

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

21 OCTOBER 2020

DAY 288



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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 21 OCTOBER 2020

CHAIRPERSON: Good morning Mr Myburgh, good morning everybody.

ADV MYBURGH: Good morning Chairperson

CHAIRPERSON: Are we ready?

ADV MYBURGH: Yes thank you.

CHAIRPERSON: Yes.

ADV MYBURGH: Chairperson we turn now to that part of our evidence during this sitting dealing with locomotives.

10 A great deal of evidence has been given in relation to the acquisition of locomotives by Transnet.

The evidence that we intend leading relates in particular to the 1064 the locomotion acquisition and the acquisition of 100 electric locomotives.

You will recall Mr Chairman that in respect of the 1064 locomotives that was split between diesel and electric the diesel award went to GE and China North Rail – CNR. The electric award went to Bombadier and CSR – China South Rail and that occurred in approximately March of
20 2014.

You know and will recall that the contract value was an enormous approximately R50 billion. To date a vast number of witnesses have given evidence. What has come to light were irregularities in relation to what was reported to the board vis-à-vis the business case, irregularities in

relation to the pricing of the locomotives and the tender process.

If – there has also been evidence in relation to potential irregularities relating to the relocation of the OME's from Gauteng to Durban. That is the 1064 locomotives.

In respect of the 100 electrical – electric locomotives yes evidence has been given. You will remember that this was an award made on confinement to
10 CSR the contract value was approximately R4.5 billion. And much of the evidence in relation to the 100 electric locomotives goes to irregularities in relation to the confinement to CSR and how that came about.

We intend to lead two witnesses. The first witness is Mr Laher – the second witness is Mr Callard.

Mr Laher finds his way to the commission as a consequence of having been implicated in certain respects by Mr Callard in his evidence. Mr Laher then brought a Rule 3.4 application which was granted by you Mr
20 Chairman and you allowed to submit a statement or an affidavit and to give oral evidence.

In his Rule 3.4 statement he makes reference to a prior statement and he wants them to be read together so it is what I refer to as his main statement will be traversed, his Rule 3.4 statement will be traversed and then more

recently he has given a short supplementary statement. So he will deal with those three things.

Mr Callard is then due to give evidence in relation to two new issues that he has come across subsequent to the evidence that he gave before you.

So with that by way of background Mr Chairperson may I call Mr Laher?

CHAIRPERSON: Yes please administer the oath or affirmation.

10 **REGISTRAR:** Please state your full names for the record.

MR LAHER: Yousuf Ismail Laher.

REGISTRAR: Do you have any ...

CHAIRPERSON: I am sorry please will you raise your voice.

MR LAHER: Yousuf Ismail Laher.

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

MR LAHER: No.

20 **REGISTRAR:** Do you solemnly affirm 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, I truly affirm.

MR LAHER: I truly affirm.

CHAIRPERSON: Thank you. You may be seated Mr Laher.

ADV MYBURGH: Thank you Mr Chairperson. The

document relevant to Mr Laher's evidence are found in Bundle 4[a] and 4[b]. Mr Laher do you have Bundle 4[a] in front of you?

MR LAHER: Yes.

ADV MYBURGH: Could I ask you please to turn to Tab BB4[f]. It should be the last tab in that file. BB4[f].1.

MR LAHER: Yes.

ADV MYBURGH: May I take you then please to page 221. Do you confirm that this is a statement that you gave...

10 **CHAIRPERSON:** I am sorry Mr Myburgh I am still trying to – you said the tag is BB?

ADV MYBURGH: BB4[f]. The last tab in Bundle 4[a].

CHAIRPERSON: I do not seem to have 4[f]. I have got what looks like BB what? I am not sure. But the last – the statement that comes immediately after the last tag is Bierman's statement on mine.

ADV MYBURGH: But then –

CHAIRPERSON: I am looking at 4. I am looking at – oh I am sorry it looks like I am looking at 4[b].

20 **ADV MYBURGH:** I think you are in File [b]. Yes I am sorry.

CHAIRPERSON: Okay alright.

ADV MYBURGH: Mr Chairperson there are two Bundle 4. There is the 4[a] and then 4[b].

CHAIRPERSON: Ja okay. No I think I have been given 4[a].

ADV MYBURGH: If one goes to the last tab.

CHAIRPERSON: Yes now I can see it.

ADV MYBURGH: In this file which is 4[a].

CHAIRPERSON: Yes.

ADV MYBURGH: There you will find Exhibit BB4[f].1. And then could I ask you please Mr Laher to turn to page 221.

MR LAHER: I am there.

ADV MYBURGH: And would you confirm that that is your statement?

10 **MR LAHER:** Correct it is my statement.

ADV MYBURGH: And if you turn forward to page 240 do you confirm that you signed this statement on the 15 April 2019?

MR LAHER: Correct.

ADV MYBURGH: Attached to that statement was a series of annexures which run all the way through to page 500.

MR LAHER: Yes.

ADV MYBURGH: Would you confirm that?

CHAIRPERSON: Yes.

20 **ADV MYBURGH:** And if I could ask you please to now turn to Bundle 4[b] that is the slimmer file.

CHAIRPERSON: Do you think we could manage without the air conditioner?

ADV MYBURGH: I beg your pardon Chairperson.

CHAIRPERSON: Do you think we can manage without the

air conditioner?

ADV MYBURGH: Yes I think we can.

CHAIRPERSON: Yes okay.

ADV MYBURGH: At least until it gets hot.

CHAIRPERSON: Ja. It makes some noise. So if you can either switch it off or turn it down considerably. Okay alright.

ADV MYBURGH: Right Mr Laher ...

CHAIRPERSON: And if in the course of the day becomes
10 too hot we can always switch it on.

MR LAHER: Thank you.

ADV MYBURGH: Thank you Chairperson.

CHAIRPERSON: Okay.

ADV MYBURGH: In Bundle 4[b] if I could ask you to turn to the first document that is Exhibit BB4[f].2.

MR LAHER: Yes.

ADV MYBURGH: And if you go to page 502 you will see that this contains your – your Rule 3.4 application. As you see from the index. At 502.

20 **MR LAHER:** Ja I see the index.

ADV MYBURGH: Could I ask you please – you should have a tab which reflects statement – could you turn forward to page 504.

MR LAHER: I am there.

ADV MYBURGH: You confirm that that is another

statement by you?

MR LAHER: Correct.

ADV MYBURGH: Effectively your Rule 3.4 statement.

MR LAHER: Correct.

ADV MYBURGH: And if you turn forward to page 521 would you confirm that you signed that statement on the 18 June 2019?

MR LAHER: Correct.

ADV MYBURGH: This statement...

10 **CHAIRPERSON**: Did you say 521?

ADV MYBURGH: 521 yes Chairperson.

CHAIRPERSON: Oh. One second. Yes. The previous statement you did not say it was at 503.4 he? Because that – I have got Mr Callard’s statement there so I suspect I have – went to a wrong page. The one you – you started with on this bundle.

ADV MYBURGH: Mr Chairman are you in the 4[b] bundle – the slimmer one?

20 **CHAIRPERSON**: Ja 4[b] ja. The first statement that you referred him to on this bundle was it not – did you not say it is at 503?

ADV MYBURGH: 503.1. is the Rule 3.3 Notice.

CHAIRPERSON: Oh you referred him to the Rule 3.3 Notice.

ADV MYBURGH: Yes.

CHAIRPERSON: Okay not that statement.

ADV MYBURGH: So that is the Rule 3.3 Notice.

CHAIRPERSON: Okay.

ADV MYBURGH: That is paginated ...

CHAIRPERSON: That is followed with Mr Callard's statement?

ADV MYBURGH: Yes all the way to 503.85.

CHAIRPERSON: 503.85. Okay. Okay yes.

ADV MYBURGH: And then after that there is a flag 504.

10 **CHAIRPERSON:** Yes.

ADV MYBURGH: And that is Mr Laher's.

CHAIRPERSON: Yes, no, no. Now I have got it right.

ADV MYBURGH: 3.4 statement. I am sorry for the confusion as you would have picked up Mr Chairman what happened is the 3.3 was issued together with Mr Callard's statement.

CHAIRPERSON: Yes.

ADV MYBURGH: So it is there.

CHAIRPERSON: yes.

20 **ADV MYBURGH:** And then comes Mr Laher's 3.4

CHAIRPERSON: Yes okay.

ADV MYBURGH: Statement. So that is from 504 up to 521 and you have confirmed that you have signed that on the 18 June 2019?

MR LAHER: Correct.

ADV MYBURGH: That too was accompanied by a series of annexures that runs up until page 730 would you confirm that?

MR LAHER: Correct.

ADV MYBURGH: And then directly after that at 731 you find the Exhibit BB4[f].3. And if I could take you to page 733 would you confirm that that is your supplementary statement?

MR LAHER: Correct.

10 **ADV MYBURGH:** And if you go to page 739 that you signed that supplementary statement on the 16 September 2020.

MR LAHER: That is correct.

ADV MYBURGH: And it too contained a number of annexures that run up until page 791.

MR LAHER: That is correct.

ADV MYBURGH: Mr Chairperson could I then and I deal with each of these sequentially if one backs to Bundle 4[a].

CHAIRPERSON: Yes.

20 **ADV MYBURGH:** What I refer to as Mr Laher's main statement.

CHAIRPERSON: Hm.

ADV MYBURGH: You see signed on the 15 April 2019 that at page 240.

CHAIRPERSON: That is the one starting at 221?

ADV MYBURGH: 221 to 240. I would ask you to admit that as Exhibit BB4[f].1

CHAIRPERSON: The statement by Mr Laher starting at page 221 is admitted as Exhibit BB4[f.1]. Is that right? Mr Myburgh did I get it right? [f.1] in brackets.

ADV MYBURGH: In brackets [f.1] yes Chairperson.

CHAIRPERSON: Okay. Okay.

ADV MYBURGH: And then if we can turn to Bundle 4[b]. There you find Mr Laher's Rule 3.4 statement at page 504
10 running to 521 signed on 18 June 2019. Could I ask you Mr Chairperson to admit that as Exhibit BB4[f.2].

CHAIRPERSON: What is in brackets?

ADV MYBURGH: BB4.

CHAIRPERSON: Ja.

ADV MYBURGH: In brackets [4f.2]

CHAIRPERSON: Okay. The statement by Mr Laher starting at page 504 is admitted as Exhibit BB4[f.2].

ADV MYBURGH: And then finally Mr Chairperson in the same bundle the supplementary statement of Mr Laher
20 running from or commencing at 733 signed on the 16 September 2020 could you please admit that as Exhibit BB4[f].3.

CHAIRPERSON: The supplementary statement of Mr Laher starting at page 733 is admitted as Exhibit BB4[f.3].

ADV MYBURGH: Thank you Chairperson. Mr Laher as I

mentioned in my opening remarks you find your way here as a witness as a consequence that having been implicated by Mr Callard and having brought a 3.4 application attached to which was a statement and I will refer to that as your 3.4 statement, the second one in the chronology.

In that statement you sought leave to rely on your initial statement which I will refer to as your main statement and for them to be read together. And then more recently you have provided a supplementary statement. So
10 main statement, rule 3.4 statement and supplementary statement.

Before we get to the – the heart of your evidence which is really your response to Mr Callard's implication of you let us deal with your main statement which you gave before then.

MR LAHER: Yes.

ADV MYBURGH: Now as I have explained to you and as you know this commission has heard a great deal of evidence in relation to locomotives and it certainly is not
20 our intention to rehash that here today more than needs be.

So if you turn please to your main statement at Bundle 4[a] page 221. Are you there?

MR LAHER: Yes.

ADV MYBURGH: I have asked you in the course of our

preparations to highlight and to focus in on what you considered to be key issues.

MR LAHER: Right.

ADV MYBURGH: And I am going to take you to those key issues in your main statement, key issues in your supplementary statement and that will effectively bookend your Rule 3.4 statement and then we will go to that.

10 So let me start off by asking you in relation to the 1064 locomotives what role did you play in the tender process?

MR LAHER: Morning Chair. Thank you for this opportunity.

CHAIRPERSON: Morning.

MR LAHER: To present my evidence to the commission. The role I played in this particular transaction for 1064 was I was involved in the evaluation team – the cross-functional evaluation team finance which did the evaluation of the financial elements of the tender. I was also then involved as part of the finance support team during the
20 negotiations supporting the Chairpersons of the negotiations for the 1064 transactions. Primarily those are my main involvements in this transaction.

ADV MYBURGH: So there you were involved as part of the finance evaluation team and you were part of the negotiation team?

MR LAHER: Correct.

ADV MYBURGH: In relation to the 100 electric locomotives what was your role there?

MR LAHER: In the 100 negotiations I was involved as part of the negotiating team at the very last minute so I was not actually appointed into the team but I was asked to go and attend the negotiations.

ADV MYBURGH: So different to seems all the other witnesses that have testified in relation to the locomotives
10 you have first-hand knowledge of what happened during the course of the negotiations in relation to the 1064 locomotives and the 100 electric locomotives?

MR LAHER: Correct I am the eyewitness.

ADV MYBURGH: Now your main statement which we will go through now I would just ask you to confirm it deals exclusively with the 1064 locomotives. It does not deal with the 100 electric locomotives?

MR LAHER: Correct.

ADV MYBURGH: So if you go to page 221 you have the
20 heading Locomotive Tender and you then deal with the business case all of this the commission has already heard about but I would like you to address these in particular paragraph 13.

MR LAHER: Chair during the negotiation process which was around February/March 2014 I advised Mr Singh very

specifically that this proposed transaction was going to increase or was going to exceed the ETC that was approved by the board. At that point in time Mr Singh told me he would deal with it. With the [00:21:20] I was not involved in the actual ETC process or the approval process. I only got told at the start so towards start of the negotiations this is what the board has approved in terms of the ETC.

ADV MYBURGH: Then you go on to deal with preparation
10 of financial evaluation criteria. Over the page stage 2 pre-qualification evaluation of bids received. Then at page 226 stage 6 evaluation of bids received. And it is there that you have indication to me that you wish to focus on paragraph 30 at page 228 that being under the heading Stage 6 Evaluation of Bids Received. Is that correct?

MR LAHER: Correct.

ADV MYBURGH: Please go ahead and deal with that paragraph?

MR LAHER: So Chair as part of the evaluation team we
20 prepared two reports – one for the electric tender and one for the diesel tender. Those reports were addressed to Mr Jiyane for him to take to the locomotive steering committee and to get approval of our evaluation.

Within that report just before I start within the report. There were six of us in the evaluation team.

Myself and five of my colleagues. Within the report we highlighted a number of risks and a number of matters we wanted to be taken up to the steering committee and also in certain instances to the board to make them aware that our risks with evaluation and what you will see is the risks that we raised in that report effectively came home to roost when the pricing finally was finally agreed to.

If I can go into more detail then – and start just talking about what risks here is. So on 30.1 so firstly the report said the – that these risks must be communicated to the SC committee and or the Transnet board and considered prior to final award of the contract. And we had some risks and I think I am going to highlight the main risks from that report.

