

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

22 OCTOBER 2020

DAY 289



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Recording & Transcriptions

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 22 OCTOBER 2020

CHAIRPERSON: Good morning Mr Myburgh, good morning everybody.

ADV MYBURGH: Good morning Chairperson.

CHAIRPERSON: Are we ready?

ADV MYBURGH: Yes we are. Mr Laher is back with us this morning.

CHAIRPERSON: Yes.

ADV MYBURGH: Chairperson.

10 **CHAIRPERSON:** Good morning Mr Laher.

MR LAHER: Morning Chairperson.

CHAIRPERSON: The oath you took yesterday or affirmation will continue to apply today. You understand?

MR LAHER: Thank you.

CHAIRPERSON: Okay alright.

ADV MYBURGH: Good morning Mr Laher.

MR LAHER: Morning.

20 **ADV MYBURGH:** I want to start off by asking you a few general questions. You were a member of the negotiation team in relation to both of the transactions involving the 1064 locomotives and the 100 locomotives. What did you consider your role to be within these negotiating teams?

MR LAHER: Chair my role was a support role. In essence we would provide financial support to the chairpersons during the negotiations. We would keep record of the

pricing as the different pricing updates were received from the bidders over that period of time. We would provide information to the legal team in terms of their contract drafting process and to contribute to the negotiations on financial related aspects. The role did not involve making any decisions. We did not have a delegation to make any decisions.

ADV MYBURGH: Well did you consider yourself simply to be a resource to Mr Singh?

10 **MR LAHER:** Well we were a resource to the negotiating team.

ADV MYBURGH: Did you consider yourself simply to be a resource to Mr Singh?

MR LAHER: I would think so ja.

ADV MYBURGH: You consider that you did not have to exercise any judgment?

MR LAHER: I would have had to exercise some judgment.

ADV MYBURGH: You would have had to exercise judgment?

20 **MR LAHER:** Ja.

ADV MYBURGH: And act in the best interests of your employer?

MR LAHER: Correct – correct.

ADV MYBURGH: You were not just sitting there with your eyes and ears closed?

MR LAHER: No.

ADV MYBURGH: So let us then redefine your role.

MR LAHER: Right.

ADV MYBURGH: What was it?

MR LAHER: So to provide financial support and provide input throughout the negotiation process. I think I have spelt it out in my statement.

ADV MYBURGH: Yes.

MR LAHER: Somewhere.

10 **ADV MYBURGH:** And if you had concerns to raise them.

MR LAHER: Correct.

ADV MYBURGH: So when you say you did not make any decision you were still obliged if you came across something that did not look right to raise the issue?

MR LAHER: Correct.

ADV MYBURGH: Which you did.

MR LAHER: Correct.

20 **ADV MYBURGH:** And you were also under an obligation to ensure that any query that you had was properly satisfied in your mind?

MR LAHER: Correct.

ADV MYBURGH: That was your role?

MR LAHER: Correct ja.

ADV MYBURGH: Did you ever suspect that the award of these two tenders was corrupt in any way?

MR LAHER: At that period of time no. I had no suspicion of anything untoward happening. Maybe it was because we were so involved in the detail. Maybe it was because we were so involved with – under pressure. I mean it was a very pressurising environment we were dealing with multiple issues at the same time. But at that point in time no I had no suspicions.

ADV MYBURGH: Not the slightest suspicion?

MR LAHER: Not that I can recall.

10 **ADV MYBURGH:** Not the slightest suspicion of any irregularities at play?

MR LAHER: Not that I can recall.

ADV MYBURGH: Despite all the queries that you raised?

MR LAHER: Correct. So no suspicions.

ADV MYBURGH: Are you certain about that?

MR LAHER: Yes.

ADV MYBURGH: So for example and we will come to the detail in a moment. You were involved in negotiations where you had done a reasonable miscalculation of R41
20 million.

MR LAHER: Ja.

ADV MYBURGH: You go into the negotiations and offer is made of below that – three days later you told Mr Molefe has reached an agreement outside of the negotiations at a much increased figure. You did not think that was irregular

in any way?

MR LAHER: I questioned it as I gave evidence yesterday. I did question it with Mr Singh. So I did the calculation. My calculation...

ADV MYBURGH: Mr Laher please answer my question? Did you think that was irregular or not?

MR LAHER: No.

ADV MYBURGH: Not?

MR LAHER: I received an adequate response from Mr
10 Singh.

ADV MYBURGH: Well in fact you did not even ask him. We will come to your statement in a moment. You did not ask him about that issue. About the fact that Mr Molefe had done a deal outside of the negotiating team.

MR LAHER: Well Mr Molefe was part of the steering committee and they were the ones making the decisions.

ADV MYBURGH: Yes. But you did not question that?

MR LAHER: Well I questioned why the price was higher than the price I calculated which is what is in my
20 statement. And that question was asked to Mr Singh and Mr Singh provided an adequate response to me at that point in time.

ADV MYBURGH: Well we will come to your statement. Now with the benefit of hindsight what is your view on irregularities?

MR LAHER: So from what I have heard and what I have seen in the media and what I have seen happening at the commission I mean there have been witnesses that have said some startling things and obviously with that evidence a mind it does seem like there was something untoward happening in the background.

ADV MYBURGH: You do not think you could have done more Mr Laher?

MR LAHER: I think I did the best that I could at that point
10 in time. I raised a number of issues as per the evidence I gave yesterday. I raised the issues through emails. I raised the issues through the reports that I submitted. I raised the issues verbally. I raised the issues with bidders directly. I raised the issues with my principle who was Mr Singh. I raised the issues with many people in the same room not only Mr Singh. So when I raised the issues Transnet internal audit were there. When I raised the – the written issues I addressed the issues to the CFET through to the board and Transnet steering committee. Whist in
20 negotiations people that were in the room when I raised the issues would include the head of legal. The issues I raised around the Durban move including emails sent to the Group Chief Procurement Officer as well as the Head of Legal as well as the Chief Financial Officer of the organisation.

ADV MYBURGH: Could you have done more yes or no?

MR LAHER: I do not think I could have done more.

ADV MYBURGH: So even now reflecting on the position you still believe you could have done no more?

MR LAHER: At that point in time I did as much as I could.

ADV MYBURGH: You could not have been any more vigilant?

MR LAHER: My fear if I was any more vigilant I would have been insubordinate.

10 **ADV MYBURGH:** Yes. But we will come to that. So you stopped short of being more vigilant because you did not want to be insubordinate, is that what you saying?

MR LAHER: No. I am saying...

ADV MYBURGH: That is precisely what you say.

MR LAHER: I said I raised as much as I could.

ADV MYBURGH: Yes. No that is not what you saying. You saying that I did not raise anything more for fear of being insubordinate.

MR LAHER: Ja – so I raised as much as I could.

20 **ADV MYBURGH:** So if you bear with me. It follows from that that perhaps you could have raised more but it was through fear that you did not. Is that as I understand your evidence?

MR LAHER: In my view at that point I raised as much as I could.

CHAIRPERSON: Mr Laher.

MR LAHER: Sorry.

CHAIRPERSON: Just listen to the question carefully. I understood you to be saying you raised as – you raised questions as much as you could without – unless you were going to be insubordinate. In other words you did not want to go beyond a certain point in raising issues.

MR LAHER: Yes.

CHAIRPERSON: Because you thought that going beyond a
10 certain point would be insubordinate, you accept that?

MR LAHER: Correct.

CHAIRPERSON: That is what you mean?

MR LAHER: Correct.

CHAIRPERSON: So My Myburgh do you want to ...

ADV MYBURGH: Yes thank you.

CHAIRPERSON: I hope that has helped?

MR LAHER: And the explanations I received obviously to my satisfaction when I did raise those questions.

ADV MYBURGH: You cannot run those two lines together.
20 So let me from the commission's point of view put my cards on the table. One of things that this commission is going to have to consider in the final analysis is how did all of these procurement irregularities actually happen. And what the commission is going to have to look at is people like you obviously well educated, intelligent people why did

they not report any irregularities? How did it happen? So you are not on trial here. This is not a disciplinary hearing. But I am asking you to take the commission into your confidence and what you need to deal with is this. When you got the answer from Mr Singh is it that you trusted his answer as being correct or is it that you were fearful of interrogating any further and therefore you stopped. Those are two different things. You understand that?

10 **MR LAHER**: Yes.

ADV MYBURGH: So which of it then was it – trust or fear?

MR LAHER: Trust – I trusted his answers.

ADV MYBURGH: So where does the fear then enter the equation?

MR LAHER: This was just something at the back of your head. It is something – it is always there.

ADV MYBURGH: Mr Laher let me give you an example. We will come to it in a moment. During the negotiations you identified that CSR was using the incorrect exchange rate to – counted for almost R3 million of their price. You told Mr Singh that and he said to you, do not worry negotiations are all about the final price. And you accepted that.

20

MR LAHER: It is a....

ADV MYBURGH: You accepted that?

MR LAHER: Yes.

ADV MYBURGH: Negotiations are all about the final price they are not about the constituent components. You accepted that?

MR LAHER: I accepted it and he did say more.

ADV MYBURGH: Now you are a chartered accountant. I take it you do not – you would not agree with that at all that negotiations are not just about the final price. Negotiations are about the constituent component surely
10 making up the final price that is what you were doing. Yes when Mr Singh told you that you just let it go and accepted it.

MR LAHER: Well he explained it. He explained further than just it is about the final price. He explained it is a process of negotiation which is a process of give and take. And you got to consider the risk that the bidders were willing to accept. So he provided a rational explanation to me. I mean when you do any type of negotiation it is always a give and take.

20 **ADV MYBURGH:** But Mr Laher negotiations are not – you know just about the final price. Correct?

MR LAHER: Well it is about the process that happens to get to the final price.

ADV MYBURGH: Yes you agree with me it is not just about the final price. I mean when you go into negotiations I

hope this is not what happens of this sort. You do not just say well put up your final price. You interrogate how you get to the price that is what it is all about correct?

MR LAHER: Yes. Ja that is what I did.

ADV MYBURGH: So when Mr Singh told you a chartered accountant do not worry about that R3 million it is all about the final price. You just accepted that.

MR LAHER: Well he did not just say do not worry about the – he had said it but he said [00:11:40] the things which
10 justify it what he was saying.

ADV MYBURGH: Well we are going to come to that. Because there is a line in your statement you write I am interested to see what it – what it means. So where do we end here? Was there any fear? Was there a degree of fear that stopped you from interrogating some of these answers further? Yes or no?

MR LAHER: If there was it was to a very small degree.

ADV MYBURGH: Sorry yes or no?

MR LAHER: Very small degree.

20 **ADV MYBURGH:** So the answer is yes?

MR LAHER: Ja but a very small degree. It was more about trust what he was saying.

ADV MYBURGH: But you told the Chairperson that you did not press the issue any further for fear of insubordination. Correct

MR LAHER: Correct.

