

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

27 NOVEMBER 2020

DAY 314



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DATE OF HEARING:

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 27 NOVEMBER 2020

CHAIRPERSON: Good morning Mr Chaskalson, good morning everybody.

ADV CHASKALSON SC: Morning Chairperson.

CHAIRPERSON: Are we ready?

ADV CHASKALSON SC: Chair we are ready.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: If maybe...

CHAIRPERSON: Maybe before we proceed let me just get
10 one item out of the way. A few weeks ago I just want to
make an announcement.

A few weeks ago Ms Dudu Myeni gave evidence via video link in this commission and in the process of her evidence disclosed the identity of a witness whose identity I had ordered should not be disclosed.

Subsequently she furnished the commission with an affidavit in which she explained her conduct. Since then the legal team has looked at her affidavit. I have looked at her affidavit and I have instructed the legal team to assist
20 the secretary and prepare the documentation necessary so that the secretary of the commission can lay a criminal complaint against Ms Dudu Myeni for the police to investigate a possible contravention of either Section 5 of the Commission's Act or Regular 9 of the Regulations of the Commission and that process will be taken forward

urgently.

Okay that is the end of that announcement. Mr Chaskalson.

ADV CHASKALSON SC: Thank you Chair. Just some housekeeping before we begin today. We will be working in files FOF 2 and 3 today and we need to identify some annexures. At the...

CHAIRPERSON: Huh-uh

ADV CHASKALSON SC: Chair – sorry Chair. In FOF 2
10 there is a Regulation 10.6 Notice at page 390.

CHAIRPERSON: That is Flow of Funds Bundle 2?

ADV CHASKALSON SC: That is correct Chair.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: Can I ask that that notice dated 17 September be entered as BB – as VV3.

CHAIRPERSON: What page is it?

ADV CHASKALSON SC: Page 390. 390.

CHAIRPERSON: You say it should be Exhibit?

ADV CHASKALSON SC: VV3.1. Then Chair.

20 **CHAIRPERSON:** The Directive in terms of Regulation 10.6 of the Regulations of the Commission starting at page 390 is admitted as Exhibit VV3.1

ADV CHASKALSON SC: Then Chair there is a second exhibit – a second 10.6 Notice at page 395 if that can be VV3.2? That is the notice calling for an affidavit it is dated

5 October.

CHAIRPERSON: The Directive in terms of Regulation 10.6 which starts at page 395 is admitted as Exhibit VV3.2. Is that right?

ADV CHASKALSON SC: That is correct Chair.

CHAIRPERSON: 3.2. Okay.

ADV CHASKALSON SC: Then Chair Mr Makhubo furnished an affidavit in response to that second notice and this affidavit certainly does comply with Rule 10.6 Chair.

10 That is to be found at page 404.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: And...

CHAIRPERSON: That one we will admit after he has confirmed his signature is it not?

ADV CHASKALSON SC: Indeed. There is that affidavit and the supplementary witness statement and a bundle. If we can reserve.

CHAIRPERSON: Yes.

20 **ADV CHASKALSON SC:** If we can reserve 3 and 4 for the affidavit and the witness statement.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: And if I might take you to the bundle which commences on page 610 – 610 of Volume 2.

CHAIRPERSON: Page 610 of the same bundle?

ADV CHASKALSON SC: Indeed Chair and if that can be a

bundle of document described as Annexure VV3.5?

CHAIRPERSON: Is it separate documents that stand alone?

ADV CHASKALSON SC: It is a bundle of documents from which we are going to put several documents to Mr Makhubo in today's session Chair like with Mr Ramosebudi yesterday it is a bundle of documents collected by the commission in due course. They will all be proven by the commission.

10 **CHAIRPERSON:** Oh okay. You – you want us to mark the first one and the others will be marked with point something – point something up to the end?

ADV CHASKALSON SC: Indeed Chair if we could...

CHAIRPERSON: And then – but we will use the page number – pagination?