So the first risk we highlighted was when we did the evaluation on price specifically the evaluation was done on the basis of not including hedging costs and escalation costs.

The evaluation criteria that were handed to us said that we must evaluate including hedging costs and escalation costs. Whilst we were conducting the evaluations a number of bidders responded. Some bidders responded with hedging costs and escalation costs, some bidders did not respond with hedging costs and escalation costs.

So we went back to Supply Chain Services, Supply Chain Services were charge of the process. Mr Jiyane and Ms Mdletshe were in charge of Supply Chain Services. We went back to them to say as a team we cannot evaluate this tender from a price perspective because we cannot evaluate apples with apples. Some were giving us with hedging and escalation and some were giving us without hedging and escalation – what do you want us to do?

Their response was do the evaluations without the
10 hedging and escalation costs. Our view as a team before – before we reached that point was we wanted to go out and clarification. So we did request from Supply Chain Services that we go back to all of the risks and request that they clarify what the cost of hedging and escalation would be so that we could evaluate with the price including hedging and escalation.

For us as a cross-function evaluation team we believe that would be a fairer way of doing evaluations. The advice given to us by Supply Chain Services was we
20 do not want to go out and clarification Mr Jiyane specifically and the reason he said he does not want to go out and clarification is because it opens up the tender to bidders changing their prices, also extends the time frame of the evaluation and creates a possible further ambiguity.

Based on his response or Supply Chain Services

response to us we then agreed to as a team to do the evaluation without hedging and escalation costs with the proviso and that proviso is captured in our report with the proviso that that point or that matter or – and that risk we brought to the attention of the board and the Transnet steering committee so that they note the importance of that.

Our view was that cost of hedging and escalation could have a material impact on the price and we raised
10 that risk right up front with – with the steering committee and we wanted it to be escalated to the Transnet board.

ADV MYBURGH: Then the second risk at 30.2.

MR LAHER: Chair we raised a number of risks and the second risk we raised – and I think these – I want to bring this as evidence to the commission because I think it is important to understand that these risks were raised right up front.

The second risk that we raised in our report to the steering committee was around the evaluation being done
20 on a full batch of 1299 locomotives for electric tender and a full batch of 465 locomotives for the diesel tender.

It was done on a smaller batch and the risk that we wanted to raise is we wanted to – board or the committee to consider this because if the batch size gets reduced then the price of the locomotive will change. And if the

price of the locomotive changes it affects the evaluation. So the evaluation results will not be – will not be consistent but will not be fair or transparent because it is a different basis. When you buying 100 cars versus buying 1 car you going to get a different price and that is what we were trying to bring to the attention to say, please consider this because if you do decide to make the decision to cut the batch size it is going to affect the price and therefore it is going to affect the evaluation.

10 **ADV MYBURGH:** And then you indicated to me that you wanted to highlight one further risk in the main and that is at 30.3.

MR LAHER: Yes. You see the third risk – and you will see we raise a number of risks. But I want to focus on these three specifically in interest of time. The third risk we raised that we wanted escalated as well and wanted the steering committee to consider was with regard to the price that we used for the evaluation was normalised to exclude the cost of Transnet Engineering TE from the price.

20 What we wanted to raise was that if the price had to be utilised with TE it could be a different price and we do not know what that price is.

The – in our view it would have been better and fairer to rather go in with a price including TE because then you evaluating with the price that you know you going

to finally contract on. The price excluding TE was a price that was not going to be finally contracted upon. So it was not – we wanted to raise this risk that that price will change. And if the price changes it changes the evaluation result. And obviously if the evaluation result changes we could be awarding the contract to the wrong bidder who did not meet the criteria to be you know the bidder.

ADV MYBURGH: Now Mr Laher if you go back to page 227 to paragraph 27 you say CFET Finance what does that stand for?
10

MR LAHER: Cross-functional evaluation team finance.

ADV MYBURGH: And this is the – the committee that you were part of?

MR LAHER: It was a team ja.

ADV MYBURGH: A team I beg your pardon. And there reference is made to two evaluation reports dated the 10 December one for diesel, one for electric and you attach them as Wild 6 and Wild 7. Are those the reports that you speak about at paragraph 30?

20 **MR LAHER:** Correct.

ADV MYBURGH: Perhaps you could just identify them for the Chairperson. Could I ask you please to go – and keep your finger at 228 turn forward to 274. Is that the report you speak of in relation to electric locomotives?

MR LAHER: Correct.

ADV MYBURGH: And then at 316 there is a similar looking report but would you confirm that this now deals with diesel locomotives?

MR LAHER: Correct.

ADV MYBURGH: And those risks are highlighted in that report?

MR LAHER: Correct.

ADV MYBURGH: If we then go forward to page 229 of your affidavit you deal with best and final offer and the next
10 heading you deal with approval to split the batches which is something that you've already touched on. In our preparation, you indicated to me that you feel that this topic is better dealt with in your supplementary statement.

MR LAHER: Yes, it is. Ja. There are two issues I want to raise on the particular ...[intervenes]

ADV MYBURGH SC: Alright. Well, let us go. Let us leave this open. And now let us turn to your supplementary statement. That is at Bundle 4B, page 733. And you deal with the splitting of batches at 735.

20 **MR LAHER:** Yes.

ADV MYBURGH SC: Alright. You want to address that topic?

MR LAHER: Yes.

ADV MYBURGH SC: You can deal with both statements. You do not have to deal with only one as long as you identify

for the Chairperson exactly where we are.

MR LAHER: Alright. So what is capturing paragraphs 15 and 16 is an anomaly in the memos that were submitted to the board where the results of the Costs Functioning Evaluation Team was misrepresented to the board. So specifically... must I ... I will go and deal ...[intervenes]

ADV MYBURGH SC: I think I actually want to direct your attention to paragraph 17.

MR LAHER: 17, ja.

10 **ADV MYBURGH SC**: Yes.

MR LAHER: I thought so. We will come back to this Chair, if you do not mind. So paragraph 17 specifically – and this relates to a caucus that was held during the negotiations sessions.

So now we are skipping forward from the evaluation to the negotiations sessions.

So during one of the caucuses that was held during the negotiations sessions, specifically involving that caucus were Mr Singh, Mr Jiyane, Mr Smit. I think Ms Mdletshe and
20 Transnet Internal Audit were in the room during that caucus.

At that specific caucus, I raised with Mr Singh and Mr Jiyane that the... we communicated pricing to the bidders during that negotiation session earlier and we raised a number of issues with the bidders and we told...

One important thing that we told the bidders during that

day is that your price cannot change for a cut in the batch size.

Now with the background being that the approval for the cutting of batch sizes already made by the Transnet board before the negotiations.

So when we get into the negotiations, Mr Singh announces to us that the board has approved the splitting of the batches which took me by surprise because, you know, firstly, we warned them that if we are going to split the
10 batches it is going to impact the price.

And if you are going to split the batch, devaluations need to redone. This is what we warn in our report.

We come then to the caucus and in the caucus I raised with the people in caucus and then Mr Singh and Mr Jiyane that the mandate that were provided, the draft mandate that we were provided, said that the price cannot change for the reduction in the batch.

So I warned them and I said we cannot allow for the bidders to change their prices. It is against the mandate. It
20 is not allowed.

And there was responses from them and I think the responses are captured in the transcript. I understand that Mr Callard has done that transcript of that particular caucus and we can go through the transcript of that caucus in more detail to talk about what happened in that particular caucus.

Because there were other issues that I raised in that specific caucus as well which are very important.

And I think the Commission needs to understand that these issues were raised. They were raised to the highest level that I could raise them in that point in time.

ADV MYBURGH SC: So you say at the end of paragraph 18 that you were advised that an official transcription is in the process of being obtained. Now that transcription, if you turn please to page 914, it is to be found there. It is a short
10 transcription, 914 to 920. Have you had an opportunity of reading this?

MR LAHER: I have not had the opportunity of reading this one. Is this now Mr Callard's one? Is this another one?

ADV MYBURGH SC: This is the official transcription.

MR LAHER: Okay. I have not read the official transcript, no.

ADV MYBURGH SC: Alright. Well, let us go through it.

“Negotiation Team meeting at Transnet on
7 February. Extract from video recording of 1064
20 Negotiations.”

So Mr Callard provided a best effort transcript. His own one. This is the official one.

MR LAHER: Alright.

ADV MYBURGH SC: It accords with what his best effort was but could you please take the Chairperson through. If

you need some time to reflect on this, you can. But could you take the Chairperson through what transpired here?

MR LAHER: Sure.

ADV MYBURGH SC: So this is a caucus. Is that correct?

MR LAHER: Yes, correct. It is a caucus ...[intervenes]

ADV MYBURGH SC: And you are reflected as being present.

MR LAHER: Yes.

ADV MYBURGH SC: Together with Danie Smit. Who is he?

10 **MR LAHER**: Danie Smit was the Deputy Treasurer at the...
in the Treasury Office at Transnet and he was part of the
Finance Support Team for the negotiations. So the Finance
Support Team was made up of two individuals. And the two
individuals being myself and Mr Danie Smit.

ADV MYBURGH SC: Also present was Mr Jiyane. He is
someone who you have mentioned already. What was his
role?

MR LAHER: Mr Jiyane was the Chief Procurement Officer
at that point in time. The Chief Procurement Officer of
20 Transnet Freight Rail.

ADV MYBURGH SC: And also present was Mr Singh.

MR LAHER: Correct. Mr Singh was the Group Chief
Financial Officer of Transnet at that point in time.

ADV MYBURGH SC: You want to go through this transcript?

MR LAHER: Sure. So Chair, maybe we can start with page

915. And maybe paragraph 20 to the bottom of page 195 where I say... the background being...

I am giving payback in terms of what we told the bidders during that day in the morning session or the afternoon session. This caucus is happening towards the evening.

So I say:

“We spoke them through...

This them being the bidders.

10 “... all the finance issues and basically what we thought we would get through in two days, we got through in one day with all bidders. And that is because we have basically told them what our issues were and we told them to come back to us by next week Wednesday on the results there.”

So we explained to them the issue we have around escalation and we told them that escalation quotes by the... what they provided are too expensive and they need to come back with better escalation.

20 We then explained to them the issues around break pricing and contractual requirements around break pricing. I think it was only CSR who really had a few questions around break pricing.

But the big one was batch pricing where they nearly all fell off their chairs and the reasons being, what we told them is that the price we evaluated on and the price that we want

is the five ninety-nine price or the four sixty-five price.

Now that we are reducing the batches by 50%, we want the same price and if we do not keep the same price then we have got a big problem, a sort of deal breaker. So ...[intervenes]

ADV MYBURGH SC: Sorry. Before you carry on. Could you just explain, perhaps remind the Chairperson who no doubt has already heard this, but what is the difference between break pricing and batch pricing?

10 **MR LAHER:** So my understanding of batch pricing. And these concepts, more or less, came to like during the negotiations. So batch pricing was where you reduced the size of the batch which you were going to contract for.

Break pricing was where you enter into a contract for however number of locomotives but say halfway through the contract you break and you say I do not want any more further locomotives.

20 So you effectively breaking the terms of the contract and there would be clauses, contractual clauses relating to breaking that contract. That should be right up front. You are only entering into a contract for, call it 50% or whatever the number is.

ADV MYBURGH SC: So here ...[intervenes]

CHAIRPERSON: Is the difference between the two that, in regard to the one, there is going to be no change of the

number of locomotives that you are buying?

MR LAHER: Correct.

CHAIRPERSON: Whereas, with regard to the other one, it leaves room for the possibility that you might reduce the number of locomotives that you want to buy?

MR LAHER: Yes.

CHAIRPERSON: Is that right?

MR LAHER: Correct.

CHAIRPERSON: So with regard to the batch pricing, the
10 price would remain the same, I guess.

MR LAHER: Correct.

CHAIRPERSON: With regard to the break pricing, then the price could change.

MR LAHER: The price could change. So halfway through execution of the contract ...[intervenes]

CHAIRPERSON: Ja.

MR LAHER: ...you would tell the supplier: Sorry, I wanted five ninety-nine. Now I only want hundred.

CHAIRPERSON: Ja.

20 **MR LAHER**: So then the price would change.

CHAIRPERSON: Okay alright.

ADV MYBURGH SC: Thank you, Chairperson. So you had ended off by saying a sort of deal breaker at line 10.

MR LAHER: Yes.

ADV MYBURGH SC: Please continue.

MR LAHER: Mr Singh then intervenes and said: Well, I would have a problem with that. And I said, for obvious reasons:

“Our mandate says...

And this is an important bit.

“Our mandate says we must get it. We must get rid of the batch pricing because we must get the same price.”

And I said:

10 “I hope Brian has not yet signed of the mandate.”

Because at that stage it was still a draft mandate.

And Mr Singh responded:

“We have not yet given it to him.”

And Mr Jiyane’s response:

“No, I do not think.”

CHAIRPERSON: I am sorry. I am sorry. Mr Laher, based on your explanation to me of the distinction between batch pricing and break pricing. That sentence does not seem to make sense to me.

20 “We must get rid of this batch pricing because we must get the same price.”

I thought with batch pricing you get certainty in terms of the price but with break pricing you do not get certainty with the price.

But here you say:

“We must get rid of this batch pricing because we must get the same price.”

Can you explain that to me?

MR LAHER: Sure. What I mean Chair there is, that the bidders during the day prior to that was saying that... I mean, we told them you cannot cut... you cannot change your price for a reduction in the batch size.

They will come back to us. And they were again and said it is impossible. We have to change our price for a
10 batch cut because for obvious reasons.

And what I meant to... what I was... what I meant when I said this, our mandate says we must get it. We must get rid of the batch pricing. What I meant was, we cannot allow the bidders to change their pricing.

ADV MYBURGH SC: So when you said the same price, would that have been the same price per unit on the assumption that one bidder was awarded the contract for all 1064 locomotives?

MR LAHER: For all five ninety-nine or for four sixty-five.

20 **ADV MYBURGH SC:** Ja.

MR LAHER: Yes. It must get the same price per unit that we evaluated on that was finally agreed to as part of the evaluations.

ADV MYBURGH SC: And if you awarded smaller batches, must the price go up or down?

MR LAHER: Ordinarily you would expect the price to go up but the mandate said the price cannot go up. And that is what I was warning them that you cannot allow. You must get rid of the batch price and we cannot allow the bidders to push the price up because that is not in terms of the mandate.

ADV MYBURGH SC: Alright.

CHAIRPERSON: I would have expected you to want that pricing if you want certainty on the price. Am I missing
10 something?

MR LAHER: Yes, we would want batch pricing and that was the... that was the decision taken by the board that they want certainty on the price and they want smaller batch.

CHAIRPERSON: H'm.

MR LAHER: So when I say get to the batch price, I do not mean get rid of the concept of batch pricing. I mean ...[intervenes]

CHAIRPERSON: Oh.

MR LAHER: Ja.

20 **CHAIRPERSON**: Because that is what I get.