ADV MYBURGH: And you say that is only a very small issue.

MR LAHER: Yes.

ADV MYBURGH: So that is how I understand your evidence.

MR LAHER: Ja.

ADV MYBURGH: Now why would you be insubordinate? That is another thing I do not understand. And it is
10 another thing that the commission is going to have to look at because many employees in your position would say that. But why are insubordinate if you are a member or a negotiating team – you are not just a calculator – you not a stenographer? You there to exercise judgment. Why you insubordinate if you ask more than one or two questions about an issue? How does that translate into insubordination?

MR LAHER: So as I said it was a very small element. I trusted his answer that he gave me. I raised the issues
20 that were necessary to be raised and the answer was – was...

ADV MYBURGH: You not answering my question? Why if you interrogate things further in a courteous way why would that constitute insubordination? Do you know what insubordination is?

MR LAHER: Ja.

ADV MYBURGH: It is the refusal to obey typically a lawful and reasonable instruction. If you a member of a negotiating team and you have a robust debate with Mr Singh surely that does not constitute insubordination?

MR LAHER: Correct so that robust debate did happen.

ADV MYBURGH: Well we do not see that. I mean from your statement you raise a concern you get an answer and you accept it. There does not seem to be a robust debate.

10 **MR LAHER:** Well there was a debate about it obviously. It is not going to be – I say something he gives me an answer immediately and I accept it.

ADV MYBURGH: Well in fact in your statement there is no reflection of any debate.

MR LAHER: I am clarifying that now.

CHAIRPERSON: Well why would you have considered that it would be insubordination – it would have been insubordination to raise legitimate issues which you were entitled to raise?

20 **MR LAHER:** So Chair I did raise the legitimate issues and we did have the debate. So I mean during the debate I would have debated with him my views and I suppose at the back of my mind there was a little fear that if I debated it too vigorously then it is – I mean I am basically telling him he does not know what he is talking about. And he

was a respected individual. I mean highly experienced – highly intelligent and he was my senior – he was my principle.

CHAIRPERSON: But were you not there at least in part to advise him and the others?

MR LAHER: Yes.

CHAIRPERSON: So? So why would – why would you have thought that giving him your honest advise would be insubordination? Would constitute insubordination?

10 **MR LAHER:** So I gave him my honest advice and we had the debate to the extent that debate became vigorous and I continued along that line. It could have resulted in insubordination but that was a very small fear at the back of my head. I mean the explanations he was giving to me at that point in time seemed reasonable.

CHAIRPERSON: So – so what is your answer to my question? Why would you have thought that if you gave him what was your honest advice that would be regarded as insubordination?

20 **MR LAHER:** Chair I suppose there is always that little fear when you dealing with someone higher than you – someone that is more senior. There is always that little fear that you got to treat them with respect and you know just a little fear at the back of your head.

CHAIRPERSON: But respect does not mean you are – you

agree with something he says if you do not generally agree with it – it is not? You can have a – can raise issues and you have a debate – you do not agree with him; he does not agree with you.

MR LAHER: Yes.

CHAIRPERSON: If he has the power to make a decision he makes his decision he can follow your advice or not follow advice but you have – you have given him your honest advice so why would doing that have been
10 insubordination in your mind?

MR LAHER: Chair as I said I – I gave him – I gave him my honest opinion. I gave him the – what I wanted to get him and we had the debate about it. The response he gave me was – was adequate. So I mean as I said earlier it was – it was a very small fear of insubordination at the back of my mind but it was not really insubordination that was the issue it was that I trusted what he told me. I had no reason to believe that he told me anything that was untoward.

20 **CHAIRPERSON:** Do you still think that as you sit there do you still think that you should have had that fear?

MR LAHER: With hindsight and seeing what is being presented at the commission ja maybe I should have – should have just – ja been insubordinate.

CHAIRPERSON: Sorry.

MR LAHER: Maybe I should have gone down the road of being insubordinate with hindsight and seeing what we have seen happening at the commission.

CHAIRPERSON: Well there would have been nothing insubordinate Mr Laher about you honestly putting your – your views. There would have been nothing insubordinate about that. Do you not agree?

MR LAHER: Yes. But Chair I think the principle is I did put my views across and I did have the debate so it was
10 not like I did not do it.

CHAIRPERSON: Hm.

MR LAHER: I did put my views across and I did have the debate.

CHAIRPERSON: No, no we accept – we accept that but you – you have suggested that you did not go – you stopped at a certain point because you thought going beyond that point would be insubordination. Do you accept now that there would have been no insubordination if you had not stopped? As long as you put your views in a
20 normal way, in a collegial way but you do not – you put them.

MR LAHER: Chair I...

CHAIRPERSON: Do you accept that now that there would have been no insubordination?

MR LAHER: Chair I do not know about that. I mean I do

not know how Mr Singh would have taken me not agreeing with him.

CHAIRPERSON: Well Mr Myburgh just gave you a definition of insubordination. Remember he just gave you a definition of insubordination. A refusal to obey a lawful and reasonable instruction.

MR LAHER: Ja...

CHAIRPERSON: Would that have been insubordination?

MR LAHER: Chair shoo I do not know.

10 **CHAIRPERSON:** But also you have not said anything that suggests that Mr Singh was known to you to have done certain things to junior members of staff if they stood up to him on certain points. You have not suggested that. I take it that there was no history of him acting like that that was known to you?

MR LAHER: Look he was known to raise his voice and have a temper so he was I mean up and down. He could be calm at one stage and then suddenly you know lose it. So I mean he was known to be something like that.

20 **CHAIRPERSON:** But that was not something that was in your mind?

MR LAHER: Obviously there is that little fear at the back of your head that you know it could happen to you.

CHAIRPERSON: Mr Myburgh.

ADV MYBURGH: Thank you. By the time of these

negotiations in 2014 how long had you been employed at Transnet?

MR LAHER: For I think it was about nine years then.

ADV MYBURGH: Yes. And you were a chartered accountant?

MR LAHER: Yes.

ADV MYBURGH: And are a chartered accountant?

MR LAHER: Yes.

ADV MYBURGH: And you accept that you bound by the –
10 your professional rules?

MR LAHER: Correct.

ADV MYBURGH: Let us deal then with the increase in the ETC of the 100 locomotives. So you accept that there was a considerable increase in the ETC from R3.8 billion to R4.8 billion? Correct?

MR LAHER: Ja.

ADV MYBURGH: And that was in a very short space of time. The business case or we can go to the documents if need be was agreed in January of 2014 and by May 2014
20 they – the recommendation that was made in the memorandum that you prepared for Mr Singh was accepted. Correct?

MR LAHER: Correct.

ADV MYBURGH: So there – this very big change an increase came about in a short space of time. Correct?

MR LAHER: Yes to space and parameters.

ADV MYBURGH: Just Mr Laher you accept it came about in a short space of time?

MR LAHER: No. No.

ADV MYBURGH: Not. Alright. Between January and May?

MR LAHER: No.

ADV MYBURGH: You say that is an extended period?

MR LAHER: There was an extended period.

10 **ADV MYBURGH:** Now – well let me ask you this. You accept that in January of 2014 the business case number was accepted.

MR LAHER: It was approved in January – I think it was approved in January ja.

ADV MYBURGH: Yes would – this comes from your own documents I will take you there. And then we know in May the increase number was accepted.

MR LAHER: Yes.

20 **ADV MYBURGH:** Alright. Now you had done a reason – a so called reasonability calculation.

MR LAHER: Yes.

ADV MYBURGH: For Mr Singh that worked out at R4.1 billion really. R41 million per locomotive. And let us go to your – your statement. This is at Bundle 4[a] page 504. So you do and I direct your attention to paragraph 27. You

had done your reasonability calculation of R41 million that you deal with in paragraph 26.

“During the negotiations Mr Singh I take it pitched a priced at R38.5.”

MR LAHER: Mr Jiyane.

ADV MYBURGH: Would that – who would that person have been?

MR LAHER: Mr Jiyane.

ADV MYBURGH: Mr Jiyane. Alright so that accorded
10 essentially with the business case number.

MR LAHER: I do not know why he pitched R3.5.

ADV MYBURGH: That accorded with the business case number.

MR LAHER: Ja the business case was R3.8.

CHAIRPERSON: I am sorry Mr Myburgh. You said Bundle 4[a] and what page?

ADV MYBURGH: We at page 508.

CHAIRPERSON: 508. No I do not have 508 on Bundle [a].

ADV MYBURGH: I am sorry – I beg your pardon then we
20 are in Bundle [b] the small file. I am sorry.

CHAIRPERSON: Yes okay.

ADV MYBURGH: So at paragraph 26 you talk about your reasonability calculation.

MR LAHER: Ja.

ADV MYBURGH: Then at 27 you have confirmed that the

chairperson as you say was Mr Jiyane who pitches the price 3.5. CSR they wanted 49 and they refused to come down.

MR LAHER: Yes.

ADV MYBURGH: And then you go on to say well you never accepted that etcetera. But what I am interested in is paragraph 28. So you were present at the negotiations where the 38.5 offer is made and where CSR wanted 49.

MR LAHER: Yes.

10 **ADV MYBURGH:** Which on the face of it was highly inflated obviously.

MR LAHER: Hm.

ADV MYBURGH: Correct.

MR LAHER: Correct.

ADV MYBURGH: You were there.

MR LAHER: Ja.

ADV MYBURGH: And then at 28 you say:

20 “A day or two later Mr Singh tells us that Mr Molefe has agreed upon the payment terms and a price of R44 million.”

Is that right?

MR LAHER: Correct.

ADV MYBURGH: That is before any board approval, is that right?

MR LAHER: Yes.

ADV MYBURGH: That is outside of the negotiations.

MR LAHER: Yes. Outside of the negotiations we were involved in. Remember we were not appointed into those negotiations we were just told to go and assist.

ADV MYBURGH: I beg your pardon.

MR LAHER: We were not appointed into the negotiations.

ADV MYBURGH: Yes but you were party to the negotiations.

MR LAHER: We were there – ja we were there.

10 **ADV MYBURGH:** You cannot distance yourself from this Mr Laher.

MR LAHER: Ja.

ADV MYBURGH: This is a formal process is that not so?

MR LAHER: Yes.

ADV MYBURGH: It was held – just remind us where it was held?

MR LAHER: It was at Webber Wentzel's offices.

ADV MYBURGH: Yes.

MR LAHER: Ja.

20 **ADV MYBURGH:** So there was not another negotiation between the one you speak to at paragraph 27 and 28, correct? There was no – another meeting?

MR LAHER: Not that I was involved in no.

ADV MYBURGH: So this must have come as a bit of a surprise to you?

MR LAHER: Ja.

ADV MYBURGH: More particularly because – and I suppose the term itself is important. Your reasonability calculation was R3 million per locomotive less.

MR LAHER: Yes.

