake of completeness perhaps Ms Strydom in that affidavit you can also just make the correction to paragraph 55 that you have dealt with.

Apart from that those are our questions. Thank you.

CHAIRPERSON: Right thank you. Thank you very much
10 Ms Strydom for coming to give evidence you are excused,
you have homework to do, you will let us have the
supplementary affidavits within the time that Mr Myburgh
will tell you about.

Thank you very much, you are excused.

MS STRYDOM: Thank you.

CHAIRPERSON: That is all for today Mr Myburgh?

ADV MYBURGH SC: Yes Mr Chairman.

CHAIRPERSON: And then tomorrow it is Mr ...[intervenes]

ADV MYBURGH SC: Mr Laher.

20 **CHAIRPERSON:** Yes, okay alright. We are going to
adjourn, and tomorrow we start at ten.

We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 21 OCTOBER 2020