MR LAHER: Ja, ja. So not the concept of batch pricing but more get rid of this notion from the bidder that they are able to change their price for the reduction in the batch.

CHAIRPERSON: So what you meant was. We must prevent them from changing the price in the context of batch pricing?

MR LAHER: Correct. Hundred percent.

CHAIRPERSON: Because changing the price does not apply in batch pricing?

MR LAHER: Changing the prices against ...[intervenes]

CHAIRPERSON: It should not apply.

MR LAHER: Yes, yes.

CHAIRPERSON: Ja, okay.

ADV MYBURGH SC: Thank you. Carry on with the transcription please.

10 **MR LAHER**: Mr Jiyane then responds:

“No, I do not think. But that is just a wish, you know. In fact, some would laugh you off and think you are smoking something.”

I responded to say:

“Ja, but you see, we have a big issue then.”

And this is again my warning to them.

“Because if we do not get that...”

And then I was interrupted.

“If we do not get that price ...[intervenes]

20 And then I was interrupted by Transnet Internal Audit.

So the unknown female speaker is from Transnet Internal Audit. She said:

“Sorry, I have to do my duty.”

Because there were other people in the room at that point in time who were not part of the Evaluation Team and

she did not want them in the room.

So she wanted to ask them to leave the room. I think it was two or three people in the room. So we sort of waited for those people to leave the room and then we continued.

I am going to continue then... okay the unknown speaker said:

“Who are they? Okay go and sit in the other room. There is another room opposite. Sorry, guys.”

And then one the person that were in the room said:

10 “I just heard. Mention my initials. It is CSR. And I am thinking what I have done?”

And the lady from the TIA, Transnet Internal Audit says:

“You know the rules.”

And then we continued. So then I continued to say:

20 “The issue we have around that and it now comes back to evaluations because they provided us. If we have to go back on it, it is critical that they give us the right advice because if it is not, some of the other bidders give us better pricing on a smaller batch.”

So now I am referring back to the evaluation report where we said... and I am making them aware that you cut the batch size, bidders that you have excluded from these negotiations, presumably were, give six or seven on electric and four on diesel. They were only negotiating with two and

two.

Now you have excluded two on the diesel and you have excluded another, I am going to say five for want... I think it was five.

“You have not allowed them to cope for a smaller batch. So how do you know you have evaluated properly?”

And this is what I am raising to them that the evaluation...

10 “You need to go back and re-evaluated.”

This is the point I am trying to make here. Mr Jiyane then responds to me. He talks me down and says:

“No, but Yusuf we never had batches and I think we must not confuse the thing.”

Singh then also responded and said:

“Ja, we never evaluated on batches.”

Mr Jiyane then responds again and says:

“We never had batches and/or what we ask for. We asked for a break. For break pricing.”

20 I said:

“Hundred percent so. Yes, in the tender response we asked for break pricing, we did not ask for batch pricing.”

But I think they are confusing the issue by talking about these things. Mr Jiyane responds:

“But they cannot use that we evaluate the batches.”

And I say:

“Hundred percent because you cannot because that is break pricing.”

And the responds again to say:

“So no bidders have given us information to say if we have given the half of the quantity, this is my price. So there I do not have a problem.

10 So as far as that is concerned there is no other price that we have gone on accept the prices that we had for the total quantity.”

So accepted his explanation at that point in time when he was senior. Way above me. He was the expert. He was the Chief Procurement Officer and I had to accept this explanation based on the issue I raised at that point in time. So I say:

“Fair enough. Let us hope they come back with the right price.”

Then Mr Jiyane responded to say:

20 “Look, the quantity makes a huge difference.”

Then Mr Singh responds:

“Let us put it this way. It is not up to... I cannot see how they will. I think it is good that you have asked but there is no way they are going to come back with the same price.”

Mr Smit then asked the question:

“There is no ways that they will come in at the same price?”

Mr Singh responds. It says:

“Yes, it cannot be. I mean, the whole evaluation is already immediately different. You allocated over 600 and now you are allocating over 300. It cannot be.”

Again, this is another crucial point I raise here in my
10 next question. So I posed the question to them. Just a question.

“Should we not have gone pre-award back to all the bidders and said give us a price for 80 %...”

It is not 80%. It should be 50%. I said 50%. And said:

“Give us a price for 50% of the batch.”

Again, I am telling them. You got to go back and re-evaluate for 50% of the batch because then the process is transparent and it is fair and it is allowing all of the bidders to quote for a lower price.

20 As you know from previous testimony at the Commission, the impact of the batch price was significant on the price. And what I am bringing as an eye-witness to the Commission is, that I did raise this issue and I warned them twice now about the impact on the batch and the price.

Obviously, they gave me reasons and provided reasons

why they thought it was still a fair process. I will continue.

Mr Sing then responds to me to say:

“It is too late now.”

I do not know if that is an adequate response but anyway, that was his response. And Mr Jiyane said:

“We still do not know what it is going to be. It is 60[^], depending on the negotiations. Some get 60%. Some get 40%. We do not know.”

I responded to say:

10 “But anyway, be that as it may. That was a flaw. A flaw down discussion.”

And I continued to then explain what we spoke about. I continued to say we then spoke about warranty and the cost of extended warranty and they will come back to us. We spoke about options. So Mr Singh to say:

“So we may put it all together.”

Mr Jiyane continues and he says that:

20 “The only one thing, okay, that you would not know about the issues around the escalation things. It was not part of the evaluation.”

Mr Singh then responds to say:

“By that time... but they put that on the table and we are getting that from Regiments.”

So he is talking about getting the escalation benchmark calculations from Regiments. So Mr Jiyane responds to say:

“Whatever they gave us on the thing, that they gave us, actually you must ignore.”

And I said:

“Ja, I think.”

And Mr Jiyane responds:

“The less you say about it, the better.”

And I respond to say:

“Ja. And thank goodness we have evaluated excluding escalations.”

10 Chair, the reason why I said that particular statement there: “Thank goodness we have evaluated excluding escalations.” Again, if you go back two or five hours in that particular day whilst we were doing the negotiations with CSR. CSR threw a real curve ball at us.

Now the curve ball they threw at us was, we told them during the negotiations that escalation costs in the initial quote that they provided was too expensive and that it needs to be a lot lower.

20 They responded to us and they basically told us – and this was the curve ball. That when they responded on the escalation costs as part of the tender.

So the initial tender, which is four, five months prior to that when whilst we were doing the evaluations. They only quoted for one year worth of escalations.

That is a critical statement made by CSR during the

negotiations which took as aback because effectively what it means was. What they supplied during the evaluations was not a true reflection of escalations over the full term of the escalation period.

I then responded like this to say: If we did evaluate, including escalations, that evaluation would have been completely wrong and we would have paid with CSR because effectively, they only gave one year worth of escalations whereas all the other bidders who we asked and supplied
10 escalations costs...

Remember, not all of them supplied escalation costs. All of the other bidders or some of the other bidders would have given us escalation for the full period, which would have been five or six years' worth of delivery.

And that is why I made the comment to say: Hold on. Thank goodness we did not evaluate because we would have been completely wrong with the evaluation.

I continue with the... Mr Jiyane then responds:

20 "Ja. And then our escalations and on the heading stuff?"

I responded:

"On heading, they must come back on Monday because we told them that they must come back on Monday with their quotes for hedging"

And then Mr Jiyane responds to say:

“And Danie. Well, explain. But the Chinese, they do not understand.”

Mr Singh says:

“They understand what I want. I want them to give me a letter from someone to say that they are going to put...

Sorry for the word.

“...the s-h-i-t in place. That is what they are going to tell us on Monday.”

10 I responded to say:

“I do not think the Chinese...”

And then Mr Smit intervenes. And he said:

“That we did not... we did not ask them, you know. We said they must come forward with an innovative hedging strategy. But Anoj, I have no doubt they will come with a letter from the bank because they themselves cannot do that.”

Now Mr Singh responds to say:

20 “I do not want that. I want them to tell me that here is my counterparty. I agree that I will give you 50% exposure and I will cover you from an APG perspective and performance point. That is what they must give me.”

Mr Jiyane responds:

“No, that they can give.”

And Mr Danie Smit then concludes this part of the recording.

“We have more than ...[indistinct]”

So I think the important bits of this particular transcription were the warnings that sounded again around, you cannot touch the batch price because it is against the mandate.

Sorry. You need to go out and re-evaluated because it is two things. Let me rephrase that. Number one. It is
10 against the mandate. You cannot accept a price from the bidders that are against the mandate.

Number two. You need to go out and re-evaluate for bidders... because now you have cut the batch and you do not know whether the evaluations is fair and transparent anymore.

And those are the two issues I have raised and obviously the responded as you can hear.

ADV MYBURGH SC: Alright. If we can go back please to your main statement, Bundle 4A, back to page 230. If you
20 have regard to paragraph 35. Was there a time when the board then approved of this splitting of batches?

MR LAHER: Yes, Chair. The board approved the splitting of batches on 17 January 2014. Supply Chain Services made that submission to the Transnet Board. I was unaware at the time of the details of the submission.

We were told later that the board had approved the evaluation process and also approved the splitting of the batches.

I, at that point in time, did not have sight of these approvals but I got them sometime later. And attached to my statement are the approvals that came through from the board as Annexures YL10 and 11 and the minutes thereto as YL12 and 13.

ADV MYBURGH SC: Alright. And then at 36.

10 **MR LAHER:** The splitting of the batches Chair, would have had an impact on the price of the locomotives and this was communicated to the CF... in the CF, the finance report by dated 10 December as detailed in paragraph 29 about so.

What I am saying there is. We warned them but the board still made the decision to cut the batches.

And there is one misrepresentation in that submission to the board what the CEF ET finding said but that is covered in my supplementary statement.

20 **ADV MYBURGH SC:** Then at page 231, you deal with negotiations. You have indicated to me that there are a few paragraphs in that section that you wish to highlight. The first of them is at paragraph 49 at page 233. Please deal with that.

MR LAHER: Thank you. Chair, paragraphs 49 and 50, essentially, talks about what I have just explained now in

terms of the warnings I gave for the mandate. It is essentially putting into my words what I showed in the transcription. So I do not know if you want to go any further into that?

ADV MYBURGH SC: You say that:

“During the Negotiation Team caucus, I raised
...[intervenes]

MR LAHER: I am sorry.

ADV MYBURGH SC: At 49.

10 **MR LAHER:** Sorry, Mr Myburgh. You are right. Sorry, I should raise it. Sorry, Mr Myburgh. Chair, 49 we have not dealt with. So during the Negotiations Team caucuses, I raised the issue that the escalation costs seem too high.

I raised these issues specifically with the bidders and I raised it during the team caucuses, during the escalation... during the negotiations sessions.

ADV MYBURGH SC: And what do you mean by escalation costs?

20 **MR LAHER:** So escalations costs would be. You have a price for a certain item today. If that item needs to be built over a period of time, the escalation costs would be the costs of inflation, et cetera, over the period of time that that item needs to be build.

To lay the costs of labour is X but next year it will be higher and the following year it will be higher. So that is

escalation costs.

ADV MYBURGH SC: And who would have been present during the Negotiations Team caucuses?

MR LAHER: During the caucuses Chair, Mr Jiyane would have present. Mr Singh would have been present. Mr Smith would have been present. Transnet Internal Audit would have been present.

In some instances, the Internal Legal Team, Transnet Internal Legal Team would also be present. And in some...
10 well, in most instances... well, in all instances, Supply Chain Services would have been as part of the caucuses as well.

ADV MYBURGH SC: You then mentioned to me that you also wish to highlight paragraph 50.

MR LAHER: Yes, Chair. So Chair, this is specifically with regard to the escalation costs again. And again, I do not think this has been brought through to the Commission before. As an eye-witness, I can bring this through to the Commission.

So I raised my concerns about escalations directly with
20 Mr Singh as well. I was uncomfortable with the value that escalations, that the bidders were quoting.

And I think Mr Smit was also very uncomfortable with the value of the escalations that the bidders were quoting. So I entered into a debate with him in terms of why I thought it was too high.

Mr Singh then responded to me to say that bidders built in a risk-premium into their pricing to cater for unpredictable... the unpredictable nature of future costs. And that explanation was not unreasonable to me because you will built in a risk-premium for future costs.

And he explained to me also that it is a negotiations process. The negotiations process, the final price is what is important in the context of negotiations.

And the pricing, the overall pricing was acceptable in
10 light of the vigorous negotiation process. So what he was getting at is, it is a give and take.

So maybe you think the escalation costs are too high but we will gain somewhere else. So in his view, he believes that the pricing, the overall pricing for these locomotives were acceptable.

I accepted his explanation that he provided to me at that point to this particular issue that I have raised with him.

ADV MYBURGH SC: Then you indicated to me, over the page at 234, that you wish also to highlight paragraph 52 but
20 that seems to me something that we have already dealt with. The batch pricing.

MR LAHER: Correct.

ADV MYBURGH SC: The next paragraph that you want to deal with, as I understand, is paragraph 73. And that relates to the concerns that you raised about the relocation of

assembly facilities to Durban.

MR LAHER: Yes.

ADV MYBURGH SC: Perhaps I could ask you to just deal with the whole of this section, please. Starting at paragraph 71.

MR LAHER: Sure. Thank you. Chair, in June 2015, this was after the contract was already signed. Approximately just over a year after the contract was signed I was instructed by Mr Singh to review proposals related to the
10 pricing for the move of the assembly facilities for these locomotives from Koedoespoort in Gauteng to Durban for two OEMs very specifically, that was for Bombadier Transportation and for CNR. I received those proposals from Ms Mdletshe and those proposals are attached as annexures YL18 and YL19.

Chair, I then commented on these proposals and maybe we should go to my emails on my comments there and my concerns from a financial point of view. I articulated in those emails and those emails are dated 21
20 June and 22 June respectively and these emails attached as YL20 and the emails were addressed to Mr Singh, Mr Jiyane, Mr Pita, Mr Selinga from our Transnet legal team and Ms Mdletshe.

ADV MYBURGH SC: Let us go to those emails. You will find YL20 at page 471. That is from an email, at the foot

of page, from yourself sent on the 21 June 2015. To whom did you send it?

MR LAHER: Chair, I sent this email specifically addressed to Ms Mdletshe from the supply chain services team and I cc'd Mr Singh, Mr Pita, Mr Jiyane and Mr Selinga. My review comments or specific instruction from Mr Singh to review the proposals and provide my responses. My responses are captured in the email, Chair. I will go through my responses in a bit more detail. The
10 first response was – so there is quite detailed responses, got quite detailed proposals that were received from the bidder. The specific response I am going to talk about now is with regard to the CNR proposal.

The first issue I raised was I said – I told him that the increase in the team size does not make sense considering that the learning curve will mitigate this requirement within a short time.

So CNR wanted to increase the number of personnel involved in the transaction and I said it does not
20 make sense because with the learning curve you should actually be able to learn a lot quicker so you do not need extra personnel for the move to Durban. Why would you need extra personnel for a move to Durban, let us try and get that.