ADV MYBURGH: Whereas you had that work.

MR LAHER: Ja.

ADV MYBURGH: Were you very surprised by this?

MR LAHER: I was surprised but I – that is why I raised the
10 question to Mr Singh.

ADV MYBURGH: Let us just deal with one thing at a time if you do not mind. Were you surprised?

MR LAHER: Yes.

ADV MYBURGH: Ja. Were you perhaps shocked?

MR LAHER: I do not think I was shocked.

ADV MYBURGH: Well Mr Laher let us just look at what happens. You in a negotiation where 38.5 is offered. You have done a reasonability calculation of 41. CSR want an inflated 49 and two days later you told literally out of the
20 blue that the Chief Executive has agreed on 44. That must have shocked you presumably or was that how things worked at Transnet?

MR LAHER: That was a process so we – as I say in the negotiation sessions we were in the prices were never agreed. It was always they would come back to us and tell

us [talking over one another].

ADV MYBURGH: You remember my question? It is really quite simple. I know – we know what your case is I am asking you specific questions. Were you shocked by that?

MR LAHER: I do not think I was shocked.

ADV MYBURGH: But you were at least surprised?

MR LAHER: Surprised ja.

ADV MYBURGH: Okay well let us leave it at that. So when you say at paragraph 29:

10 “That I pointed out to Mr Singh that the Mitsui quote was cheaper.”

When did you do that?

MR LAHER: When we received the notification that that was going to be the final.

ADV MYBURGH: So how did it work? You had a negotiating meeting a day or two before. Then you were told of Mr Molefe’s decision.

MR LAHER: ja.

ADV MYBURGH: Was that then at a – at this meeting or
20 discussion you had a day or two...

MR LAHER: Ja.

ADV MYBURGH: After the last negotiation.

MR LAHER: Ja.

ADV MYBURGH: So you said to him, well but that is more expensive than Mitsui.

MR LAHER: Yes.

ADV MYBURGH: And was it?

MR LAHER: It was.

ADV MYBURGH: Substantially?

MR LAHER: I cannot recall what the Mitsui quote was but ja and the Mitsui quote from a year before that.

ADV MYBURGH: Was it substantially more?

MR LAHER: It was more but I do not think it was substantial.

10 **ADV MYBURGH:** Well we relying on you; you are a chartered accountant.

MR LAHER: Ja.

ADV MYBURGH: You were involved in these negotiations. You put up all these documents in this hearing. Can you tell us – I mean presumably if it was just a little bit more you would not have raised it?

MR LAHER: Ja. Ja.

ADV MYBURGH: Was it a significant increase – yes or no?

20 **MR LAHER:** I do not think so no.

ADV MYBURGH: Then why did you say Mitsui is cheaper if it was not significant?

MR LAHER: It was cheaper because the price was cheaper. I will have to go and check the numbers again I cannot recall at this point in time.

ADV MYBURGH: But on the face of it it would have been significant because that is why you made the point. I mean we are not talking about R50 here.

MR LAHER: Ja.

ADV MYBURGH: Correct?

MR LAHER: Ja.

ADV MYBURGH: On the face of it.

MR LAHER: Ja.

ADV MYBURGH: Right. And you say:

10 “I was told by Mr Singh that the decision to go to CRS had already been approved by the board for reasons explained in a memorandum.”

MR LAHER: Ja.

ADV MYBURGH: But that of course does not answer the price question does it? I mean the problem was that this was too much, and he says to you but we have already decided to go to CSR. That hardly answers your concern about it being too expensive. Correct?

20 **MR LAHER:** Yes, but it was a different locomotive.

ADV MYBURGH SC: Yes, but the point that I make is, it does not answer the question. It does not answer the concern. In other words, you – and you must correct me if I am wrong.

You come to learn of this which is substantially in

access of your reason-ability calculation. You say you are surprised.

You say to Singh. But this is more than Mitsui. He says: Yes, but we have agreed to go to CSR. It does not answer the question about the price being too much in your mind. Correct?

MR LAHER: Yes. CSR had a different locomotive.

ADV MYBURGH SC: Just answer my question. You said to him. You compared it to Mitsui. You said this is too
10 expensive or ...[intervenes]

MR LAHER: Ja.

ADV MYBURGH SC: Or it is beyond what they had offered. He said we have already agreed to go CSR. That does not answer the question, does it?

MR LAHER: No, but ...[intervenes]

ADV MYBURGH SC: Okay.

MR LAHER: I mean, it is for that ...[intervenes]

ADV MYBURGH SC: I see.

MR LAHER: ...it is for the discussion afterwards.

20 **ADV MYBURGH SC**: Well, you see there is an example of Mr Singh just blowing you off. Did you think you were going to be insubordinate if you said to him: But Mr Singh, that does not answer my question.

I accept that you might have agreed to go to CSR but this price is too high. You do not do that. He says: Well,

we have agreed to go to CSR. So you just leave it, right?

MR LAHER: Ja, well there is reasons therefore and that is what he explained. I mean, he explained, it is a different locomotive. The locomotive is a different specification which means that the price will be higher because the different specification requires more steel, et cetera, et cetera. And that pushes the price higher to a different locomotive.

ADV MYBURGH SC: Yes.

MR LAHER: And I mean, if you go through the memo, it
10 justifies the memo that requested this to go through to CSR.

ADV MYBURGH SC: Yes.

MR LAHER: It justifies why it goes to CSR and there is an explanation putting there in the memo.

ADV MYBURGH SC: You know the history about Mitsui?

MR LAHER: Yes. Well, I cannot say I know the history.

ADV MYBURGH SC: But did you know it at the time?

MR LAHER: No, I did not know...

ADV MYBURGH SC: You have come to known of it?

MR LAHER: Recently, ja.

20 **ADV MYBURGH SC**: Alright. So you raise your concern. He tells you: We have agreed to go to CSR. Okay. Now, just let me understand how these negotiations worked. You say you made up the negotiating team and then the team reports into... is that the sub-committee, the Locomotive Sub-Committee?

MR LAHER: The team reports into the chairpersons. The chairpersons report into the sub-committee.

ADV MYBURGH SC: Well, the chairperson is part of a team.

MR LAHER: Ja, he is part of the team. But we reported into the chairpersons.

ADV MYBURGH SC: Yes, but I mean, he is part of the meeting. Correct?

MR LAHER: Ja.

10 **ADV MYBURGH SC:** Right. So there you are. The co-chairperson is here.

MR LAHER: Ja.

ADV MYBURGH SC: Is that right?

MR LAHER: Ja.

ADV MYBURGH SC: Jiyane and Singh.

MR LAHER: Correct.

ADV MYBURGH SC: Okay. And do that... the two of them report into the sub-committee?

MR LAHER: Correct.

20 **ADV MYBURGH SC:** And that sub-committee comprises the two of them and Mr Molefe?

MR LAHER: No, it comprises Mr Singh, Mr Molefe and Mr Gama.

ADV MYBURGH SC: Ah! Okay. So Mr Singh does not tell you that the sub-committee has agreed to the R 44 million?

He just tells you that Molefe has agreed to the R 44 million.

MR LAHER: Yes, probably. It is part of mine... it is part of the sub-committee meeting that they held.

ADV MYBURGH SC: Mr Laher, he does not tell you that we as the sub-committee have agreed on R 44 million. He tells you – and you must understand. Your evidence is important for other ...[intervenes]

MR LAHER: Ja, sure.

ADV MYBURGH SC: ...parts of this inquiry.

10 **MR LAHER**: Sure.

ADV MYBURGH SC: It is not just a matter of exonerating yourself.

MR LAHER: Sure, sure, sure.

ADV MYBURGH SC: He tells you that Mr Molefe had agreed.

MR LAHER: Yes.

ADV MYBURGH SC: Now that must have been strange to you?

20 **MR LAHER**: My understanding is, they would have met with the sub-committee. Mr Molefe being the most senior person in the sub-committee would be the one that makes the final decision. My understanding of how a committee works. Because normally, the most senior person in the committee would ...[intervenes]

ADV MYBURGH SC: So you did not think this was strange?

MR LAHER: No.

ADV MYBURGH SC: So you thought... you were surprised only by the price?

MR LAHER: Ja.

ADV MYBURGH SC: Alright. At paragraph 30, where you say:

“During the negotiations I raised concerns about the high price.”

And then you go on to say at 31 that you also raised
10 these concerns with Mr Singh. Correct?

MR LAHER: Ja

ADV MYBURGH SC: And this is where the accounting team quite correctly identified that CSR was using the wrong exchange rate.

MR LAHER: Yes.

ADV MYBURGH SC: Correct?

MR LAHER: Correct.

ADV MYBURGH SC: Now that was your job.

MR LAHER: Yes.

20 **ADV MYBURGH SC:** To identify things like that.

MR LAHER: Yes, yes.

ADV MYBURGH SC: You came up with this point.

MR LAHER: Yes.

ADV MYBURGH SC: And this is when you say, four lines from the bottom:

“His response was to advise me that it is a negotiation process on final process and in the context of negotiations, it was the final overall price that is important.”

MR LAHER: Yes.

ADV MYBURGH SC: Were you persuaded by that?

MR LAHER: May we read further?

ADV MYBURGH SC: Just... I am asking you Mr Laher. Please, do not get ahead of yourself. I well aware of the
10 next sentence and you know that I am going to take you there.

MR LAHER: Ja.

ADV MYBURGH SC: Could we concentrate on my question, if you do not mind?

MR LAHER: Sure.

ADV MYBURGH SC: You raise a line item with him. It is the accountant in you coming out.

MR LAHER: Ja.

ADV MYBURGH SC: That is why you are there.

20 **MR LAHER**: Ja.

ADV MYBURGH SC: Yes.

“His response was to advise me that it is a negotiation process on final price and on the context of negotiation, it is the overall final price that is important.”

MR LAHER: I think it is important to read it with the next sentence.

ADV MYBURGH SC: Were you persuaded by that?

MR LAHER: No, I was persuaded with what he said as far as the next sentence ...[intervenes]

ADV MYBURGH SC: Yes.

“He explained that the pricing was acceptable in light of the rigorous negotiation process and the risk.”

10 It is... we are going to come to that but let me deal with this theory. Because, just bearing in mind, you say this in many other parts of your affidavit.

That is why I do not know why you are hesitant.

MR LAHER: Ja.

ADV MYBURGH SC: In fact, I think, it appears three times, does it not?

MR LAHER: H'm.

ADV MYBURGH SC: Where you say: My principles... we are worried of the overall price.

20 **MR LAHER:** Ja.

ADV MYBURGH SC: It is your own testimony before this Commission.

MR LAHER: Sure, ja.

ADV MYBURGH SC: But that is wrong. That you need to interrogate the constituent parts.

MR LAHER: Yes.

ADV MYBURGH SC: Do you want me to take you to those places?

MR LAHER: Yes, yes.

ADV MYBURGH SC: You know of them.