The second point I raised with was negotiating with

suppliers or eliminating inflationary costs related to the additional four months. In any case material costs generally do not increase on a monthly basis thus the impact should not be as large as – I think it is 1.8%, it is not very clear here.

Also, 1.8% for four months does not equal 5.5% but rather 7.2% which is excessive. So I am pointing out that this cost is excessive in the quote. The next bullet 3:

10 “From the explanation provided the incremental cost of procurement does not relate to the move to the Durban. This should not be charged. In any case, 9% interest is excessive.”

So the point I am making there, Chair, is they wanted to charge additional costs for procurement because they are moving the facilities from Johannesburg to Durban and I am saying but that does not make sense because you should have already incurred the cost in your original quote when you were doing it in Johannesburg, so that should not be charged.

20 And then they quoted for interest which is 9% and I said no, the interest rate of 9% is excessive and nobody charges those type of rates.

Item 4, they quoted for additional technical support required in Durban and I said the additional technical support requirement in Durban does not make sense. The

cost of this technical support should have already been included in the original price of the locomotives. So again I am saying it does not make sense, you cannot ask us – you cannot charge for this.

Point 5 I said:

“On-site service technicians should have been included in the original price.”

So CNR quoted additional costs for on-site service technicians and I am saying it should have already been included in the original price so you cannot charge for it again, in other words. Also, they charged R31.5 million for travel and relocation and I said R31.5 million for travel and relocation seems excessive.

Then I asked the question, we are a transport company, why do they need to use other transporters to transport goods down to Durban? We are a rail company, surely we can use our own rail and that was the point I am making in point 6:

“Can the task not be done by TFR, Transnet Freight Rail via rail containers? If so, then insurance costs would also be minimal as we would be internally insured.”

As you can see there is a number of detailed responses I am raising here.

Point 7 I say that – they wanted to charge for

shelving and I responded to say R11 200 per square metre per shelving seems excessive, as Siya(?) should research this, there needs to research what the real cost per shelving is in Durban.

Point 8, the point I am raising here is they wanted to establish a warehouse in Durban and I am asking has consideration been given to a Transnet property or a TFR property warehouse as we can use our own warehousing. Why must we go and use someone else's warehousing, we
10 can save costs on that basis.

I also asked in point 9, they quoted for additional forklifts and I asked why the additional forklifts, you should have – in other words, you should quoted for forklifts in your original quote now why because you are moving to Durban it does not make sense that you need more forklifts because you are in Durban.

Point 10, this is not very clear on my copy, Chair. It looks like it something how much is ...[intervenes]

CHAIRPERSON: How much of the incentive and
20 relocation cost per staff member.

MR LAHER: Yes, yes, I am asking the question how much is that because that was not counted and on my copy I cannot see 11 as well.

CHAIRPERSON: 11 is not legible.

ADV MYBURGH SC: I will ensure that page is replaced,

Chairperson. I am going to move on to 12 then, Chair person.

MR LAHER: Point 12 that I raised is the labour inflation rate applied at 5.5% for the full year whereas the move was only for four months. I said how can you charge 5.5% for the full year which is where should only be four months and I also pointed out that there was an error in the formula in their sheet there, cell E23 in the staff sheet.

I pointed out in item 13 they would have already
10 quoted for aging costs, so the additional costs to roll over the hedge must be checked by our treasury department to confirm whether it is reasonable or not.

Now point 14, I also said that the additional bond costs must be checked by our treasury department to confirm if it is reasonable.

Point 15, Chair, I raised there that they have included a cost for contingency risk of 4% and a risk provision of 9% as part of their price and I raise there that this contingency risk of 4% and the risk provision of 9% is
20 unexplained and seems unjustified. It is unexplained and seems to be additional profit, sorry. This seems excessive. So again they are charging us profit for something they should not be charging for.

Point 16, I asked that a detailed list of suppliers being used in Durban must be obtained versus those in

Jo'burg so that we can explain why they would need – why there would be additional cost? If there are already suppliers in Durban, there should not be additional costs for those suppliers in Durban for transportation.

Point 17 I raised was the cost of the long term maintenance consulting does not relate to the move to Durban. This should not be charged as it should have already been included in the original price.

And then lastly I raised that in their calculation they
10 double counted the labour inflation in those particular cells. So as you can see, Chair, I raised a number of very pertinent and important issues with regard to the pricing that came through with regard to move to Durban by CNR specifically.

ADV MYBURGH SC: Mr Chairman, I see that it is quarter past eleven.

CHAIRPERSON: Oh okay, let us take the tea adjournment and we will resume at half past. We adjourn.

INQUIRY ADJOURNS

20 **INQUIRY RESUMES**

CHAIRPERSON: Okay, let us proceed.

ADV MYBURGH SC: Thank you, Chairperson. Mr Laher, we were at page 471, 472, those were your points you raised in respect of CNR's relocation proposal. If you go to 473 you find a similar email dated 22 June from you to

the same people and my understanding is that then in turn addresses Bombadier's proposal. These are your comments.

MR LAHER: Correct, Chair, these are my comments regarding the Bombadier proposal. Chair, the Bombadier proposal did not provide adequate information from which to do a financial evaluation. So I am not going to go through the entire email suffice to say that the gist of my email was that Bombadier did not provide sufficient
10 financial numbers so that we can do any evaluation and that that was it, so I do not know if you need to go through it, the rest of it?

ADV MYBURGH SC: Well, I see your conclusion just before you say: Best regards, Yousuf, is:

“The BT cost information is limited and does not allow for a detailed analysis of their costing.”

Was that the conclusion that you came to on the basis of the preceding points?

MR LAHER: Correct, correct.

20 **ADV MYBURGH SC:** If you go back then please to your – the text of your main affidavit at – or statement or 238. We have now dealt with paragraph 71, 72. 73, that is essentially a list of the concerns that you have already mentioned in relation to CNR.

MR LAHER: Correct.

ADV MYBURGH SC: 74, can you pick up there please?

MR LAHER: Chair, I received a revised CNR proposal on the 23 June from supply chain services. I reviewed the revised proposal and I responded then on the 25 June that the proposal that I received had not changed from the previous proposal except for a new offer of payment terms. So basically nothing changed except for the payment terms and that was in my response in YL21, I think.

ADV MYBURGH SC: Then at 75 you deal with Bombadier,
10 BT.

MR LAHER: Yes, it goes back to BT did not provide the detailed costing of each item, it makes up the additional cost and the BT cost information is limited and does not allow for a detailed analysis of the costing.

ADV MYBURGH SC: And did you subsequently receive any further proposal from BT?

MR LAHER: Chair, I did not receive any further proposals from BT or CNR after that.

ADV MYBURGH SC: So Mr Laher, that then completes
20 your main statement, the things you wanted to highlight. Could we then please go to your supplementary statement. As I explained to you, we are going to deal with the main statement and the supplementary statement and then we will deal with your rule 3.4 statement.

Your supplementary statement you find in bundle 4B and if I could ask you to turn up page 733. Some of this we have already dealt with but could I take you to paragraph 12. Would you deal with that please?

MR LAHER: Chair, I have included paragraph 12 into my submission to give a view of what the reporting lines were during the evaluation stage and the negotiation stage, those are depicted in annexure YL39.

ADV MYBURGH SC: Alright, well let us go to YL39 and
10 that you find at page 741.

MR LAHER: Chair, if I can talk through YL39. Sorry, if I could start with the bottom right block. Those are the reporting lines during the evaluations so there were three teams essentially for the valuations. There was the CFET finance team which was myself and five other individuals. Then there was the CFET technical team which evaluated the technical part of the tender made up with a different lot of individuals.

And then there was the cross-functional evaluation
20 team that evaluated local content supply development and BBBEE, so three separate teams. We evaluated each of our sections separately and then we provided our results through to supply chain services. Supply chain services, we reported in to supply chain services essentially for the evaluations. Supply chain services then would consolidate

all of the results and then report in to the steering committee and obviously the steering committee would report in to Transnet Exco in to the board. The decisions were obviously made at the steering committee and board level.

ADV MYBURGH SC: So you were part of the CFET finance team.

MR LAHER: Correct.

ADV MYBURGH SC: At the bottom on the left hand side.

10 **MR LAHER:** Correct.

ADV MYBURGH SC: Alright and then that relates to evaluations and the position during negotiations?

MR LAHER: So during the negotiations, Chair, the top left hand side block, there were a number of teams that were part of the negotiations so it was the finance support team which was two of us, myself and Danie, then there was the legal team made up with internal legal and external legal, so we had an army of lawyers with us, quite few individuals.

20 Then there was the supply chain services support team effectively made up of Ms Mdletshe and Mr Jiyane and then there was Transnet internal audit who are also part of the negotiation sessions.

We reported in to the chairpersons of the negotiating team. The chairpersons of the negotiating

team were Mr Singh and Mr Jiyane, co-chairperson, so on the days Mr Singh was not there, Mr Jiyane would chair, the most senior person would normally chair and then the chairpersons would report in to the steering committee or the subcommittee of the steering committee. There was a subcommittee of the steering committee, the subcommittee of the steering committee was made out of three individuals which is Mr Singh, Mr Molefe and Mr Gama.

The decision-making happened at the subcommittee
10 of the steering committee so any decision that had to be made around this particular tender and negotiations, including price, payment terms, etcetera, was made at that level.

Our role was purely a support role with no decision-making capabilities.

ADV MYBURGH SC: Alright, so if you go back to page 734 of your supplementary statement. We have dealt with paragraph 12. You also highlighted previously at page 736, you have dealt with paragraph 17 and what I would
20 ask you to deal with now – and perhaps you can deal with the whole of this section under the heading Final Consolidation and in particular the issue of hurdle rates, which is a new thing, as I understand it.

MR LAHER: Yes.

ADV MYBURGH SC: If you could deal with paragraphs 19

to 28 please?

MR LAHER: Sure. Chair, post the negotiation process Mr Singh requested that I put through a final consolidation of the numbers as well as assist him in making edits to a memorandum that needed to go through to the board requesting for the increase in ETC from the board-approved 38.6 initially through to the 54.5 billion including the options. The evidence I present here was – is with regard to the NPV calculations that needed to be done for
10 the memorandum to the board and specifically this evidence I have put into my supplementary statement because I identified it recently whilst I participating in giving evidence at the SAICA disciplinary case against Mr Singh.

ADV MYBURGH SC: So let us just break this down. We are talking about hurdle rates used for NPV calculations. What does that stand for?

MR LAHER: NPV stands for net present value calculations and a net present value calculation would then
20 determine whether a capital investment is viable or not. If it is positive it is viable, In other words.

ADV MYBURGH SC: And what is a hurdle rate?

MR LAHER: A hurdle rate would be the interest rate used to discount the cash flows for the NPV calculation.

ADV MYBURGH SC: And do I understand you to have

said that you gave this evidence about the hurdle rate used for the NPV calculations at Mr Singh's SAICA inquiry?

MR LAHER: Correct.

ADV MYBURGH SC: Please carry on?

MR LAHER: I am at paragraph 20 now. So as part of obtaining the required inputs for the memo Mr Singh requested that I contact Mr Callard in order to obtain an updated net present value number as Mr Callard had performed original net present value calculations.

10 As instructed, I contacted Mr Callard on the 21 March. Mr Callard responded on the 23 March essentially indicating that if the hurdle rate for the original NPV calculation that was presented to the board of 18.56% was used the NPV would become negative which effectively meant that the whole project is not viable.

 Shortly thereafter – obviously Mr Singh saw this, Mr Singh told me that the hurdle rate actually changed from 18% to 15% and that the NPV would become positive if the new hurdle rate of 15% is used and adjusted.

20 So I then – Mr Gama sent an email to ask the question why is the NPV negative? I responded to Mr Gama in a nutshell to say that the Transnet hurdle rate has been changed from about 18% to about 15%, it changed last week, I think, based on what Mr Singh told me, so just relaying the message – and a copy of that email is

attached.

The background behind is that the policy owner for the WACC rate or the hurdle rate is the General Manager Group Financial Planning wanted to get that right, the General Manager Group Financial Planning and the General Manager Group Financial Planning at Transnet reports in to the Group CFO so effectively he reported in to Mr Singh and this policy sponsor for the WACC rate was Mr Singh as he was the Group CFO.

10 So at that point in time I was not involved in developing or utilising the WACC rate so I did not know that there was going to be a change in the WACC rate and I took his word for it and explained to Mr Gama that a reduction from 18 to 15% was what is coming and obviously sent that Mr Callard to ask him to update his calculations based on the revised hurdle rate.

20 The final WACC policy was actually only signed off on the 20 May 2014, way after that, backdated to 31 March 2014. So the evidence I am bringing forward to the Commission, which I do not think has been brought to the Commission before, is that it is possible that Mr Singh deliberately influenced such that the hurdle rate should be reduced in order to ensure that the NPV remains positive.

ADV MYBURGH SC: Alright. Then that ends off on what you wanted to deal with in your supplementary statement.

Could we then go to your Rule 3.4 statement but perhaps it is most convenient first just to look briefly at the Rule 3.3 notice that you received. That you find at the beginning of the file. If I could ask you please to go to page 503.1. This is the 3.3 notice that you received? Would you confirm that?

MR LAHER: Yes.

ADV MYBURGH SC: And at paragraph 5 you were advised that the evidence of Mr Callard which implicates
10 you or may implicate you in the above allegations is set out and there is only five paragraphs, 60, 64, 67, 197 and 211 and you were then provided with a copy of that statement and you were told that the relevant annexures were 17, 18 and 18A, is that right?

MR LAHER: Correct.

ADV MYBURGH SC: I would like just to place the evidence that you are going to give now in context. I would like to go to those five paragraphs in Mr Callard's statement starting with paragraph 60 which you find at
20 page 503.17. Are you there?

MR LAHER: Yes.

ADV MYBURGH SC: So in this paragraph: Mr Laher (sic) says that:

“On 21 March 2014, I and colleagues in finance received an email from Yousuf Laher with

spreadsheets of the final cash flows as at 17 March 2014. I was shocked and astounded to note that the advanced payment guarantee for the CSR 100 was 30%, the design review 30%, payment on acceptance per locomotive 37% and retention 3%. This translates to a 60% upfront payment before a single locomotive is received.”

Now paragraph 60 then appears to relate to the 100 locomotives, is that correct?

10 **MR LAHER**: Correct.

ADV MYBURGH SC: Not to the 1 064.

MR LAHER: No.

ADV MYBURGH SC: And it relates to spreadsheets dealing with cash flow on the 17 March and in particular the upfront payment.

MR LAHER: Correct.

ADV MYBURGH SC: So that is 60. If we go to paragraph 64 Mr Laher (sic) says that:

20 “On 15 April I was asked by Laher to assist in updating a memorandum from Molefe to BADC on the increase in the ETC of the acquisition of the 100 21E locomotives. The memorandum requested a recommendation by BADC to the board for an increase in the ETC of the 100 locomotives from 3.871 billion to 4.840 billion. The increase was

approximately a billion rand or 25%.”

So this also relates to the 100 electric locomotives?