MR LAHER: Ja, ja.

ADV MYBURGH SC: So here, when he told you it is all about the final price, you knew that in your mind not to be right.

10 **MR LAHER:** Acceptable in terms of the risk, the bidders were not ...[intervenes]

ADV MYBURGH SC: I am asking you. Your own evidence before this Commission. Is it wrong, as far as you are concerned, to focus on the overall price. You must look at the constituent components. In fact, you are critical of Singh and Jiyane on that basis, correct?

MR LAHER: Ja, ja.

ADV MYBURGH SC: Right. So you were not persuaded when he said look at the overall price, correct?

20 **MR LAHER:** I was persuaded with the next sentence

ADV MYBURGH SC: But how could you have been persuaded when those passages in your affidavit say this is the very mistake my principles made?

MR LAHER: It was the mistake they made but I mean, the explanation they provided were ...[intervenes]

ADV MYBURGH SC: Then it was not a mistake Mr Laher. I mean, you cannot have it both ways here.

MR LAHER: So the explanation that was provided was reasonable at that point in time.

ADV MYBURGH SC: That in the next sentence?

MR LAHER: In the next sentence, ja.

ADV MYBURGH SC: But you would accept that taken in isolation, this idea that negotiations were all about the final price. That does not record with your own view of life, does
10 it?

MR LAHER: Correct.

ADV MYBURGH SC: As an accountant?

MR LAHER: Ja.

ADV MYBURGH SC: In fact, it is nonsense, is it not?

MR LAHER: It does not accord with my view, ja.

ADV MYBURGH SC: Yes. Okay. But why you were persuaded is. He said he explained that the pricing was acceptable in the light of the rigorous negotiation. You have been involved in the negotiation process.

20 **MR LAHER:** Yes, correct.

ADV MYBURGH SC: I mean, you knew that rigour or otherwise. And the risk that the bidders were prepared to accept.

MR LAHER: Yes.

ADV MYBURGH SC: So what? They were still using the

wrong exchange rate.

MR LAHER: Right.

ADV MYBURGH SC: You could have potentially say R 2.4 million. Correct?

MR LAHER: Correct.

ADV MYBURGH SC: But somehow, you were just persuaded by this answer.

MR LAHER: So, I mean, it is not only about the exchange rate. It is also about the rest of the negotiations.

10 **ADV MYBURGH SC**: Ja but ...[intervenes]

MR LAHER: There is also about what the bidders were willing to accept. So, I mean, when you do a negotiation for anything, it is not only about one element.

ADV MYBURGH SC: Yes, but you did not test this with them. You see that is the problem. I mean, I understand what you say. But you were in the negotiations. You have not described them as particularly rigorous. Did you ...[intervenes]

MR LAHER: It was.

20 **ADV MYBURGH SC**: Why did you not go to them and say: By the way, you are using the wrong exchange rate. We want you to reduce your price about R 2.4 million. How do you know what they would have said?

MR LAHER: I did. I did do that.

ADV MYBURGH SC: You did that?

MR LAHER: I did that.

ADV MYBURGH SC: Well, that does not seem to appear here.

MR LAHER: But that was part of the negotiation sessions. I mean, I raised it directly with the bidders to say, this is the wrong percentage(?).

ADV MYBURGH SC: You do not raise that in your statement here.

MR LAHER: But I did do it.

10 **ADV MYBURGH SC:** You understand how that might be seen as a bit opportunistic because so far we are testing ...[intervenes]

MR LAHER: Ja.

ADV MYBURGH SC: ...you going to Mr Singh.

MR LAHER: Ja.

ADV MYBURGH SC: And Mr Singh giving you answers that plicate you. Now you say that you actually raised this issue with Mr Singh, does not agree with during the negotiations.

MR LAHER: Sorry, say that again?

20 **ADV MYBURGH SC:** Did you raise this issue during negotiations? Because remember, Mr Singh does not agree with this.

MR LAHER: I have raised it with the bidders during negotiations.

ADV MYBURGH SC: I see. So there is no issue then of

subordination?

MR LAHER: But I raised it with him as well.

ADV MYBURGH SC: Yes. My question is. Why do you not say you raised this in the negotiations?

MR LAHER: I think I raised in point 30 or I raised my concerns of the high costs directly with the bidders.

ADV MYBURGH SC: Okay. Perhaps I have missed that. I am talking really about the R 2.4 million.

MR LAHER: Ja.

10 **ADV MYBURGH SC:** And the foreign exchange fluctuations.

MR LAHER: That is when I am referring to when I talk about that.

ADV MYBURGH SC: Yes. Did you raise that?

MR LAHER: Yes.

ADV MYBURGH SC: Okay. Now let us go back to Mr Singh. Are you seriously suggesting that you were persuaded by his answer?

MR LAHER: Yes.

20 **ADV MYBURGH SC:** Well, you have accepted that negotiations about overall price. Were you persuaded that these negotiations are so rigorous and they have assumed so much risk that they will not entertain using the correct foreign exchange?

MR LAHER: Well, the risk relates to other elements, not ...[intervenes]

ADV MYBURGH SC: Please, just answer my question. I mean, were you at such a breaking point that you could not push this issue? Is that what you say?

MR LAHER: No, I do not think I said that.

ADV MYBURGH SC: But then why did not... why was this not raised? Why was the point not taken further?

MR LAHER: So it was. As I said, these matters were debated with Mr Singh as I said earlier.

ADV MYBURGH SC: I am asking you. Why was this not
10 pressed in the negotiations?

MR LAHER: It was pressed in the negotiations.

ADV MYBURGH SC: I see.

CHAIRPERSON: When you say in paragraph 32:

“In light of the seniority, expertise, experience and ability of Mr Singh, I deferred to his explanations and judgment on the issue that I had raised.”

That sounds like you are saying, even if you were not convinced that he was right with his responses or explanations, you let go because of his seniority, expertise,
20 experience and ability?

MR LAHER: Ja, Chair. The explanations ...[intervenes]

CHAIRPERSON: Is that correct?

MR LAHER: The explanations provided was reasonable at that point in time.

CHAIRPERSON: Sorry?

MR LAHER: The explanation provided was reasonable at that point in time.

CHAIRPERSON: Well, if the explanation was reasonable, why would you need to defer to him?

MR LAHER: I suppose ...[intervenes]

CHAIRPERSON: You mean... do you mean, it was reasonable but not correct?

MR LAHER: It was reasonable and it made sense at that point in time. So accepted what he was telling me.

10 **CHAIRPERSON:** But then the seniority, expertise, experience and ability should not come in, should it?

MR LAHER: Ja. And you respected that he had experience and you knew what he was talking about. And he spoke with authority. So you accepted it.

CHAIRPERSON: My Myburgh.

ADV MYBURGH SC: Thank you. Explain to me the concerns you have articulated in your statements about the chairpersons having, as you put it, focussed incorrectly on the overall price instead of the constituent parts because
20 this really goes to that. Explain that criticism to the Chairperson.

MR LAHER: Ja, so Chair. As a finance person, obviously, you want to focus on the individual parts but during the negotiations the chairpersons were much focussed on the overall price and that is just the impression I got during the

negotiations.

ADV MYBURGH SC: Why did you consider that to be wrong? Why are you critical of the chairpersons?

MR LAHER: I would have liked for us to focus more on the individual elements that made up the price because then you could, you know, take things a bit further and you know going with a more with the bidders.

ADV MYBURGH SC: Yes, you would have preferred that.

MR LAHER: Yes.

10 **ADV MYBURGH SC:** That would have been the correct way to do it, presumably, from your point of view.

MR LAHER: From my point of view.

ADV MYBURGH SC: Yes. So that is... you understand why I questioned you in relation to this particular issue? Because this went to the very criticism that you have of how the chairpersons ran the negotiations.

MR LAHER: Ja.

ADV MYBURGH SC: But you get this answer from Mr Singh and you just leave it.

20 **MR LAHER:** Debate to that. I did not leave it. Debated it.

ADV MYBURGH SC: But you were not persuaded because you believed that you needed to look at each of the components of price. That is your own case. Do you want me to read that to you?

MR LAHER: Ja, so the components are one section.

ADV MYBURGH SC: Ja.

MR LAHER: The overall price is another section.

ADV MYBURGH SC: Yes.

MR LAHER: And the risk related to overall price is another section.

ADV MYBURGH SC: Ja. So you say in your main statement:

10 “The impression I gained during the negotiations
 was that the chairperson’s negotiations tactic was
 very much focussed on the overall price.”

 Correct?

MR LAHER: Correct.

ADV MYBURGH SC: Yes.

 “The effect of this was that much of these
 components was self-standing components of the
 negotiations. In the end, it was the overall price
 that they focussed on.”

MR LAHER: Yes.

20 **ADV MYBURGH SC:** And negotiating in that way has its
 dangers, does it not?

MR LAHER: Correct.

ADV MYBURGH SC: Perhaps you could articulate those
 dangers to the Chairperson.

MR LAHER: I suppose there should be more rigour in
 discussing the detailed elements that make it up and in that

way you can... you can get to the bottom of each of the elements.

ADV MYBURGH SC: Yes. Well, I assumed what you were going to is, because you came in that way artificially increased prices. Correct? If you do not, as you correctly put it, rigorously interrogate each of these things, you can hide R 5 million here or R 10 million there. Correct?

MR LAHER: Possible.

ADV MYBURGH SC: That is the danger of not negotiating
10 in a way that you describe.

MR LAHER: Ja. Possible, ja.

ADV MYBURGH SC: Yes. That is why it is very important to press these types of issues, is it not?

MR LAHER: Yes.

ADV MYBURGH SC: And Mr Singh persuaded you on the basis that you have explained.

MR LAHER: Ja.

ADV MYBURGH SC: Correct?

MR LAHER: Correct.

20 **ADV MYBURGH SC:** I see. Now did you ever say to Mr Singh, because this is your central criticism of the chairpersons.

What you have not already told the Chairperson is that at a certain point in time, that you met with the chairpersons and said, with all respect, the way that you are negotiating is

wrong. It does not rest well with me. We are not interrogating the constituent components of this offer.

Now we know that is what you believed.

MR LAHER: H'm.

ADV MYBURGH SC: Did you say that to them?

MR LAHER: I cannot recall saying that.

ADV MYBURGH SC: What do you mean you cannot recall Mr Laher? Did... I mean, this was your central problem that you had. As I understand it.

10 You sat there from an accounting perspective and you looked at what was going on and you looked comfortable because they were not interrogating the components.

Now, surely, you would remember as to whether or not you took this leap of addressing them on this issue.

MR LAHER: H'm, h'm. I cannot recall if I said that ...[intervenes]

ADV MYBURGH SC: Well, the I assume you did not.

MR LAHER: Ja, what I probably did was try to raise it as much as I could during the negotiations. So even though
20 they were focussing on overall price, I would have, you know, butted in to say but what about this, what about that. Just to make sure that it is being addressed.

ADV MYBURGH SC: That is the most you would have done. Why did you not tackle this? Because what you explain in your affidavit is that it seems to me that a fundamental

difficulty with the manner in which these negotiations were being run. Why did you not tackle it head on?

MR LAHER: I thought I was doing a good enough job by just trying to raise the issues myself.

ADV MYBURGH SC: But we know that... I mean, I have made a list of your concerns. There is six of them.

MR LAHER: H'm.

ADV MYBURGH SC: None of them involved this material issue. I mean, this is central to the whole in which you were
10 conducting your job. I mean, you were there as an accountant. That was your job, presumable.

MR LAHER: J.

ADV MYBURGH SC: To interrogate the lineout.

MR LAHER: Yes.

ADV MYBURGH SC: Right?

MR LAHER: Ja.

ADV MYBURGH SC: Now the chairpersons were not conducting the negotiations in that way. You have told the DCJ, the Chairperson of this inquiry that it is wrong to do
20 that and that that potentially can lead to price inflation. This is a big issue for you as a chartered accountant, correct?

MR LAHER: Ja.

ADV MYBURGH SC: Yet, you do not say, with all respect, I must put my foot down. You do not do that.

MR LAHER: Not that I can recall but I mean I can go back

and check what ...[intervenes]

ADV MYBURGH SC: But Mr Laher, you just told the Chairperson at the outset that you did not want to push things too far because you were scared of insubordination. Did you put your foot down, yes or no, in relation to this?

MR LAHER: No, I do not think I put my foot down.

ADV MYBURGH SC: No. Okay so then, why did you not? Because this is what you were doing there. The whole modus operandi on your evidence was wrong. Why did you
10 not put your foot down?

MR LAHER: So as I said, I would have raised the issues myself directly to say that we have got to focus on escalations directly with the bidders. And I would say escalation during the negotiation sessions.

The same with all the different elements, I would have raised directly with the bidders to say we got to focus on this, we got to focus on that and see what responses we got from the bidders. And that is what I did.

ADV MYBURGH SC: Alright. Now at paragraph 32. Here
20 we are dealing with the exchange fluctuations. And it is important. And you have pointed out something to me which I did not or might have forgotten. Of course, we are dealing here with you believe that the cost was too high.

MR LAHER: Paragraph three, two?

ADV MYBURGH SC: Ja, 30, 31, 32.

MR LAHER: Ja.

ADV MYBURGH SC: And you knew it was too high because you had done your own reasonability calculation.

MR LAHER: Ja.

ADV MYBURGH SC: But... So you are coming from that perspective, really, when you learn of the R 44 million. As I understand, it was just a matter of a short time before you had done your own accounting sum.

MR LAHER: Right.

10 **ADV MYBURGH SC:** And it would come to R 41 million.

MR LAHER: Right.

ADV MYBURGH SC: So you were better placed than anyone to know that this actually was too high.

MR LAHER: Without building risk into it.

ADV MYBURGH SC: Yes.

MR LAHER: Yes.

ADV MYBURGH SC: You know that?

MR LAHER: Ja.

ADV MYBURGH SC: Okay. So at 32:

20 “In the light of seniority expertise and experience an ability, I deferred to his explanation.”

So that explanation, would you know, is wrong at least in part, fundamentally. That negotiations are all about the final price. You deferred to him.

MR LAHER: Ja, that is the explanation I gave to the Chair

a few minutes ago.

ADV MYBURGH SC: You deferred to him, telling you that negotiations are all about the final price because of his expertise, experience and ability.

MR LAHER: And because he said that there is risk involved and there is... you have to pay a price for the risk.

ADV MYBURGH SC: Yes. But look, Mr Laher. I do not want to be uncharitable to you but you also had skills. You also had seniority, experience, expertise and ability.
10 Correct? And all those things took you to say to him that the price is too high.

MR LAHER: [No audible reply]

ADV MYBURGH SC: That is why I am struggling to understand and I think the Chairperson has touched on it and I am not going to belabour it but it is not a case where this is not your field.

This is your field. You had done the accounting. You had got to R 41 million. You were no really surprised that Mr Molefe had agreed to R 44 million.

20 But you land up, on the basis of this answer, just deferring to him.

MR LAHER: With rigorous debate that happened before that.

ADV MYBURGH SC: Mr Laher, there is no reference here you rigorous debate. Please. You draft... I mean, this is an

important statement that has been drafted.

MR LAHER: Ja.

ADV MYBURGH SC: You do not even talk about, let alone rigorous, you say nothing about debate.

MR LAHER: So that is why I am saying now that is what happened. To clarify.

ADV MYBURGH SC: You are now saying here you had a rigorous debate with Mr Singh.

MR LAHER: It was a debate ...[intervenes]

10 **ADV MYBURGH SC:** When you started out your evidence this morning, the record will show that you adopted the position that you actually did not want to have a rigorous debate with Mr Singh because you think you might insubordinate yourself.

MR LAHER: At the back of your mind, but I mean ...[intervenes]

ADV MYBURGH SC: So where are we then?

MR LAHER: So the debate was held. I mean ...[intervenes]

20 **ADV MYBURGH SC:** A rigorous debate was held despite no reference being made here.

MR LAHER: Let me stop you with the word rigorous but the debate was out.

ADV MYBURGH SC: Debate was...

MR LAHER: Ja.

ADV MYBURGH SC: You did not have concerns about

insubordination?

MR LAHER: At the back of your mind, as I have said, it is always there.

ADV MYBURGH SC: So tell us then. Let us explain the debate. Let us go through it.

MR LAHER: So go through it with Mr Sing. So approach him and say that my believe is that my calculation is a certain number and this is a number. They are using the wrong numbers in the calculation. And then asking why are
10 the prices higher. Why would it be to a higher number?

ADV MYBURGH SC: Yes.

MR LAHER: And his explanation would have been, as I said there, he believed it was a rigorous negotiation process. And it was a rigorous negotiation process where it was up and down over a period.

ADV MYBURGH SC: Carry on.

MR LAHER: And based there upon, the bidders were willing to only... and we were not there when the final price... we only agreed to that because there was risk involved.

20 And they were only willing to accept that price because there was risk involved and because of that risk, they wanted a higher price.

And that was the additional element of risk that pushed it up to R 44 million ...[intervenes]

ADV MYBURGH SC: And you described that as a debate?

MR LAHER: Well, he would have come back to me and I mean, I would have said ...[intervenes]

ADV MYBURGH SC: You see, Mr Laher. Even on your own version, you raised a concern and he gave the answer in these two lines and you were placated. I mean, you have basically repeated what you have in your statement. Correct?

MR LAHER: Effectively, I would have said: Does that... You know, I would have said: Okay but in my view it is
10 ...[intervenes]

ADV MYBURGH SC: I see. Well, let us carry on. Now what happens is that you become in part the author of what we can refer to as the Singh memorandum. Correct?

MR LAHER: Ja.

ADV MYBURGH SC: Now you, if I recall your evidence correctly, you were very surprised... *[voice trails off]* You were surprised that Mr Singh choice you to perform this task.

MR LAHER: Ja.

ADV MYBURGH SC: Is that right?

20 **MR LAHER:** Ja.

ADV MYBURGH SC: And presumable must have trusted you.

MR LAHER: [No audible reply]

ADV MYBURGH SC: Correct?

MR LAHER: Possible, ja.

ADV MYBURGH SC: Were there lots of other people that he could have asked.

MR LAHER: Ja.

ADV MYBURGH SC: But he choice you.

MR LAHER: Ja.

ADV MYBURGH SC: Right?

MR LAHER: Ja.

ADV MYBURGH SC: Now, I understand entirely the edits that were made. I have looked carefully at the notes at
10 Annexure YL15. But I mean, there seems to be to be substantial parts of that memorandum that you would have authored yourself.

MR LAHER: What you see in the notes are only a few pages.

ADV MYBURGH SC: Ja. Sorry, can you just answer my question? Are there substantial parts of the memorandum that you have authored yourself?

MR LAHER: No.

ADV MYBURGH SC: Alright. So you given a draft and you
20 work it up and key then amends(?).

MR LAHER: Ja.

ADV MYBURGH SC: What we need to know which is important is, do you take ownership then of that memorandum? Do you accept that you were ultimately the author with the input of Mr Singh?

MR LAHER: No.

ADV MYBURGH SC: Okay what are you saying? That you performed simply a secretarial function?

MR LAHER: Yes.

ADV MYBURGH SC: But then why ...[intervenes]

MR LAHER: And chased up whatever information he wanted me to chase up.

ADV MYBURGH SC: Yes. Yes but are you saying, you authored none of that memorandum?

10 **MR LAHER:** I would have captured his wording ...[intervenes]

ADV MYBURGH SC: So you performed – and it is important. We just need to know.

MR LAHER: Ja.

ADV MYBURGH SC: You performed simply a secretarial function?

MR LAHER: Ja. Except for Table 1 where he explained to me how to put the table ...[intervenes]

ADV MYBURGH SC: Yes. We are going to come to Table 1.

20 **MR LAHER:** Ja.

ADV MYBURGH SC: So apart from – because of course, Table 1 is the critical thing, is it not?

MR LAHER: Ja, it is a record of the ...[intervenes]

ADV MYBURGH SC: Right.

MR LAHER: Ja.

ADV MYBURGH SC: That is really what I wanted to get at.

MR LAHER: Ja.

ADV MYBURGH SC: Table 1 is critical.

MR LAHER: Ja.

ADV MYBURGH SC: As for the rest, you were playing the role of a secretary.

MR LAHER: Ja.

ADV MYBURGH SC: Okay. Now you knew that what you... what Mr Singh was trying to do, was to provide really an
10 expo facto explanation for the increase to R 44 million per locomotive.

MR LAHER: Ja.

ADV MYBURGH SC: Correct?

MR LAHER: Ja.

ADV MYBURGH SC: And what is important is that that memorandum took a substantial amount of time to draft, did it not? Or to finalise.

MR LAHER: Ja.

ADV MYBURGH SC: In fact, it seems, it is closer to two
20 months and one month. Would you agree?

MR LAHER: Ja.

ADV MYBURGH SC: So there is... the picture that you paint is that there is a backwards and forwarding between you and Mr Singh for up to two months.

MR LAHER: Possible, ja.

ADV MYBURGH SC: There is a gathering of information. There is an exercise of the mind in relation to Table A.

MR LAHER: Ja.

ADV MYBURGH SC: So I take it then, the Chairperson can accept that Mr Molefe and the sub-committee did not have that information on tab at the time that the R 44 million was agreed to? They did not have on tab, did they?

MR LAHER: I do not know what the sub ...[intervenes]

ADV MYBURGH SC: No, you do know. Because if they had
10 on tab, then you would have been given the information and you could have just drafted Table A and the memorandum could have been immediately. Correct?