MR LAHER: Correct.

ADV MYBURGH SC: And here, whereas the first issue related to the upfront payment this issue relates to the increase in the ETC.

MR LAHER: Correct.

ADV MYBURGH SC: Then if I can take you please to paragraph 67 Mr Callard records:

10 “Subsequent interrogation of the memorandum from
Laher however raised the following question.
Paragraph 5A of the memorandum states foreign
exchange rates, the rand has depreciated by 10.7%
against the Japanese yen, this has impacted the
expected price of the locomotive as per the
business case and ultimately the ETC as approved
by the board by approximately 10.74%. This is
most unusual as the Japanese yen would be
associated with Mitsui, a Japanese company and
20 not CSR, a Chinese company. Further, the cash
flow spreadsheet reflects USD for CSR. From the
ownership of these documents and spreadsheets,
Singh and Laher should talk to this anomaly.”

So this is really – or, let me ask you, it seems again relates not to the 1064 but to the 100 electric locomotives.

MR LAHER: Correct.

ADV MYBURGH SC: And this is really an issue relating to exchange rates.

MR LAHER: Correct, ja.

ADV MYBURGH SC: And currency.

MR LAHER: Currency, ja.

ADV MYBURGH SC: Currency. So those three paragraphs, 60, 64 and 67, electric locomotives. Let us go then forward please to paragraph 197.

10 **CHAIRPERSON:** Page or paragraph?

ADV MYBURGH SC: I beg your pardon, page 503.54, Chairperson.

CHAIRPERSON: Okay.

ADV MYBURGH SC: There one finds paragraph 197. 197 records that:

“I was part of a team...”

This is Mr Callard.

20 “...that primarily comprised Yousuf Laher, Mohamed Moeller, Executive Manager Finance Freight Rail. Others participated but in a secondary role. Our brief was twofold. To show conclusively that forex hedging and escalation were included in the business case and reconcile the 38.6 billion of the business case to the contracted amount of 49.55 billion.”

This was a task that you undertook together with Mr Laher (sic) and it related to whether a correct report had been made to the board.

MR LAHER: Yes, correct. Initially report to the board in 2013.

ADV MYBURGH SC: Yes. Now you take – I mean, I do not suppose are implicated here, you are simply mentioned as being part of this team and you accept that you were and you undertook the work.

10 **MR LAHER:** Correct.

ADV MYBURGH SC: So 197 is not particularly important. Let us then go to the final paragraph where you are said to be implicated and that is paragraph 211 at the foot of page 503.58. Just for the sake of completeness, paragraph 197 now deals with the 1 064 locomotives.

MR LAHER: Correct.

ADV MYBURGH SC: Paragraph 211:

20 “Laher is the primary author of these two Excel spreadsheets of 17 March 2014. Laher is a signatory to the BAFO valuation of 15 January 2014 and was furthermore, a member of the negotiating team for the 1 064 locomotives comprising *inter alia* Molefe, Singh, Gama, Pita, Jiyane, etcetera.”

Is that correct?

MR LAHER: Correct, ja.

ADV MYBURGH SC: That is what you are allegedly implicated on that basis. Now these spreadsheets of the 17 March 2014, we are dealing here with 1 064 locomotives.

MR LAHER: Correct.

ADV MYBURGH SC: Now although you are said to be implicated in paragraph – or sorry, 211. If you have a look at paragraph 208 at page 503.57, Mr Callard says:

10 “On examination I could not credit that the figures in the spreadsheet were a true reflection of the real cost of the locomotives for the following reasons.”

So at 211 Mr Callard contends that you are the primary author but importantly, and I raise this because it is something that you then quite correctly deal with in your Rule 3.4 statement, not only does he say the primary author but at 208 he is then critical of the content of those spreadsheets.

20 211 has a subparagraph which you find at page 503.59, it would also appear that you were implicated here, it is something that you deal with:

“With this knowledge I was disappointed that the exercise undertaken in January 2018 was in good faith but Laher, with full knowledge of the pricing details and negotiations, chose not to share his knowledge including the spreadsheets and

evaluation reports with the members of the team to arrive at an honest and accurate assessment of the increase in ETC from 38.6 billion to 49.55 billion or 54 billion, if options are included.”

So there the contention is that you did not share your information. That relates also to the 1 064 locomotives.

MR LAHER: Correct.

ADV MYBURGH SC: Alright. So with that then by way of background, let us turn to your Rule 3.4 statement which
10 you find at page 504. Are you there?

MR LAHER: Yes.

ADV MYBURGH SC: And if I could direct your attention to paragraph 6 at 505, you state:

“In the Commission’s notice I was advised by the Commission that paragraph 60, 64, 67, 197 and 211 of Mr Callard’s statement implicate me.”

We have dealt with that.

MR LAHER: H’m.

ADV MYBURGH SC: Then I want to take you to the
20 heading at the foot, towards the foot of page 506, is the heading there 100 Locomotive Tender. Do you see that?

MR LAHER: Ja.

ADV MYBURGH SC: And what you say over the page at paragraph 18 that:

“I deal with paragraph 60, 64 and 67 of Mr Callard’s

statement in the paragraphs that follow.”

Because those were the three paragraphs that implicate you in relation to the 100 locomotive tender.

MR LAHER: Correct.

ADV MYBURGH SC: And what you do then in this part of your statement is you start out with the heading Pertinent Facts Related to the 100 Locomotive Deal.”

MR LAHER: Correct.

ADV MYBURGH SC: And if I could then take you forward
10 in that. When you get to paragraph 35 you then deal with paragraph 64, Mr Callard’s 64.

MR LAHER: Yes.

CHAIRPERSON: And then if I could take you please to paragraph 36, the next paragraph, but go over the page to 511, it is in that paragraph that you deal with Mr Callard’s paragraph 67.

MR LAHER: Yes.

ADV MYBURGH SC: And then if you go over the page to
20 512 you will see at 42 you deal with Mr Callard’s paragraph 60.

MR LAHER: Correct.

ADV MYBURGH SC: So this section running from 19 to 42 you set out pertinent facts relating to the locomotives and in that context you deal albeit it not sequentially and numerically but you deal with all three of those

paragraphs, 60, 64 and 67.

Could I then ask you please to take the Chairperson briefly through this section and in the process of doing so address those three paragraphs.

MR LAHER: Sure. Thank you, Chairperson. So I will start with paragraph 19 now, Chairperson, this is with regard to the pertinent facts which provides some context to the 100 locomotive deal and my specific involvement.

So during the 1 064 negotiation process which took
10 place in February/March 2014 I was asked by Mr Singh or informed by Mr Singh to help Mr Jiyane with the finance-related negotiations for this 100 locomotive deal and he also told us at that stage that the board had approved a confinement for 100 locomotives to CSR.

At that point in time it took me by complete surprise because we were involved with 1 064 negotiations and I am wondering why do we need an extra 100 locomotives? But in any case, he said it was approved by the board, we need an extra 100 locomotives, it has been confined to CSR.

20 So we provided the financial support to Mr Jiyane. These negotiations took place in the same place where the 1 064 negotiations took place. I was not officially appointed, it was just Danie, you and Yousuf, go to that room and help Mr Jiyane.

So it took place at Webber Wentzel's offices in

Illovo, it was recorded, TIA were involved in the entire negotiation, in our process. At the same process the co-chair – we were reporting to the co-Chairperson, the co-Chairperson was report to the steering committee. That steering committee is the committee that makes the decisions including pricing as well as the payment terms. We were just a support team to Mr Jiyane.

Mr Singh and Jiyane ran the overall process of negotiations. During the negotiations we would respond to
10 bidders directly if we had issues to raise but most of the time the responses would be through the chairpersons.

As I said, the negotiations included Transnet internal audit as well as supply chain services in those sessions the co-chairpersons.

The negotiation process, like any other negotiation process, is offer, counter-offer and it went along those lines. So whilst we were busy with the negotiations Mr Singh asked me to prepare a reasonability calculation for these particular locos.

20 So in 2012 we purchased locomotives from CSR, which was a year or two ago, and we knew what the pricing for the locomotives were. So what he asked me to do is to say, okay, if you know what the pricing for that locomotive is in 2012, you do your own calculation and you tell me what you think the pricing for this locomotive now in 2014

should be.

I conducted the calculation accordingly, I went and did some research to see what the pricing of that locomotive and I came to a figure of R41 million for that particular locomotive. My calculation is referenced in annexure YL24.

My calculation was primarily based on the – should we go to YL24 just to show the movement?

ADV MYBURGH SC: Alright, we will deal with the
10 paragraph first and then we can go there.

MR LAHER: So my calculation was primarily based on taking the price of the 20E locomotive that was purchased in 2012, knowing what the exchange rate for that locomotive was in 2012 and adjusting for the change in exchange rate between 2012 and 2014 as well as increasing the cost of that locomotive for escalations between 2012 and then, for inflation, etcetera.

Then I would add in items that were provided to us by CSR which is items we did not know about. This was a
20 higher spec locomotive so it was not exactly the same locomotive as a 20E, it was a bit more powerful locomotive.

So there would have been additional design costs, additional variations and I think there were additional hedging costs and setup costs. So I added in those costs into the calculation to get to my 41 million, that was the

only way I could rely on this information, was the information I got from CSR. That calculation is in YL24.

ADV MYBURGH SC: Yes. So YL24 you find at page 548.

Is that the calculation?

MR LAHER: That is the calculation yes Chair. So essentially what is reflected on this calculation is the base price for the 20 locomotives in 2012 was R28.8million. The exchange rate used in 2012, on the 22nd of October 2012 was R8.635 to the US Dollar, the exchange rate whilst we
10 were doing negotiations in February 2014 was 10.9, so essentially I calculated the exchange impact based on those parameters as well as calculated the escalation for the South African portion and the US Dollar portion of that locomotive and then added in the additional items as per the CSR quote for variations adding hedging costs and duties and I also took out R1.5million for the set-up costs because my view was a set-up costs should have already been included using they're using the same production line and that's how I got to my price of R41million. I then
20 presented that R41million – I'm back in my statement, Chair I'm back at my statement, I then presented my calculation to Mr Singh and Mr Jiyane as a benchmark to use for the negotiations. When we started the negotiations, Mr Jiyane pitched at the price of R38.5million so he told CSR we want a price of R38.5million for these

locomotives, CSR disagreed and wanted a price of R49million, it was a to and fro, to and fro for a long period of time and eventually we never agreed to anything but they didn't want to budge on their promise and obviously we didn't want to budge on our price. A day or two later, Mr Singh comes in to us and says, Mr Molefe has approved a price of R44million for these locomotives, so there obviously must have been some other negotiations happening in the background and based on that I
10 responded to him to say that, but the Mitsui quote was cheaper and he responded to me to say it had already been approved by the Board that we're going to go with CSR so it doesn't matter what the Mitsui quote was, that's on Graph 29.

ADV MYBURGH SC: Sorry, can I just ask you, this CSR tender was that done on confinement?

MR LAHER: It was done on confinement, correct.

ADV MYBURGH SC: Chairperson we heard all the evidence about, initially there was an award to Mitsui, then
20 there was a change of confinement and ultimately it went to CSR.

MR LAHER: Yes.

ADV MYBURGH SC: So, when you say here, pointed out to Mr Singh, is that the Mitsui quote was cheaper, it's in that context.

MR LAHER: Correct.

ADV MYBURGH SC: The total context.

MR LAHER: Correct.

ADV MYBURGH SC: Yes, carry on, what were you told?

MR LAHER: Sorry, I forgot to mention in paragraph 28 that, Mr Singh told us that Mr Molefe approved the price of R44million as well as the payment terms which is what Mr Callard request be the payment terms and he instructed the lawyers to draft the contract accordingly. On paragraph 30
10 I raised with the bidders, in my view, the pricing was – you know pointing out the R49million was excessive and it was too high and I also raised my concerns that they were using the incorrect exchange rates to determine their prices.

Subsequent to that, I also raised, with Mr Singh that – and I particularly pointed out to him that CSR were using the incorrect exchange rate to determine their price and because they were using the incorrect exchange rate they were adding an additional R2.4million per locomotive to the
20 price. His response to me, to what I raised with him there was, this again is a process of negotiation and you win some you lose some and it's the overall price that's important in his view the price of R44million was reasonable, considering the risk that that CSR were willing to take ...[indistinct 3.57]. In light of Mr Singh's seniority

and expertise and experience I deferred to his explanation that he provided to me.

Continuing further, post the negotiation process, Chair I just want to raise that Mr Singh was very senior at that point, I was two levels below him at that point in time and I had to respect his opinions and respect his views. If I continued it would have been insubordination to him, he was a member of the Board etcetera, etcetera. I don't even know if you know that, in those days he was awarded
10 CFO of the year in South Africa award, so he was a man of stature. So, when he spoke it was authoritative and he spoke – he knew what he was saying so you had to respect what he was saying, it's the context in terms of why I accepted what he had said to me, it wasn't unreasonable what he was saying at that point in time.

Post the negotiation process Mr Singh then explained to me, principle elements he wanted included in a memorandum that needed to go to the Board to request for an increase in the ETC from the initial pricing, I think it
20 was R3.4 I could be wrong with the price to the R4.4million and detailing the reasons for the increase in price. He also then explained to me the detail of the format he wanted the numbers presented in for this particular memo to the Board and he requested that I typed it up into a draft memorandum that was already prepared. I received the

draft memorandum from Transnet Group Capital Department, so this is not my normal function, it was not what I normally do, it was done by another department. so they prepared the draft memorandum, they sent it through to me, Mr Singh then made edits to that and there's his handwriting, there's evidence about the edits that he made, I think the handwriting is captured in one of the Annexures, I'm trying to see what Annexure it is, oh sorry, YL 15, YL 15 is the handwriting.

10 Over a period of time – Mr Singh was very pedantic with the wording of this particular memorandum and he was very pedantic with the 1064 memorandum as well and over a period of time, one or two months he made numerous changes and he asked me to type up those edits into the memorandum for him. I don't understand why he asked me because I have another job to do, at that point in time I wasn't working in his office but he used to call me to – come to my office today, you know, spur of the moment, you couldn't really say no to him because he was the big
20 boss, drop whatever you are doing and go and do whatever he wants to do. Handover what you've done and move over again, so I even questioned, why am I doing this because it's clearly a secretarial function. I can put the numbers together which is what I did but the – typing up handwritten notes was – I don't see why I was doing it.

ADV MYBURGH SC: Whilst we're on that Mr Laher, you talk about some handwritten notes of Mr Singh which you say are attached as Annexure YL15 well that YL15 to your main statement?

MR LAHER: Correct.

ADV MYBURGH SC: Perhaps we could just go back there because they may be of significance, so if you could go back to file or Bundle 4A and if you can turn, all the way please, to page 402, that's – sorry under the last tab, there
10 you should find Annexure YL15, are you there?

MR LAHER: Yes.

ADV MYBURGH SC: This series of handwritten notes, firstly on Weber Wentzel's notepad and then some on plain paper, what are these notes?

MR LAHER: Chair, these are the handwritten notes of what Mr Singh wanted incorporated into the memorandum that would go to the Board. These notes incorporated his notes on both the 1064 memorandum that went to the Board as well as the 100 memorandum that went to the
20 Board. I think, specifically Chair, I want to point out, specific evidence, and maybe if we can go to page 408 and 409 where you can see wording around the interest in ETC has resulted for the following reasons and then he explains the reasons. So, to show that he's thought this through, and these are his reasons for the increase in ETC and

basically this is what he wanted me to capture into or type up into the memorandum. If you go to the next page, which is 409, and Chair I'd like to refer to the actual memorandum and you'll notice that word for word what is written here, it's word for word in the actual memorandum and we can go to the actual memorandum I don't know which actual Annexure it is.

ADV MYBURGH SC: Yes, we'll come to that.

MR LAHER: So what he says there, sorry Chair, is the
10 first wording as so that we can remember when we get to the actual memo, Financial Risk Management Framework, FRMF approved by the Board, does not permit the accepting forex exposure on committed transactions...[intervenes].

ADV MYBURGH SC: Right, Mr Laher, let's leave that page open for the moment at page 409 in the file – the Bundle 4A. Let's go back to your supplementary – sorry your Rule 34 statement at Bundle 4B page 510, you've explained to the Chairperson at paragraph 34 how this
20 happened, you've referred now to the notes and ultimately, I take it that, a memorandum was then produced.

MR LAHER: Yes.

ADV MYBURGH SC: And you say a copy of this memorandum, dated 23 May 2014 is attached to this statement as Annexure YL25, let's go to that, you find it at

page 550, is this the memorandum?

MR LAHER: Correct.

ADV MYBURGH SC: If you look at it, it's says it's to the Board of Directors and it's from Brian Molefe.

MR LAHER: Correct.

ADV MYBURGH SC: You had been preparing it though on behalf of Mr Singh.

MR LAHER: Correct.

ADV MYBURGH SC: I see, and the purpose of the memo
10 is recorded at paragraph one for the BOD to note or to
note of the reasons for the increase in the ETC and then to
request that body to approve the increase.

MR LAHER: Yes.

ADV MYBURGH SC: From R3.871billion to R4.840billion.

MR LAHER: Yes.

ADV MYBURGH SC: If you turn forward, this is quite a
lengthy document, it concludes at page 563 and that was,
ultimately, the recommendation.

MR LAHER: Yes.

20 **ADV MYBURGH SC:** It was recommended by Mr Singh
and Mr Gama and then signed by Mr Molefe.

MR LAHER: Yes.

ADV MYBURGH SC: You wanted to tell the Chairperson,
if you still have open page 409 of the handwritten notes in
Bundle 4A, do you want to cross-refer?

MR LAHER: Thank you. So, Chair, if you look on page 555 bullet point number 25.

CHAIRPERSON: Yes.

MR LAHER: Okay so, bullet point number 25 if you cross reference page 409 of the first Bundle to page 555 of the second Bundle, specifically bullet point number 25, the wording, Financial Risk Management Framework, FRMF, approved by the Board does not permit Transnet accepting forex exposure on committed transactions word for word as
10 you can see in his handwriting. The second paragraph, SARB also does not permit ...[indistinct] to accept open exposure on foreign currency contract, you can see its word for word. The third – then there's another paragraph, where it says consequently which is bullet 28, consequently the cost of foreign currency edging to mitigate and protect the company against foreign currency devaluation is an inherent cost of the transaction. So, those are all – I'm not going to go through all of them, Chair, but you can see it's word for word. He basically
20 wrote it out and all I did was, secretarial function of typing it in.

ADV MYBURGH SC: Alright, now we come to the important paragraph, 35 in your Rule 34 statement at page 510. This is where you now deal with paragraph 64 of Mr Callard's statement, please take us through that.

MR LAHER: So, paragraph 35, Chair, on page 510, Mr Singh then told me to contact Mr Callard and request that he update the net present value number that was required for the memorandum. I sent the draft memo to Mr Callard, this is the memo...[intervenes].

ADV MYBURGH SC: Just so that I understand, this is then before the memo was completed?

MR LAHER: Correct.

ADV MYBURGH SC: So, YL25 is the completed memo?

10 **MR LAHER:** Correct.

ADV MYBURGH SC: Paragraph 35 deals with the process of completion?

MR LAHER: Correct.

ADV MYBURGH SC: Alright, carry on.

MR LAHER: This is the memo that Mr Callard refers to in paragraph 64 of his statement. Mr Callard prepared the NPV for the original business case and then duly provided the NPV for the memo. Mr Callard raises issues there but the issues he raised in his statement, at no stage did he
20 raise those issues with me or raise any queries about the draft memo or its contents, including the issues he raises in his statement at the Commission about the use of the Yen to ...[indistinct] and the price, the increasing ETC or the pricing...[intervenes].

ADV MYBURGH SC: Just hang on a moment. Mr Callard,

in paragraph 64 simply deals with the increase by a billion rand of the ETC, that's what he's dealing with. Now insofar as he's implicating you, what is your response to that?

MR LAHER: Sorry repeat that question again?

ADV MYBURGH SC: Mr Callard seems, in some or other way, to be implicating you in relation to the increase in a billion rand of the price, what is your crisp response to that?

10 **MR LAHER:** So, number one, I would not have approved the price, number two, I didn't have the delegation to approve the price, number three, it was approved by the steering committee. So, I cannot be responsible for something I cannot approve and number two is, where it relates to the increase in price, I raise the issues, as you've heard in my statement, I raise issues about pricing to Mr Singh and during the negotiations where I voiced out that I was not happy with the price myself. I was provided with a reasonable explanation at that point in time and
20 therefore my view is, that question in terms of the price should be asked to the steering committee, in terms of why they accepted the price and remember that negotiation was done, not where I was present. So, I don't know how the price was agreed to, we were told afterwards, this is the price that was agreed to.

ADV MYBURGH SC: And insofar as you were involved in the production of the YL25 memorandum, do you consider that significant in any way?

MR LAHER: Obviously, if the pricing – ja the memo is significant in the sense that it requests an increase in ETC from the Board, so ja.

ADV MYBURGH SC: And was that your own memorandum?

MR LAHER: No, it wasn't my memorandum, the
10 memorandum – it started at the Transnet Group Capital Department, it's part of a standard process. The normal process in requesting an ETC, there's a department that deals with it, it's called the Transnet Capital Department, they deal with all the approvals required for a request in the ETC and it would go through the normal approval channels. The normal approval channels would be to go through Investment Committee etcetera, etcetera. They prepared the draft memorandum so I received the draft memorandum from the Transnet Group Capital Department
20 first then I was asked to update or insert edits to that memorandum that I'd received and also obtain information from other parties. So, I got information from Mr Callard, specifically for the NPV and whoever else needed to buy inputs into that memorandum. The bulk of the memorandum was Mr Singh basically, saying what goes

into the memorandum. The inputs I provided was the walk forward part which we will come to in the particular memorandum where I did the calculation of the walk forward from R34million to the R44million.

ADV MYBURGH SC: Right, do you have anything else to say in answer to Mr Callard's paragraph 64?

MR LAHER: So, in terms of 64 I cannot be held responsible for the price where it was not my accountability and also, I was not involved I never made the decision.
10 So, it's completely wrong where he's trying to hold me accountable for something, I cannot be held responsible for.

ADV MYBURGH SC: Alright, then at paragraph 36 you have a lengthy paragraph which culminates then in an answer to Mr Callard's paragraph 67, can you deal with paragraph 36 please.

MR LAHER: Sure, so Chair, this is the issue Mr Callard raised about why was the yen rate used to do the walk forward of the pricing as well as an explanation of what a
20 walk forward is. So, here are two things, I'll go through an explanation of what a walk forward is in terms of the definition of a walk forward because when Mr Callard was presenting he was presenting the definition of a projection not a walk forward. There's a difference between a walk forward and projection. If I can explain, a walk forward

starts with two givens. You have the first given which is the price of R34million which was in the memorandum we referred to earlier and we can go back, and I've highlighted it in the memorandum. It is the final price that was agreed to of R44million, those are two givens *fait accompli*, you cannot change those. That was presented to the Board and signed off, this is what was contracted for. A walk forward would then say, okay you've got R34million, you've got R44million how do you get from R34million to
10 R44million, that's a walk forward. A projection is you have a starting point and then you need to project into the future into what it's going to be, we don't know what the future outcome is. This is, you already know what the future outcome is because you've been given the final number. So that's the difference between a walk forward and a projection, I think that was the confusion whilst he was presenting.

The second thing around, specifically, the walk forward, so the walk forward would entail taking the
20 R34million and walking it forward to the R44million. It would entail taking the elements that make it up, so for example, the elements that would make up R34million to the R44million, similar to what I've presented earlier in my own calculation would be the escalation cost, the hedging cost, the variations etcetera, etcetera. I would take each

of those elements and I would walk it forward from R34million to R44million. The reason why the yen rate was used – and let me just go a bit more slower, through the process, in my statement then I'll come to the reason why the yen rate was used. So, Mr Singh asked me to prepare that walk forward from the business case price and I explained what the walk forward was about. Mr Singh also then explained the assumptions used in the business case. Chair, the reason why I point that out is because I was not
10 involved in the business case. So, I don't know what the assumptions were, I don't know how they go to that number, I came cold because I was given this right at the end to say, here's the business case number, now do the walk forwards.

So he told me what the assumptions were, he told me how they got to the business case price and he asked me to walk forward the price for the business case through to the information – based on the information that CSR provided through to the final R44million.

20 The method that he asked me to do the re-baselining or the walk forward was not unreasonable, it's a normal financial way of doing things. He explained to me the assumptions, also, the assumptions that were used in the business case. So, for example the assumption used in the business case was a yen/rand rate of .098823 and

that's, as I said fair to the company, it's in the business case, it's written it's not something you cannot change. So, he explained to me, this, in the business case and pointed it out to me in the actual wording of the business case. He also explained to me that the business case was basically yen and that the price must really be escalated in yen because the business case is based in yen. That's not unreasonable as well, it's normal financial principles. You're given something, you work with what you're given

10 you don't make assumptions to change it because that exposes the calculation to unnecessary complication and risk of miscalculation.

Then, whilst he was pointing all of this out to me, I asked him the question, surely there's more than one currency involved, his response to me was, no the business case was based on yen therefore do the calculations based on the yen rate. Accordingly, I complied and did the walk forward calculation based on the yen rate.

20 So, from that perspective, I think Mr Callard, when he presented his evidence, he didn't understand how to do it financially, he didn't – well I'm putting words in his mouth but my view is he didn't understand how did the financial walk forward and there's a difference between a walk forward and a projection. Chair, if you allow me, maybe I

can put it in simpler terms because he was saying why not use the dollar it's a Chinese company why are you using the yen? My response to that is, I don't know why they used the yen rate in their business case I wasn't there, I wasn't involved in the business case, that was done way before I got involved. So, that question must be asked of the people that put the business case together.

The second question is, okay, even if that's the case then why did you continue to use the yen and I'm
10 saying it's not unreasonable to use the yen because that's how you would do it when you are given a *fait accompli*, you're given something, you can't change it. If I can give you a simple example, if Johnny is asked to – or you're told, Johnny ran a race, Johnny ran the race, it started at 10am it finished at 11am and the race was 10km long. You are asked to calculate a speed that Johnny travelled at. Because you're given kilometres and you're given time, your answer is going to be kilometres per hour. Now if you are told the race is meant to be in Johannesburg but
20 Johnny eventually ran the race in England, where they use miles per hour, why would you change your calculation, your answer is still in kilometres per hour. If you had to do it in miles per hour – because that was the brief, the brief was, give me the answer in kilometres per hour. If the brief was given in miles per hour, then you would go and try and

do a recalculation but obviously doing a recalculation you convert kilometres to miles which then complicates the whole transaction.

So, always stick to the brief and do the calculation with the inputs that you are given. There's no need to go and complicate the calculation by using another currency and doing a cross-currency conversion because you're not going to get the correct answer and for me this is a reasonable basis of doing it.

10 **ADV MYBURGH SC:** So, what Mr Callard said at 67 in the second part is that this was most unusual as the Japanese Yen would be associated with Mitsui the Japanese company and not CSR, the Chinese company, you've answered that.

MR LAHER: Yes.

ADV MYBURGH SC: And then it says further,

“The cash flow spreadsheet reflects US Dollar for CSR”.

MR LAHER: Yes.

20 **ADV MYBURGH SC:** And he says,

“From the ownership of these documents and spreadsheets, Singh and Laher should talk to this anomaly.

MR LAHER: Yes.

ADV MYBURGH SC: What do you say about the fact that

the cash flow worksheets reflect US Dollar for CSR?

MR LAHER: So, the cash flow worksheets are based on what was finally agreed to with CSR. So that's post negotiation, remember the business case is pre-negotiation it's something that is *fait accompli* it's given to you already in yen. Cash flow is now after you've already negotiated, and these are the cash flows for the locos that CSR are going to deliver. When CSR provide the cash flow they give it to you in US Dollars and that's why you have a US
10 Dollar cash flow and then the business case is in yen. As I said, I can't answer as to why it was in yen but that's what was given to me. Correctly, if it was done properly, whoever created the business case should have said we're contracting with a Chinese company, it should be in yen or in dollars but this was not done, so you can't go and change what's already on a piece of paper, signed off by the Board, it's there already.

ADV MYBURGH SC: Alright and then you – at the end of paragraph 42, at page – sorry at paragraph 42 at page 512
20 you deal with paragraph 60 and that's the upfront payments. You want to move towards that, is there anything else that you want to deal with, you've dealt with paragraph 36, you've provided your explanation or your answer, as far as you're concerned to Mr Callard's paragraph 67, do you need to deal with 37 and 38 or can

one go to the heading, “Advanced payments”?.

MR LAHER: We can move on.

ADV MYBURGH SC: Alright, so, let’s go to the heading, “Advance payments”, at page 512 which culminates in the statement that you make at paragraph 42, do you want to deal with that please?

MR LAHER: Yes Chair. Chair, so if you move on to paragraph 39, so I’ll deal with the paragraphs 141 to 152 as well because what Mr Callard raises in paragraph 60, he
10 raises as well under 1064 paragraph 141 to 152 even though he doesn’t implicate me in the paragraph 141 to 152 and I just want to provide further input on – with regard to the advanced payments.

So, it’s common knowledge that the management of Transnet’s long-term and short-term funding and cash flow is a function of the Transnet Treasurer and the Transnet Treasurer reported into the GCFO, at that point was Mr Singh, I can’t recall who was the Transnet Treasurer at that point in time. Also, I was not involved in the management
20 of Transnet’s cash or funding, during the 1064 and the 100 locomotive transaction, Mr Singh who was, effectively in charge of the Treasury Department told the negotiating team that Transnet had the funding available and that the advanced payments were affordable to Transnet.