MR LAHER: You are talking about the information in the table?

ADV MYBURGH SC: Yes.

MR LAHER: Well, they would have had a quote because that information came from the quote. So they would have had it with them.

ADV MYBURGH SC: Yes. But the point is that it was an
20 expo facto justification. Correct?

MR LAHER: It was the calculation or a reconciliation.

ADV MYBURGH SC: Well, the point is. You now have to justify an explain a decision that had already been made. That is perhaps a more accurate way of putting it, correct?

MR LAHER: That was the objective and the memo was to

request ...[intervenes]

ADV MYBURGH SC: Yes.

MR LAHER: ...permission to ...[intervenes]

ADV MYBURGH SC: You accept that I say?

MR LAHER: [No audible reply]

ADV MYBURGH SC: You were trying to justify the increased to 44 which had already been agreed.

MR LAHER: I was not justifying anything. Mr Singh was preparing the memo.

10 **ADV MYBURGH SC:** Yes, but you knew that was Mr Singh was doing.

MR LAHER: That is what Mr Singh was doing.

ADV MYBURGH SC: Right. And did that not make you... do you not feel uneasy about being involved in this process? I mean, already you were concerned about the price.

MR LAHER: [No audible reply]

ADV MYBURGH SC: Were you not concerned about involvement with this memorandum?

20 **MR LAHER:** I do not think so. I mean, where I did not know what was happening in the memo, he would have... he got inputs and he would provide instruction to the other sections of the memo which needed to come from other areas.

ADV MYBURGH SC: That is not my question. I mean, you yourself say you are surprised that he choice you.

MR LAHER: Ja.

ADV MYBURGH SC: Were you not a little bit wary about this task?

MR LAHER: Look, obviously I did not work in that department. I did not work for him. I was working at Freight Rail. I was working in another office in Park Town. They were working in Carlton Centre.

I got called to come and do these edits and to chase people up to get information for the memo. I suppose it was just... it felt like it was just a job that I needed to do based
10 on the instruction of my superior.

ADV MYBURGH SC: Did you feel... and again Mr Laher, you have done everything but answer my question.

MR LAHER: Ja.

ADV MYBURGH SC: Were you not wary about engaging in this task? You do not even tell us about the Carlton Centre, to answer that question.

MR LAHER: No. I do not recall being wary.

ADV MYBURGH SC: Alright. Well, then that is the answer.

MR LAHER: Ja.

20 **ADV MYBURGH SC:** You were not wary.

MR LAHER: Ja.

ADV MYBURGH SC: You were surprised though that he choice you.

MR LAHER: Ja.

ADV MYBURGH SC: Okay. Then the memorandum is

produced. Let us then go to... it is Table 1. I am sorry. I am wrong when I referred you to A, Table 1 is at 553, is that right?

MR LAHER: Yes.

ADV MYBURGH SC: So that is how one gets to the 44 million.

MR LAHER: Yes.

ADV MYBURGH SC: And for example what you would find at A, that is the column next to the rand.

10 **MR LAHER:** Yes.

ADV MYBURGH SC: That deals with the exchange rate.

MR LAHER: Yes.

ADV MYBURGH SC: And we know these are the constituent parts that caused the increase, right?

MR LAHER: Right.

ADV MYBURGH SC: And you say that in the process of putting together the memorandum and table 1 that Mr Singh asked you to do a so-called walk forward.

MR LAHER: Yes.

20 **ADV MYBURGH SC:** Now if I could ask you please to go page 510 and paragraph 36, the fourth line:

“Mr Singh told me to prepare a walk forward calculation from the business case price to the final contracted price.”

MR LAHER: Ja.

ADV MYBURGH SC: “The walk forward would entail taking the price as reflected in the business case of 34 million and adding or subtracting any elements that impact the price to that price in order to end up at the final contracted price.”

MR LAHER: Yes.

ADV MYBURGH SC: that is what you had to do.

MR LAHER: Ja.

ADV MYBURGH SC: You had to go from 34 million to 44
10 million.

MR LAHER: Yes.

ADV MYBURGH SC: You had to ensure that.

MR LAHER: Those were the two parameters, yes.

ADV MYBURGH SC: Yes. But because, of course, Mr Molefe had already agreed on that.

MR LAHER: Yes.

ADV MYBURGH SC: It might have been two months before.

MR LAHER: Ja.

20 **ADV MYBURGH SC:** That is what you had to do. You had to balance the books.

MR LAHER: That was the parameters, ja.

ADV MYBURGH SC: Yes, precisely. So let us then go; and have a look at what Mr Callard had to say. You have considered his transcript, I have provided you with there.

MR LAHER: Ja.

ADV MYBURGH SC: You know that he has given evidence already in relation to your Rule 3.4 statement and Mr Callard’s transcript or transcript of his evidence you find – if you go to page 791 of bundle 4B. You find it directly after that, it starts at 791.1. Are you there?

MR LAHER: Ja.

ADV MYBURGH SC: There is just one or two passages that I want to take you to. Let us go please to page
10 791.30. I want to take you just to three parts and he is dealing here with table 1. Mr Callard says at line 18:

“There is nothing which adds to the table or enables a further determination of the table in a deterministic manner of a walk forward which I was mentioning. None of those, that data or methodology for a calculation of that walk forward is provided. It is covered as I, in my reading of this, under the guidance of Mr Singh who provided those elements but it does not elucidate or add to
20 an understanding of how the final 44 million was derived at other than these figures. We have no understanding how these figures were derived at in a deterministic or traceable manner.”

Do you want to comment on that?

MR LAHER: So yes, we do know how the figures were

arrived at. I mean, if you go to table 1 the elements are explained in terms of the foreign exchange was arrived at, would be changing the EN rate and that was a 10.7% increase in EN rate, so that is 10.7 increase from the business case to the point in time when the contract was signed.

ADV MYBURGH SC: Yes.

MR LAHER: Same would be for the escalation. It would be the escalation relating to indices over that point in time.

10 **ADV MYBURGH SC:** But all of those were controversial decisions made during the course of negotiation.

MR LAHER: Why do you say controversial?

ADV MYBURGH SC: Well, I mean, we have touched on the exchange rate already.

MR LAHER: Ja but this is – these exchange rates are a given. So, I mean, you have it in the business case and you have the exchange rate at the date of [inaudible – speaking simultaneously]

20 **ADV MYBURGH SC:** So you do not agree with what Mr Callard said?

MR LAHER: I disagree.

ADV MYBURGH SC: Then let us have a look at page 791.32 at paragraph or line 12.

“I have not come across that methodology in the past.”

He is talking about the walk forward.

“It is most unusual, highly unusual. In fact I would go so far as to say irregular because we are now trying to justify a price which has been given as he mentioned in his statement earlier, that he was given the price. He is now trying to justify the price as in a walk forward.”

I think you have accepted that your walk forward had to get you from 34 to 44.

10 **MR LAHER:** Yes.

ADV MYBURGH SC: So he is saying well, you are just simply trying to justify, you knew where you had to go to.

MR LAHER: Well, it is not a justification, it is a calculation and it is standard way of doing a walk forward. So it is not something that is new, it is standard financial way of doing things.

ADV MYBURGH SC: But the point is it was being done *ex post facto*, you had to get to 44.

MR LAHER: And you would normally do that always.

20 **ADV MYBURGH SC:** I see. Then if we go please to page 791.35. At 21 Mr Callard says:

“Mr Chair, I think you have summarised it beautifully, a walk forward would be prior to the event to determine the price. Post event would be a walk backwards to justify. I think you have

summarised it beautifully.”

In other words, what he was saying is really you are going backwards to justify a price. Do you want to comment on that?

MR LAHER: Mr Callard is not a financial expert, so I mean we do walk forwards in this way, we call it a walk forward, at the end of the day it is semantics, walk forward, walk backwards and I explained yesterday how a walk forward is done and that is a standard way you do a
10 walk forward.

ADV MYBURGH SC: Alright. Then let us please go back to your statement. And I am going to deal with the next thing that Mr Callard deals with and that is the forex issue.

MR LAHER: Alright, page?

ADV MYBURGH SC: And this you deal with at page 510 in paragraph 36, it is quite a lengthy paragraph, as you know. I think it is that part of the paragraph that you find at page 511. Are you there?

MR LAHER: Ja.

20 **ADV MYBURGH SC:** So you say at the top:

“Singh explained that the assumptions used in the business case was the rand/yen rate and that the base price in the business case was based upon a price obtained from Mitsui. Singh explained that the business case was based in yen.”

And so it goes on.

MR LAHER: Ja.

ADV MYBURGH SC: A few lines down you say:

“I pointed out that there would be more than one
currency involved.”

What did you mean by that? What were the other
currencies?

MR LAHER: So that would be like the US dollar rate
example.

10 **ADV MYBURGH SC:** Yes, when you say there were other
currencies involved, what did you mean? Were you saying
well, I said to him look, we should be using the US dollar?

MR LAHER: No, no, no, no.

ADV MYBURGH SC: What did you say?

MR LAHER: I am saying could have been or could other
currencies involved and he is saying the business case is
based in yen.

ADV MYBURGH SC: Ja.

MR LAHER: Yes.

20 **ADV MYBURGH SC:** But is this an – why did you not say
to why are we not using the US dollar?

MR LAHER: I cannot – I mean, the business case was
based in yen, it is *fait accompli* [intervenes]

ADV MYBURGH SC: Sorry, can you just answer my
question? Did you say to him why are we not using the US

dollar?

MR LAHER: The contract was meant to be done in rands.

ADV MYBURGH SC: Okay.

MR LAHER: So – and that is what was finally agreed upon, in rands.

ADV MYBURGH SC: Right. So when you say I pointed out that there would be other – sorry, more than one currency involved did you mean rand and something else? Or did you mean...?

10 **MR LAHER:** So the initial price, when I was doing my calculation, my reasonability was based on the CSR price which would have had a dollar element and you will see it in my calculation.

ADV MYBURGH SC: Yes, I saw it.

MR LAHER: And that is why I asked that question.

ADV MYBURGH SC: So when you did your re-stability calculation that is where you used US dollar.

MR LAHER: Yes.

20 **ADV MYBURGH SC:** Did you raise with Mr Singh the prospect of rather using a US dollar in this context or not?

MR LAHER: No, I did not.

ADV MYBURGH SC: And then he says:

“Well, the business case is based on yen so that is what we are going to use.”

And you accepted.

MR LAHER: That is not unreasonable.

ADV MYBURGH SC: When you did your re-stability calculation why did you use US dollar and not yen?

MR LAHER: Because the price of the 20E was based in US dollar.

ADV MYBURGH SC: So CSR is a Chinese company?

MR LAHER: Yes.

ADV MYBURGH SC: Not a Japanese company.

MR LAHER: Correct.

10 **ADV MYBURGH SC:** And their prices are based on US dollar, as I understand, from what you say.

MR LAHER: Yes. Ja, and a few other currencies.