I did not have the delegation to accept the

advanced payments proposals from bidders. The sub-committee or the steering committee accepted the advanced payment terms, and they accepted the pricing of the locomotives. I agree, the quantum of the advanced payments would put a stain on Transnet's funding and cash position. Should the real volumes, as envisaged in the marketing strategy not materialise. So, in conclusion, I don't know why Mr Callard is directing that question at me because I was never accountable for Treasury function.

10 There is a Treasurer that deals with it and its part of the negotiating, Mr Smit was the representative as well. Mr Singh was the overall accountability for the Treasury function and the overall accountability for Transnet's cash flow position. So, he would be accountable, and he needs to answer that type of question.

ADV MYBURGH SC: Now this advanced payment guarantee, was that something dealt with in the memorandum that you had prepared on behalf of Mr Singh?

MR LAHER: I can't recall.

20 **ADV MYBURGH SC:** Is it part of the contract or is an advanced payment guarantee is that something that comes afterwards, is it a separate negotiation?

MR LAHER: So, the guarantee is a document which the bidders would sign to say, we guarantee the advance payment, normally a bank would issue the advance

payment and guarantee. The advance payments which Mr Callard refers to is the actual payment that was made. So, you know, rands or dollars paid to the suppliers and those payments would be made before delivery of the locomotives.

ADV MYBURGH SC: Mr Callard says, at paragraph 60 that he was shocked and astounded to note that the advanced payment guarantee for CSR 100 was 30%, what is your simple answer to that?

10 **MR LAHER:** Mr Singh said they were affordable and that Transnet had funding to – to afford those advanced payments firstly and secondly the advanced payments were agreed to as part of the package deal if I can call it by the steering committee.

So when Mr Singh told us at the steering committee accepted the price of R44 million they accepted – he also said they accepted the price of R44 million with the advanced payments that go with it.

20 So those are decisions that were made at that level in terms of the – the advanced payments.

ADV MYBURGH: So were you involved in making this decision?

MR LAHER: No not at all.

ADV MYBURGH: Now Mr Callard at paragraph 60 this stems from the fact that he and some colleagues received an email

from you with spread sheets of the final cash flow.

MR LAHER: Yes.

ADV MYBURGH: So he gets this from the spread sheets of final cash flow.

MR LAHER: Yes.

ADV MYBURGH: Just address that issue – did you populate those spread sheets?

MR LAHER: So with regard to the cash flow spread sheets we would have received cash flows from the bidders but Mr
10 Danie was also involved with the populated cash flow spread sheets whilst we were busy with the negotiations. And he needed those in order to work out what the cost of the foreign exchange hedging would be. So he would have populated those spread sheets for the cash flows.

And in some case maybe I would have helped him populate the spread sheet and the population would have been done based on what the bidders submitted to us saying these are the cash flows.

ADV MYBURGH: So let us then move on. So those are the
20 three paragraphs 60, 64 and 67 relating to the 100 electric locomotives. You have explained to me during consultation that you can actually a line above the heading 17 March negotiations spread sheet at the foot of 512.

MR LAHER: Correct.

ADV MYBURGH: Because from here onwards you now

dealing with the 1064 locomotives.

MR LAHER: Correct.

ADV MYBURGH: Whereas previously you have been dealing with the 100 electric motor – locomotives. You say:

“At paragraph 43 at the foot of 512 that in the paragraphs that follow I deal with paragraphs 206 to 215 of Callard’s statement.”

Now we know that paragraph 211 then falls in
10 between that. And 211 you will recall deals with your excel spread sheets of 17 March. This is different from the cash flow spread sheets. These are your excel spread sheets of 17 March relating to the 1064 negotiations. He says you were the author. He says the information contained in – he finds it difficult to believe that it is true and correct and also there is then a criticism of you not sharing this information in time.

So this section then deals head on with the March 17 negotiations spread sheets. And if you turn forward to page
20 512 you will see that at paragraph 49 you actually then address paragraph 211. And further on in your statement at page 515 at the foot you start dealing with paragraph 208. 56 you deal with 208.1 that is where he questions the accuracy of the information. 57 you deal with 208.2. 58 – 208.3 and so you go on all the way to 62.

MR LAHER: Yes.

ADV MYBURGH: Where you deal with 208.7 and then you come back to paragraph 211 and then over the page at 64 you deal with 211.1 and we can then stop above paragraph 85. Is that correct?

MR LAHER: Yes.

ADV MYBURGH: So what then remains for you to do is to essentially take the Chairperson through paragraphs 43 to 64 dealing with this – this issue.

10 **MR LAHER:** Sure. Thank you. Chair if I can move to paragraph 44 on page 513. So the explanation I think there is a lot of context in that background at Supply Chain.

ADV MYBURGH: So you moving to what paragraph?

MR LAHER: 44.

ADV MYBURGH: Yes.

ADV MYBURGH: A lot of explanation and background which with regard to the spread sheets that needs to be provided. So firstly there is two spread sheets. There is one for diesel and there is one for electric.

20 The second part to understand is these spread sheets were created over a period of time. So within a spread sheet if you understand a spread sheet there are tabs at the bottom which we call work sheets. So within the spread sheet for diesel and electric they will need tabs at the bottom of the spread sheet.

And those tabs if I can name them one would call – one would be called base cost, one would be called base cost excluding TE. Another one will be called negotiations and each of them had different calculations within them.

So let us start with the tab marked base cost. So to understand – oh sorry before you even get to the – to the tab marked base cost. Understand there were many spread sheets prepared. So even though there are two which are dated 17 March prior to the two dated 17 March there are
10 many spread sheets before that.

So whilst the negotiations were on-going we prepared spread sheets as and when pricing – new pricing came in. So for example and I know there is an annexure for that I think it is Annexure YL26 where I give you a view of the numerous number of spread sheets which were prepared over a period of the evaluation and negotiations.

I do not know Chair if you want to go to YL26 now or should we come back to it?

ADV MYBURGH: We will come back to that.

20 **MR LAHER:** Okay. So – so understand there is many spread sheets firstly. Secondly within the spread sheets there is a number of tabs. If I explain further if you look at the tabs within the spread sheet a tab marked base cost that is – that tab's spread sheet or work sheet was prepared during the evaluation phase. So that was prepared in

November 2013 where there were six people evaluating.

Each of those six people had access to that tab. And each of those six people would capture information within the tab.

The information that is captured within the spread sheet comes from bidder submissions. It is not something we cal – it is not something we would pluck from the sky. There would be documentation and that is again attached in my Annexure YL27 where I provide the evidence of the
10 bidder documentation that correlates to the numbers in the spread sheets.

So I know it sounds a bit complicated but very simply a number of spread sheets, tabs within the spread sheet. The base cost tab was prepared during evaluations The base cost excluding TE tab was prepared during the evaluations. Then the tab marked negotiations was prepared during the negotiations. The tab marked negotiations there were many spread sheets that were prepared for that.

The spread sheet Mr Callard refers to are the final
20 spread sheets that were finalised on the 17 March. So just to give you some background behind it.

Chair I think I have dealt with 44 and 45.

ADV MYBURGH: Just before you move on you wanted to take the Chairperson to YL26. That you found at page 565.

MR LAHER: Chair on page 565 that is a screen shot of the

spread sheets that were created during the – during the tender. And you will notice there are a number of spread sheets there. This is only one of the – a section of the portion of the hard drive that contained these spread sheets.

So if you note there is – so 1, 2, 3, 4, 5 down there is a file called Negotiation Diesels 5 March. Then there is another file called Negotiation Diesels 10 March. Then there is another file Negotiation Diesels 12 March. Then there is another one Negotiation Diesel 17 March that would be the
10 final one. Also there is another one called Negotiation Diesels 18 February and 27 February.

So we created these spread sheets as and when we were getting new pricing proposals from the bidders. And these spread sheets were effectively a recordal of what the bidders were giving us in terms of the pricing whilst the negotiations were going on.

Thanks Chair that is YL26.

ADV MYBURGH: And you have told the Chairperson if one goes back to page 513 at paragraph 46 that these spread
20 sheets referred to by Mr Callard the March 17 spread sheets were then the final version of them.

MR LAHER: Correct ja they were the final version of these spread sheets. I think I have explained paragraph 47 Chair.

ADV MYBURGH: Can I take you to 48 and ask you. Who was responsible then for populating and keeping these

spread sheets?

MR LAHER: Okay. So we start with the evaluations. There were six people responsible for populating the – that spread sheet. Do you want me to name them or is it fine?

CHAIRPERSON: Ja.

MR LAHER: Okay so the members of the team the cross-functional evaluation team finance evaluations were Mr Muller, Mr Valli, Mr Traletsi, Mr Danie Smit, Mr Thabo Siaphi and myself.

10 So we in total we would have populated the sheets. Any one of us had access and any one of us would have populated those sheets within the spread sheet.

 That relates to the sheets we populated doing the evaluations i.e. the sheets marked base costs and base costs TE. Continuing for the sheet marked negotiations there were two of us involved myself and Mr Danie Smit and either one of us could have populated the information into those sheets.

20 Chair on paragraph 49 to also understand that the master version of these spread sheets were stored on a master computer and that master computer was kept by Ms Mdletshe. We did not have the password to that master computer. They would log - a Supply Chain Services would log us in at the start of the day and they would log us out at the end of the day.

So it is clear Chair in response to Mr Callard's statement in paragraph 2.1 that I was the primary author is completely wrong. I was not the primary author I was one of the authors from a team of six in evaluations and a team of two in the negotiations.

ADV MYBURGH: So I understand this term author. From what you have explained it does not seem that there was any author it was more a data capturer function, is that correct?

MR LAHER: Correct 100%. And when I go through YL 27 I
10 will explain – but I will explain that portion.

ADV MYBURGH: Yes please carry on.

MR LAHER: So now we are at paragraph 50 Chair. So as I was saying the information that is captured on these spread sheets were obtained directly from bidder submissions. That was not something we plucked from the sky and I will show you the evidence in – when we get to Annexure YL27 in terms of where the information comes from.

Paragraph 51 deals with the same thing I said earlier in terms of the information on the negotiation work sheet
20 were also obtained from bidder submissions and when I get to – I take you through YL27 I also show you how the information correlates to the information from the bidders.

I think paragraph 52 is important Chair in that it is not the spread sheets that determine the final price. The spread sheets were the recordal. At the determination of the

final price was based on the outcome of the negotiation process in terms of what was approved or what was accepted by the sub-committee of the steering committee for the locomotives.

So Mr Callard had it incorrect when he talks about the spread sheets determining the final price. They did not determine the final price. It was merely a recordal of what was given to us during the negotiations to keep track. And the recordal was to keep track. So you have to keep track
10 daily of what is happening. So we recorded so we can even manage what is being provided for us over a period of time.

ADV MYBURGH: Alright so in paragraph 50, 51 and 52 you refer to the series of annexures they starting with 27. You mentioned 27, 28, 29 and 30 in all three of those paragraphs, correct?

MR LAHER: Yes correct.

ADV MYBURGH: Can I ask you and I – I understand this is what you wish to do. By way of example go to Annexure YL27. That you found at page 567.

20 **MR LAHER:** I am ready.

ADV MYBURGH: Yes please go ahead.

MR LAHER: Chair if you look at paragraph – oh page 567 you will notice bidder 1 Bombardier is the bidder we specifically referring to here which is the first column on the – or the third column from the left. It says: Bidder 1

Bombardier un-escalated. You will notice that this was prepared during the evaluations and if I take you then with your finger still on page 567 because this is a spread sheet Mr Callard refers to where he says that the numbers are incorrect. With your finger on page 567 to move to page 578. Chair as background you will notice and sorry to be running you around like this on all the pages. There is a number of pages here. The..

CHAIRPERSON: This is hardly legible he? At 578 except
10 for the numbers on the right. The middle column.

MR LAHER: Yes. So let me start at page 569 to give context.

CHAIRPERSON: 569?

MR LAHER: Ja. So on page 569 you will notice Chair this is a submission from Bombardier dated 21 November 2013 to Transnet. This was the submission from Bombardier as part of the tender evaluation process.

So they would have submitted this document and we would have evaluated this document. This was the document
20 we used for the evaluations.

As we move on through the pages they submitted many items in this document and page 570, 571, 572 are just responses to clarification questions we asked specifically to Bombardier.

If we move on right through to page 578. Page 578

was the original documentation that was received from Bombardier as part of their tender submission.

So I want to show you how the numbers correlate. So these – just to prove that these numbers are not made up. The first number you see on the top there in Row number 1 on page 578. 28788150. That number correlates exactly to page 567 under Row number 1 base price as per technical specifications. 28788150. The next line, line 2 engineering support costs ties up exactly 619100. The next line special
10 tooling 3762 ties up exactly 3762. You will note that the fourth line which is 491240 on page 578 does not correlate exactly to line 4 474880 and for that there is a specific note in terms of why that number does not correlate. And I will take you to that calculation. I must just try and find it in this batch Chair. Oh so if you looked at page 568 Note number 1.1 this is the – this is the actual spread sheet we used. This is part of what the evaluation team wrote – this is with the notes for my workings. The note says?

20 “The capital spares were reflected as
491240”

Which is the number you see on page 578.

“This included both schedule A and schedule B spares. Schedule B was removed and price changed to 474880.”

We had to remove Schedule B because Schedule B was not

meant to be part of the spares for these locomotives. And that is how we got to the number of 474880.

Continuing Chair you will notice that the remaining numbers should tie up 45302 it ties up. 12382 and it ties up. 27405 ties up. And then 309550 ties up.

You will notice that on the original bid Bombardier did quote for hedging costs but the evaluations were not done with hedging so we just exclude it from here.

The option realignment was – is captured on
10 Annexure YL35 and there was a specific calculation in terms of how to realign the options but I am not going to go through that detail.

With regard to the exchange rates that you see quoted there. So you will note on Bombardier's proposal they quote an exchange rate of – or the number that we calculated on the top there 32722350 on page 567.

CHAIRPERSON: Yes.

MR LAHER: That is the – ja. That number if you multiply that by the declared import percentage of 30.2% which is
20 further down the page then you divide that by the exchange rate as provided in the declared import percentage you get to Euro 979069 this was a calculation done by the evaluation team at that point in time.

So that is your – basically the numbers on the base cost sheet come out. Mr Callard also then refers to another

sheet. Now I am going to move on to show you where the remaining numbers come from.

Chair if we can go to page 579 then. Sorry Chair still with your finger on page 567.

CHAIRPERSON: Yes.

MR LAHER: You will note that this spread sheet or this work sheet is base cost excluding TE. This was also put together during the evaluations by the team of six and these numbers again correlate exactly to what I would have showed you
10 earlier and the only difference is when we did the second sheet which is cost – or base cost excluding TE we would have excluded the cost of TE based on the decision taken by Supply Chain Services there for us to do the evaluation excluding TE – the point I mentioned earlier on.

So if you look at the letter from Bombardier which in on page 584. You will note the letter dated 4 December 2013 and specifically towards the bottom of the letter under point 1 where we asked – where Transnet asked Bombardier, what would the impact – what would the rand be impact on
20 your price per locomotive [00:21:58] if you did not use TE as a local subcontractor for 599 Koko but used an alternative local private sector subcontractor and you note they quoted a figure of 1905514.