ADV MYBURGH SC: Yes but in this instance we were using the US dollar.

MR LAHER: Yes.

ADV MYBURGH SC: In your mind.

MR LAHER: US Dollar as well as rand, portion.

ADV MYBURGH SC: No, that I... So using the US – sorry, using the yen as the rand/yen rate we know that that
20 came at something of a price. I think we have already looked at table 1.

MR LAHER: Yes.

ADV MYBURGH SC: How much was it?

MR LAHER: 10.7% increase.

ADV MYBURGH SC: And that translated into how much in

rand?

MR LAHER: I will go to table 1 to see what it is. On what page is table 1? R3.6 million. I think 3.6 [indistinct – dropping voice]

ADV MYBURGH SC: Sorry?

MR LAHER: R3.6 million rounded.

ADV MYBURGH SC: 3.6 million per locomotive?

MR LAHER: Ja.

ADV MYBURGH SC: So that was quite a large part of the
10 increase from 34 to 44.

MR LAHER: Yes.

ADV MYBURGH SC: Did you ever do a calculation as to what the difference would have been if you used the rand/US dollar rate?

MR LAHER: I did not do that calculation.

ADV MYBURGH SC: Do you know whether it would have been offhand more or less?

MR LAHER: No.

ADV MYBURGH SC: Alright. So let us just then go to Mr
20 Callard again please and I will ask you to go to page 791.37. This is where he deals with this issue and perhaps I can take you forward to page 44.

CHAIRPERSON: You say 791 point?

ADV MYBURGH SC: 791.44, Mr Chairperson.

CHAIRPERSON: 44.

ADV MYBURGH SC: At line 13. Mr Callard says:

“But what I fail to understand is this is I have a price for a locomotive, I am now buying a dollar-based locomotive into the future, why should I now be using yen into the future in justification or determining a dollar-based locomotive? I still do not understand that anomaly. I still have nothing in here to address that anomaly other than the first line.”

10 Do you want to address that?

MR LAHER: The standard way of doing a walk forward is to, as I explained yesterday, was to work on what you were given. So you were given the rand/yen rate, which was included in the business case which is *fait accompli*, as I said in my statement yesterday as well. I was not involved in the business case, so I cannot explain why the business case was based in yen but from a financial principle perspective you start with what you are given and the rand/yen rate was what was given and that is why you used
20 the rand/yen rate.

ADV MYBURGH SC: But there was no reason why you could not use the rand/dollar rate if you chose to.

MR LAHER: It would just complicate ...[intervenes]

ADV MYBURGH SC: But you could.

MR LAHER: You could, ja, but it expose the calculation to

miscalculation.

ADV MYBURGH SC: But you could do the calculation.

MR LAHER: You could do the calculation.

ADV MYBURGH SC: That is why they had smart people like you there.

MR LAHER: Ja, you could do the calculations but ...[intervenenes]

ADV MYBURGH SC: Yes and then you could trace it into the future using the correct currency.

10 **MR LAHER:** Not necessarily, I mean, we cannot say it is the correct currency. As I say, when you do a walk forward you work with what was given.

ADV MYBURGH SC: Yes.

MR LAHER: So it is more correct to use what you were given rather than to make assumptions and use something that you are not given.

ADV MYBURGH SC: Yet when you did your calculations you used the dollar.

MR LAHER: That is a separate calculation completely.

20 **ADV MYBURGH SC:** But your answer is yes.

MR LAHER: Correct, ja.

ADV MYBURGH SC: Alright. Then the next page 791.45, line 19.

MR LAHER: Ja.

ADV MYBURGH SC: What he says is ...[intervenenes]

MR LAHER: Sorry, I do not have lines in my...

ADV MYBURGH SC: Line 19.

CHAIRPERSON: The number on the margins.

ADV MYBURGH SC: On the left hand side.

CHAIRPERSON: When it says line 19, there is 10, 20.

ADV MYBURGH SC: You do have them, I can see them from here, Mr ...[intervenes]

MR LAHER: I see 10 and 20 – oh, you mean...

CHAIRPERSON: Ja, ja.

10 **ADV MYBURGH SC:** 20, so it is the line above.

“Secondly, in that explanation I can pick up from Mr Laher’s statement for the continued use of the yen was that Mr Singh explained the assumption and I take that as guidance from Mr Singh.”

So you took guidance from him there.

MR LAHER: Ja but it is a financial principle which I agree with.

20 **ADV MYBURGH SC:** Let us then deal with the advanced payments which is the next thing that Mr Callard deals with. Now Mr Callard says that he was shocked when he came to learn of amongst others a 30% advanced guaranteed payment to CSR. Were you shocked when you came to learn of that?

MR LAHER: I do not know if I was shocked. I do not think I was shocked.

ADV MYBURGH SC: Well, let me just take you to the extent of it and we can break for tea. Could you please go to the transcript 791.57. At the foot of the page .57, he says when he came to learn of this he then sent an SMS to finance people.

MR LAHER: Yes.

ADV MYBURGH SC: Did you get this SMS?

MR LAHER: No.

ADV MYBURGH SC: And the SMS read – over the page:

10 “My giddy hat, we are shocked at these figures.
 These guys are cowboys, what are they playing at?”
Do you see that?

MR LAHER: Ja.

ADV MYBURGH SC: You were not shocked, were you surprised?

MR LAHER: That was the offer that was put on the table [inaudible – speaking simultaneously]

ADV MYBURGH SC: No, I am asking you were you surprised that it was agreed to?

20 **MR LAHER:** No.

ADV MYBURGH SC: Mr Chairperson, could we break for tea?

CHAIRPERSON: Let us take the tea adjournment, we will resume at half past eleven. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let us continue.

ADV MYBURGH SC: Thank you, Chairperson. Mr Laher, we are dealing with the advance payments. Could I ask you please to go to page 501 of bundle 4B? At paragraph 40 you say that you were not involved in the management of Transnet's cash or funding, 512.

MR LAHER: Sorry, 512?

ADV MYBURGH SC: And then it says:

10 “During the 1 064 and 100 locomotive transaction
Mr Singh told the negotiating team that Transnet
had the funding available and that the advanced
payments were affordable.”

I just wanted to clarify, I take it that the issue of advanced payments, was that part and parcel of the negotiations or is it something that Mr Singh told you about outside of that?

MR LAHER: It is party, ja.

ADV MYBURGH SC: So you sat there and there was a
20 negotiation around these advanced payments?

MR LAHER: Ja, when bidders provide their pricing they provide a payment profile as well.

ADV MYBURGH SC: So could I take you please to
...[intervenues]

CHAIRPERSON: I am sorry, what was that answer?

MR LAHER: When bidders provide pricing they provide a payment profile as well.

CHAIRPERSON: It was part of the negotiations?

MR LAHER: It was part of the submission by the bidders per negotiations, yes.

CHAIRPERSON: Okay.

ADV MYBURGH SC: Now I want to take you to Mr Callard's statement that was attached to the 3.3 notice, that is right at the beginning of the file and could I ask you
10 please to turn to page 503.37. Perhaps we can start at 503.38. Do you see at 147 there is a table, the table below is compiled from annexure 17 and if you look at the column headed CSR you will see:

“Total advance payment, 30%”

Do you see that?

MR LAHER: Ja.

ADV MYBURGH SC: Then at 148:

“From the above table the advance payments before
a locomotive is delivered for all bidders increased
20 from their initial bids. Bombadier was slightly increased from a high base and CSR, having the highest increase, followed by CNR and GE.”

Now in order to make sense of that one must go the table at 144 at page 503.37. Do you see that?

MR LAHER: Yes.

ADV MYBURGH SC: So there we know that CSR was bidder 2 and there it reflects:

“Total payments before acceptance for bidder 2, the initial proposal was 1.62%.”

Do you see that?

MR LAHER: Yes.

ADV MYBURGH SC: And that then increased, did it not?

MR LAHER: Correct.

ADV MYBURGH SC: To a whopping 30%.

10 **MR LAHER:** Yes.

ADV MYBURGH SC: And at 149 Mr Callard says:

“The increase begs the question as to how the final negotiations were conducted.”

Perhaps if you can just explain to the Chairperson, how does one get from 1.62% to 30%? Bearing in mind that these are people – oh, yes, so carry on?

MR LAHER: As part of the negotiation process, Chair, you started off at a point obviously and then bidders would submit proposals over a point of time. When we started
20 the negotiations remember there were many issues we had to deal with. Those issues related to the reduction of the batch increase in cost per escalation, the forex portion, the use of TE, etcetera. That pricing was not part of the evaluation and was only provided during the negotiation phase, correctly or incorrectly.

Now when they submitted their proposals as part of the negotiation phase, they would have submitted proposal with revised pricing now for inclusion of those elements as well as payment terms related to those proposals over a period of time and as part of the negotiation process. They would negotiated different payment terms with different payment terms with different prices, so it was a part of a negotiation.

ADV MYBURGH SC: But I think my question is, how does
10 one get to a situation where the advanced payment was
twenty times more than what they initially asked for?

MR LAHER: My understanding is the locomotives were meant to be delivered over a shorter period of time and the initial evaluation was much longer period of time. So because it was a shorter period of time they needed higher advanced payment to set up the infrastructure.

ADV MYBURGH SC: Twenty times more?

MR LAHER: That is the basis upon which they provided.

ADV MYBURGH SC: And you know that that – what was
20 the cost then to Transnet? It was then paid out, was it
some R7 billion or something? You would know.

MR LAHER: Total advance payments for all these – all the different bidders ...[intervenes]

ADV MYBURGH SC: 7 billion.

MR LAHER: I cannot remember the exact number but

possibly ...[intervenes]

ADV MYBURGH SC: Without anything being delivered on a contract?

MR LAHER: Ja.

ADV MYBURGH SC: Now Mr Callard who has, as you know, has been around this industry for a long time, was truly shocked when he came to learn of this amount. Do you want to comment on that?

MR LAHER: I guess he was not part of the negotiations,
10 he did not know the process that was done in order to get there. As I say, it was a process of give and take and this is what they were proposing, if you want us to deliver quicker, you have got to give us bigger advance payments that we can bring our infrastructure here a bit quicker.

ADV MYBURGH SC: Alright.

CHAIRPERSON: Well, Mr Laher, it gives one impression that it may give is that no proper – either no proper homework had been done when 1,62 percent was – thought was the right percentage and when somebody else who had
20 done his or her proper homework came up, showed that this 1.62% was really – had no foundation. Either that or the people who came up with 1.62 had done their homework but there is some other reason why they agreed to 30%, that is difficult to understand because whatever was put on the table must be the kind of factors or things

that would have been taken into account at arriving at 1.62.

MR LAHER: Yes.

CHAIRPERSON: Is it not?

MR LAHER: Ja. Mr Chair, the 1.62% was based on the initial bid proposals that we came to as part of the tender process that were evaluated right up front, so this was part of the 2013 proposal that came through.