So what your figure – with your finger still on the original page 567 you would note that the number there was

32722350 right on top there – the first line. That will then correlate if you go to page 579 there is a note on the right hand side in handwriting which is called C.

CHAIRPERSON: Yes.

MR LAHER: So if you look at the note it is called C 32722350 correlates minus the 1905514 which is the number that was quoted by Bombardier in the letter I just showed you now and that equals a number of 30866836 which is the number on this sheet which correlates the number 30866836.

10 Again proving that these numbers all come from somewhere. They are not made up and – there is science behind it. And it comes from – it is the recordal of what has been given to us.

ADV MYBURGH: Right I – Mr Laher I would like to move on if I may? It might have been that you could have presented this evidence in a slightly clearer way. The Chairperson might very well ask you for a schedule now.

MR LAHER: Ja.

20 **ADV MYBURGH:** Where you put out the figures and then you cross-refer for us where you find it. Are you able to do that?

MR LAHER: I can do that.

ADV MYBURGH: So that we do not need to jump around from one document to the other. I am going to afterwards ask you to provide us with that schedule. But the long and

the short of your evidence is that there was no manipulation – this was a data capture exercise and the figures were taken from original documents.

MR LAHER: Correct.

ADV MYBURGH: Proposals made by the bidders.

MR LAHER: Correct 100%.

ADV MYBURGH: That is what you are saying?

MR LAHER: Correct.

ADV MYBURGH: And let us then go please to page 514
10 paragraph 52 you have dealt with that. Is there a need to –
to deal with anything else before we get to paragraph 208?
Paragraph 53 is something which I know is featured in other
of your affidavits. Is it something you want to reiterate?

MR LAHER: I think it is important Chair I would like to
reiterate ...

ADV MYBURGH: Yes please go ahead.

MR LAHER: Just to overall the impression I gained during
the negotiations was that the co-chairpersons Mr Singh and
Mr Jiyane were very much focussed on the overall price
20 whereas Mr Smit and I were very detailed [00:25:02] were
more focussed on the detail pricing. So items like
escalation, batch pricing etcetera they were not very
focussed on those.

So even though a detailed elements may have been
spoken about at various times during the negotiations it was

not their main focus. The effect of this was that as much as these components were self-standing components of the negotiations in the end it was the overall price that the chairpersons focussed on. And then the sub-committee made the decision on the final – final pricing.

My – my view I would have preferred if we focussed on the details so that we could you know debate those properly but that was not their focus.

ADV MYBURGH: Can we then move to paragraph 56.

10 **CHAIRPERSON:** Yes please.

ADV MYBURGH: So I have already explained to you that Mr Callard's paragraph 308 must be read together with 211. Because in 208 he really in effect queries various of the figures and information contained in the spread sheets. And he does that over the space of seven sub-paragraphs.

From paragraph 56 to 62 you address those seven sub-paragraphs. Now it seems to me that ultimately your answer is the same for all of them. Is that correct?

MR LAHER: Correct.

20 **ADV MYBURGH:** And what is that? So if Mr Callard says well here is a potential query or an inaccuracy in relation to A, B, C, D? What is your answer – your overall answer?

MR LAHER: The overall answer Chair is you have seen from the evidence I prepared is that the spread sheets were a recordal of information we received from bidders. There was

no manipulation of the numbers within the spread sheet. I think the principle point is the pricing was not determined by a spread sheet. The pricing was determined by the negotiation process and what was agreed to by the – by the steering committee. Now – and it is not the spread sheet that you should picking on you should be – it is throwing stones in the wrong direction in other words.

Yes there might have been issues with the pricing and yes I also raised similar issues as I explained earlier. I raised issues about escalations. I raised issues about the batch pricing. So my view is Mr Callard may have a point yes which is the same points I raised with my superiors. I voiced my concerns. But it is not the spread sheets that are the problem. The spread sheets were just a recordal. So again he is throwing stones in the wrong direction.

ADV MYBURGH: So at 56 you say:

“With reference to paragraph 208.1 of Callard’s statement” And there he was raising the issue of cost escalation. You say:

20 “The cost escalations as captured in the spread sheet were obtained directly from the bidder submission.”

MR LAHER: Correct.

ADV MYBURGH: And then four lines if you go – page 516 four lines from the end of that paragraph you say:

“To the extent that Mr Callard is insinuating that the escalations were inflated I never inflated any escalations I simply recorded the breakdown etcetera.”

MR LAHER: Yes.

ADV MYBURGH: And paragraph 57 then deals with 208.2 this time a query about foreign exchange component and you essentially make the same point and you rebuff the insinuation.

10 **MR LAHER:** Correct.

ADV MYBURGH: Paragraph 58 deals with the costs of reduced batch sizes. You make the same point and you then contest the insinuation.

MR LAHER: Correct. Chair with the background that I did also raise the same issues during the negotiations with my superiors.

ADV MYBURGH: And 59 and 208.4 deals with the local content requirement and so you explain that and you contest the – or you deny the insinuation.

20 **MR LAHER:** Correct.

ADV MYBURGH: 208.5 deals with the side bar calculation. Essentially your evidence is the same.

MR LAHER: Yes.

ADV MYBURGH: 208.6 deals with negotiation price recon. Your evidence is the same.

MR LAHER: Ja.

ADV MYBURGH: And 208.7 re negotiation work sheet.

MR LAHER: Yes.

ADV MYBURGH: You deal with that and you dispute the insinuation.

MR LAHER: Correct.

ADV MYBURGH: Then at paragraph 63 you say that – or perhaps I can ask you to deal with it.

MR LAHER: So paragraph 63 Chair deals with again the
10 insinuation that I was the primary author. And as I have mentioned earlier there were two of us involved in the negotiations from a finance perspective and six in the evaluations. So again I deny that I was the primary author. I was one of six and one of two.

ADV MYBURGH: And then finally this is the last paragraph that you say you want to deal with and I would like to get it done before lunch so that you could be released. Paragraph 64 deals with Mr Callard's 211.1 where he says that you were not forthcoming with information. Would you deal with
20 that please?

MR LAHER: Sure. So on paragraph 64 Chair and I am – with regard to Mr Callard's insinuation that I deliberately and without just cause withheld information from him. I think it is important to understand that firstly as part of a normal tender process within Transnet the rules are you sign a

confidentially – confidential agreement.

The rules are and it is part of a standard tender process you do not provide any information around that tender to anybody that has not received express permission to get that information.

Unless that person has also signed a confidentiality agreement. At that point in time when I was dealing with Mr Callard which was in 2018 I was just following the rules in terms of standard Transnet confidentiality rules. I signed the
10 agreement. If I did give him any information which is confidential information to Transnet I could be held to account.

So that is the first reason I could not give it to him. The second reason I could not give it to him is because I did not have it. How can I give him something I did not have?

I did not have the evaluation reports at that point in time. You will note in my evidence I asked for the information in June 2018 which is six months after that and I only received it then in June 2018.

20 So Chair I mean that is my response. I mean I told him I cannot give you confidential information and you need to ask for it through the right channels.

Eventually he got it through the right channels. And in the evidence I lead and I think it is YL34 I even provide an example of where we asked for the information from Supply

Chain Services.

ADV MYBURGH: Alright and as I understand it you did not want to deal with anything further after the end of paragraph 64?

MR LAHER: Ja.

ADV MYBURGH: Mr Chairman with your leave could Mr Laher be released and then return tomorrow at ten o'clock so as to afford him an opportunity to study the evidence given by Mr Callard in reply to his Rule 3.4 statement? There is of course a transcription of that and I will then ask him questions in relation to that tomorrow morning at ten o'clock.

CHAIRPERSON: Okay no that is fine. So you will be released Mr Laher and then come back tomorrow at ten o'clock to deal with the rest of the issues.

MR LAHER: Thank you Chair.

CHAIRPERSON: Thank you very much for coming.

MR LAHER: Thank you Chair.

CHAIRPERSON: You are excused. Mr Myburgh what is the situation after lunch?

ADV MYBURGH: Well the situation is that we do have Mr Callard on standby.

CHAIRPERSON: Yes.

ADV MYBURGH: I have raised with you Mr Chairperson whether you wish to hear from Mr Callard or simply to admit his affidavit. You will recall that Mr Callard has frequented

this commission on more than one occasion.

CHAIRPERSON: Yes. Yes.

ADV MYBURGH: He puts evidence about two things.

CHAIRPERSON: Ja.

ADV MYBURGH: The one is the video and transcription that Mr Laher has already dealt with.

CHAIRPERSON: Yes.

ADV MYBURGH: The rest of his new evidence relates to what he describes as the Regiments price walk.

10 **CHAIRPERSON:** Yes.

ADV MYBURGH: That – that is all he will testify about.

CHAIRPERSON: Ja.

ADV MYBURGH: If you allow that and it apparently as I understand it he will not be more than an hour.

CHAIRPERSON: Yes.

ADV MYBURGH: We could fit him in tomorrow if that is more convenient for you.

CHAIRPERSON: Well if you are inclined that it should be enough to admit his affidavit I would be inclined towards the
20 same thing. Because as you say he has given evidence quite a few times.

ADV MYBURGH: Yes.

CHAIRPERSON: And of course if anything later arises that we did not foresee we can always be in touch with him.

ADV MYBURGH: Would it then be necessary for you to

admit it – it is part of our – our bundle or what does your – what is the...

CHAIRPERSON: My – I am sure it can be admitted as part of one of these bundles if that is – that is convenient but ja I think there should be no problem [talking over one another].

ADV MYBURGH: It is – yes it is Bundle 4[b] Chairperson. It is the second last tag.

CHAIRPERSON: Yes.

ADV MYBURGH: Exhibit BB4[h].

10 **CHAIRPERSON:** Yes I have got it.

ADV MYBURGH: And you will see that it is a short affidavit. There are some annexures.

CHAIRPERSON: Yes.

ADV MYBURGH: It was signed by Mr Callard on the 14th day of September. If your – the Chairperson requires us we could call Mr Callard simply to confirm that this is his affidavit.

CHAIRPERSON: Ja.

ADV MYBURGH: And then it could be formally admitted.

20 **CHAIRPERSON:** Ja let us do that. You are excused Mr Laher. You are excused.

ADV MYBURGH: I know I might be getting ahead of myself I do not know if he is here. I know he is coming here at two o'clock I am not sure if he is still here.

CHAIRPERSON: Oh okay maybe then we can adjourn and

then come back at two.

ADV MYBURGH: And deal with it on that basis.

CHAIRPERSON: And deal with it on that basis.

ADV MYBURGH: Thank you Chairperson.

CHAIRPERSON: Okay alright. We will adjourn for lunch and resume at five past two. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

10 **INQUIRY RESUMES**

CHAIRPERSON: I forgot that I had said we would resume at five past two, so I was ready at two o'clock but somebody reminded me. Okay are we ready?

ADV MYBURGH: Yes we are thank you.

CHAIRPERSON: Yes, okay.

ADV MYBURGH SC: Chairperson this is Mr Francis Callard who has testified before you on a few occasions.

CHAIRPERSON: Good afternoon, Mr Callard.

MR CALLARD: [Microphone not working]

20 **CHAIRPERSON:** Yes. Thank you for coming back.

MR CALLARD: Thank you very much.

CHAIRPERSON: Thank you. H'm?

ADV MYBURGH SC: Mr Callard, could I ask you to turn to the second last tab of 54B? Mr Chairperson, I do not know if you... if it is necessary for Mr Callard to take the oath?

CHAIRPERSON: Oh, yes. Let him... ja, let us do that.

REGISTRAR: Please your full names for the record.

MR CALLARD: Francis Quinton Callard.

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

MR CALLARD: No.

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

MR CALLARD: I do.

10 **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 up your right hand and say, so help me God.

MR CALLARD: So help me God.

FRANCIS QUINTON CALLARD: (d.s.s.)

CHAIRPERSON: Thank you. You may be seated.

ADV MYBURGH SC: Thank you, Chairperson. Mr Callard, would you go to the second last tab of Bundle 4B, please?

MR CALLARD: I have that. BB4(h).

20 **ADV MYBURGH SC**: So can you then turn please to page 795?

MR CALLARD: 795.

ADV MYBURGH SC: It is document headed: Fourth Supplementary Statement. Is that the statement of yours?

MR CALLARD: It is.

ADV MYBURGH SC: Could I ask you please to turn forward to page 802?

MR CALLARD: 802. Sorry. I am there.

ADV MYBURGH SC: Did you sign the statement under oath on the 14th day of September this year?

MR CALLARD: I did.

ADV MYBURGH SC: And attached to your statement is a series of annexures. They are set out and listed at page 803 to 804. And those annexures then run from 805 all the way
10 to 920. Would you confirm that?

MR CALLARD: I do.

ADV MYBURGH SC: Mr Chairperson, with your leave. I would ask that Mr Callard's fourth supplementary statement commencing at page 795 be admitted as Exhibit BB4(h).

CHAIRPERSON: Thank you. And for the sake of completeness. You confirm Mr Callard that the contents of this fourth supplementary statement are to the best of your recollection true and correct.

MR CALLARD: Sorry, Mr Chair. I...

20 **CHAIRPERSON:** Do you confirm the correctness of the contents of your fourth supplementary statement?

MR CALLARD: I confirm the correctness thereof, yes.

CHAIRPERSON: Yes, okay. Mr Myburgh, it is BB4, F point...?

ADV MYBURGH SC: BB4(h), Chairperson.

CHAIRPERSON: Oh, okay. Only?

ADV MYBURGH SC: Yes.

CHAIRPERSON: Okay alright. The fourth supplementary statement by Mr Francis Quinton Callard, starting at page 795 is admitted as Exhibit BB4(h).

FOURTH SUPPLEMENTARY STATEMENT OF MR FRANCIS QUINTON CALLARD HANDED UP AND MARKED AS EXHIBIT BB4(h)

ADV MYBURGH SC: Thank you, Chairperson.

10 **CHAIRPERSON:** Thank you very much, Mr Callard. I hope we will not need to ask again. [laughing]

MR CALLARD: [laughing]

ADV MYBURGH SC: [laughing]

CHAIRPERSON: You have been coming here for too many times. But if there are compelling reasons, we will ask you but I hope not. But thank you very much.

MR CALLARD: I am always available. Thank you, Chair.

CHAIRPERSON: Thank you. You are excused.

MR CALLARD: Thank you.

20 **CHAIRPERSON:** And then tomorrow Mr Myburgh, we have Mr Laher at ten, who might take how long, do you think?

ADV MYBURGH SC: He will not take long. I do not suspect Mr Chairperson. And after that, the next witness we have is Mr Mhlango who is due on Friday.

CHAIRPERSON: Oh, okay. Okay. Okay alright. Okay we

will then adjourn for the day and we will resume tomorrow at ten. We adjourn.

REGISTRAR: All rise

INQUIRY ADJOURNS TO 22 OCTOBER 2020