The final 30% was post the negotiation process. So
10 through the negotiation process the bidders wanted more upfront advance payments in order to set up their manufacturing facility.

CHAIRPERSON: But I do not think the percentage should change, is it not, because if you say – if you say if you had put in a figure as opposed to a percentage and you had said, for example, it must be R1 million that is advance payment and then later on you agreed to R30 million and you say there was a change in the price, you know, the percentage might have remained the same.

20 **MR LAHER:** Ja.

CHAIRPERSON: Okay. But if you put the percentage, one would have thought that you are taken into account everything and the percentage would remain the same or if there is a change, it would not be as drastic a change as this. That is what one would have thought.

MR LAHER: Yes, Chair, so upfront it would have been a percentage of the bigger batch. So, remember, it was – in the valuations it was a full batch of 599. When we were doing the negotiations it is half a batch so therefore, there is that portion to take care of as well as well as the negotiations in terms of because you want a quicker delivery we need more cash upfront so that we can setup our manufacturing facilities quicker and that was the negotiations.

10 **ADV MYBURGH SC:** No but if it is half a batch, why would you need fifteen times more advance payment? Surely it works the other way around?

MR LAHER: You need a – I mean, it is a bigger percentage, it is a bigger ...[intervenes]

ADV MYBURGH SC: Why? It is half the batch.

MR LAHER: So mathematically, I suppose, and I am just trying to work this out in my head, 1% of a million is a certain amount ...[intervenes]

ADV MYBURGH SC: I am not ask you that. Why would
20 you need fifteen times more because you are delivering half a batch?

MR LAHER: You would need more upfront.

ADV MYBURGH SC: Why?

MR LAHER: To setup the production facilities upfront and also just part – I think maybe it was part of a ...[intervenes]

ADV MYBURGH SC: But you would need a bigger production facility and you would need more cash if you were producing double batch.

MR LAHER: It would be probably the same production facility.

ADV MYBURGH SC: Well, precisely.

MR LAHER: It is the time period over which you are doing it.

ADV MYBURGH SC: So now it is down to time?

10 **MR LAHER:** Ja because now the batch is cut and the time period for delivery is also cut.

ADV MYBURGH SC: But still, why do you need fifteen times more advance payment? I mean, we are not talking about double.

MR LAHER: Ja.

ADV MYBURGH SC: We are talking about potentially fifteen times more. How is that possible?

MR LAHER: As I say, it was part of the negotiation process ...[intervenes]

20 **ADV MYBURGH SC:** Yes, no, we of course know that that does not answer the question. You style yourself as an eyewitness, you were there.

MR LAHER: Ja.

ADV MYBURGH SC: So tell us what happened in these negotiations that caused someone to agree to 30%

advance payment that causes Mr Callard to be shocked, someone who has been around this industry, who sees this as an outlier.

MR LAHER: So part of the process – and that is the explanation that was given to us by the bidders, that we need further amount upfront so that we can setup our production facility and also, if you give us more upfront, there is a discount in the price as part of the negotiation process. So that is what they would have told us when we
10 did the negotiations.

At the end of the day it was not me that accepted the proposal, it was obviously the steering committee that accepted the proposal that came from the bidders. It was still something we were negotiating.

CHAIRPERSON: Well, I am not sure that I follow the explanation, Mr Laher. It is quite strange, to say the least, but maybe you have said what you are able to say. Mr Myburgh?

ADV MYBURGH SC: Yes, thank you. Then I just want to
20 deal with two other things. The spreadsheets – let me just take you perhaps directly to what Mr Callard’s criticism of your answer is so we can short circuit some of this. Could you go back to the transcript please at page 791.83?

CHAIRPERSON: 791 point?

ADV MYBURGH SC: 83.

CHAIRPERSON: 83.

ADV MYBURGH SC: What Mr Callard says at line 16, is he says:

“I highlighted numerous considerable anomalies in the spreadsheet. This does not address any of the anomalies in the spreadsheet except for Mr Laher’s statement that the recorded what the bidders provided.”

And then he goes on at the foot of the page:

10 “He got it from the bidders’ submissions and just recorded it and I have not gone through poor statements like that. My statement on the spreadsheet is that they - stands that the anomalies in the spreadsheet still pertain if Mr Singh just – Mr Laher just recorded them, that is what he says, but it does not explain any of the anomalies.”

So what he is saying, and you would have read this. He says look, I understand what you say but I pointed out anomalies and you have done no more than say that you
20 recorded what the bidders said. What is your response to that?

MR LAHER: So yes, it was recordal but I also pointed out anomalies. As per my evidence yesterday, I pointed out a number of anomalies as part of the negotiation process and I raised those anomalies, as I said yesterday, with the

batch pricing. I raised the issue the manner it was in that and I raised the issue that we need to go back and evaluate because then we have a more market-related issue around the best pricing. I raised the issue around the escalation so yes, I also raised these anomalies during the process, the spreadsheets for the outcome of the final pricing.

ADV MYBURGH SC: You see, I think you mis...[intervenes]

10 **CHAIRPERSON:** I am not sure but I thought Mr Myburgh's question was more about what do you say to Mr Callard's statement that all you could say was you were recording what the bidders said and you provided no further explanation. Am I right, Mr Myburgh?

ADV MYBURGH SC: Yes, that is correct, perhaps if I can pursue that.

CHAIRPERSON: Yes.

ADV MYBURGH SC: Let me take you to Mr Callard's statement that is attached to the 3.3 notice. At the
20 beginning of the file, page 503.57. Now we know that Mr Callard deals with this at paragraph 208 but let me just give you two examples.

208.4 Mr Callard says – and here he is dealing with the spreadsheets:

“The foreign exchange components amounts...”

Now we know you listed them and you get them from the bidders.

MR LAHER: Ja.

ADV MYBURGH SC: But that is not the point, he says:

“...used in the final negotiation spreadsheet would cause some of the locomotives not to meet local content requirement.”

MR LAHER: Yes.

ADV MYBURGH SC: He says well, you do not address
10 that.

MR LAHER: I do.

ADV MYBURGH SC: You simply say – well, this is what he is saying.

MR LAHER: Ja.

ADV MYBURGH SC: I am giving you an opportunity.

MR LAHER: Yes, ja.

ADV MYBURGH SC: He saying the best answer you have is you simply record what the bidders said.

MR LAHER: Yes.

20 **ADV MYBURGH SC:** And he says in so doing you are not answering or dealing with the anomaly.

MR LAHER: Yes.

ADV MYBURGH SC: What is your response to that?

MR LAHER: Right, I do deal with the anomaly in my statement, so specifically we look at 28.4, I did raise the

issue about local content directly with Mr Jayne and Ms Maltese and I made it known to them that based on the pricing that has been offered, these bidders are not going to meet the local content requirements.

ADV MYBURGH SC: Yes but you – you again, Mr Callard's point, he says in your answers to my concerns about the spreadsheet, all you say in relation to this is you record what the bidders said, but I pointed out an anomaly, which you have not dealt with.

10 **MR LAHER:** Ja.

ADV MYBURGH SC: Do you accept that you did not deal with the anomaly nor are you saying you did?

MR LAHER: I am saying I did in my statement. I do not think we covered it yesterday but it was in [inaudible – speaking simultaneously]

ADV MYBURGH SC: In dealing with paragraph 208.4?

MR LAHER: Yes.

ADV MYBURGH SC: Well, we will come to that. And then at paragraph ...[intervenes]

20 **CHAIRPERSON:** When you say you dealt with it you are not saying you raised it because Mr Callard is concerned about you not providing an explanation.

MR LAHER: Right, right.

CHAIRPERSON: Are you saying you did provide an explanation?

MR LAHER: I did provide an explanation in my statement and I raised the issue. I think it is in one of the paragraphs in my statement.

ADV MYBURGH SC: Alright and then let us go, for example, to 208.6.

“The diesel negotiated price recon worksheet contains inexplicable discounts on exchange rate impact and escalation.”

What do you say to that?

10 **MR LAHER:** Well, as per my statement yesterday you will see that that particular sheet meant nothing, it was an illustrative calculation and it did not go anywhere. It was purely illustrative calculation to see where we started and where we ended, so that sheet meant nothing.

ADV MYBURGH SC: And then last thing that I want to just deal with is the reconciliation of the business case and this is the paragraph where Mr Callard states that he did not think you were forthcoming with the information.

MR LAHER: Ja.

20 **ADV MYBURGH SC:** Now you would have read the transcript. Perhaps I can again just take you directly to what Mr Callard’s concern ultimately seems to have been. If you go to page 791.81. He says at line 7:

“Insofar as the process goes I stand by my point, if Mr Laher had knowledge of the spreadsheets and

detailed information, that he was bound by the confidentiality agreement but could have highlighted that to the evaluation group that we could then either had access to that and proceeded on a more informed basis with our evaluation.”

So you would have seen what his complaint was ultimately.

MR LAHER: Ja.

ADV MYBURGH SC: What do you say to that?

MR LAHER: In my statement I said I did tell them I was
10 bound by a confidentiality agreement.

ADV MYBURGH SC: No. Okay, well I mean, his point is
...[intervenenes]

CHAIRPERSON: You did tell him?

MR LAHER: That I was bound by a confidentiality
agreement.

ADV MYBURGH SC: You told Mr Callard that?

MR LAHER: Ja, I think I did say that in my statement, ja.

ADV MYBURGH SC: Well, he seems to indicate from his
perspective – and I must just put his version to you.

20 **MR LAHER:** Ja.

ADV MYBURGH SC: That you did not do that.

MR LAHER: And I say I did.

ADV MYBURGH SC: You disagree?

MR LAHER: Ja.

ADV MYBURGH SC: Mr Chairperson, we have no further

questions, thank you.

CHAIRPERSON: Okay, thank you. Thank you, Mr Laher, for coming. If we need you again we will ask you to come back but thank you very much, you are now excused.

MR LAHER: Thank you, Chair. Mr Myburgh?

ADV MYBURGH SC: Yes, Chairperson, I had asked that we adjourn now and then reconvene tomorrow to hear the evidence of Mr Mahlangu.

CHAIRPERSON: Yes.

10 **ADV MYBURGH SC:** Mr Mahlangu is available at nine o'clock if you would prefer to get an earlier start, it being a Friday, but we are entirely in your hands.

CHAIRPERSON: Yes. No, no, that is fine, I think let us start the usual time, ten o'clock, ja.

ADV MYBURGH SC: Thank you, Chairperson.

CHAIRPERSON: We – you do not have an idea how long he might be, hey? Maybe two hours?

ADV MYBURGH SC: I am confident that he will – we should be completed with his evidence by lunchtime.

20 **CHAIRPERSON:** By lunchtime, ja. Okay, alright. Thank you, we will adjourn for the day. We adjourn.

INQUIRY ADJOURNS TO 23 OCTOBER 2020