ADV CHASKALSON SC: Indeed.

CHAIRPERSON: Ja okay alright. Did you want me to – to just mark the first one and then say we will say point 1 or whatever and then the rest will be done later?

20 **ADV CHASKALSON SC:** Indeed Chair unfortunately it is going to point 606 or whatever.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: But yes please Chair.

CHAIRPERSON: Oh okay alright. Exhibit VV stands – remains?

ADV CHASKALSON SC: VV remains yes Chair.

CHAIRPERSON: Yes. And then it will be after VV what will it be?

ADV CHASKALSON SC: 3.5.

CHAIRPERSON: 3.5.

ADV CHASKALSON SC: And Chair because there are – there is going to be pagination – that bundle in fact runs to the end of Bundle 2 and through the whole of Bundle 3.

CHAIRPERSON: Ja.

10 **ADV CHASKALSON SC:** Might I suggest that we create a new annexure for Bundle 3 so we do not end up with duplicate page numbers.

CHAIRPERSON: Yes, yes I agree ja I agree.

ADV CHASKALSON SC: And that would then be VV3.6.

CHAIRPERSON: Okay no that is fine. Okay so I have marked it as Exhibit VV3.5 at page 610.

ADV CHASKALSON SC: Thank you Chair.

CHAIRPERSON: Yes. And then do not forget to let Mr Makhubo's legal team repre – place themselves on record?

20 **ADV CHASKALSON SC:** Thank you.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: Maybe if Mr Mphaga can do that now.

CHAIRPERSON: Ja maybe you can do it from there ja.

ADV MPHAGA SC: Thank you Chair it is Advocate Moses

Mphaga SC briefed by Malanga Incorporated. And Chair just as a matter of also explaining something? It is in the founding affidavit – the first affidavit. You will note that the – is there a paragraph which is titled...

CHAIRPERSON: Tell me the page first?

ADV MPHAGA SC: Page VV3 MGM016.

CHAIRPERSON: Oh use the black numbers on the top left corner of the page.

ADV MPHAGA SC: Top corner. Oh I do not have the ...

10 **CHAIRPERSON:** You do not have?

ADV MPHAGA SC: Yes but it is just...

CHAIRPERSON: Okay tell me the red one it is fine. Tell me the red page number.

ADV MPHAGA SC: VV3 MGM016.

CHAIRPERSON: 016. Okay I just want to get – Mr Chaskalson are you able to give me the black number or not?

20 **ADV CHASKALSON SC:** It would be 405 Chair. But I think for Mr Mphaga's benefit we need to get him a bundle with the correct pagination.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: Otherwise he is not going to be able to follow.

CHAIRPERSON: Ja it is going – he will not be able to find the right documents.

ADV CHASKALSON SC: Can we just attend to that now
Chair.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: Apparently there is a bundle
here.

CHAIRPERSON: Yes. Ja okay. 405 you said.

ADV MPHAGA SC: Yes Chair.

CHAIRPERSON: Yes I have found it.

ADV MPHAGA SC: Yes Chair.

10 **CHAIRPERSON:** Yes.

ADV MPHAGA SC: We have consulted with our client and
he does not want to deal with those issues.

CHAIRPERSON: Yes.

ADV MPHAGA SC: Because they are legal arguments.

CHAIRPERSON: Oh okay, okay.

ADV MPHAGA SC: And I think the request.

CHAIRPERSON: Ja just to save time.

ADV MPHAGA SC: The request for a ruling I do not think
it is confident because there is no application.

20 **CHAIRPERSON:** Yes.

ADV MPHAGA SC: So we will not be dealing with that.

CHAIRPERSON: Okay. Okay.

ADV MPHAGA SC: Thank you Chair.

CHAIRPERSON: Thank you very much. Thank you. Mr
Chaskalson.

ADV CHASKALSON SC: Thank you Chair. Then we are ready to commence and we will need Mr Makhubo to be sworn in but I understood that possibly before Mr Makhubo is sworn in he wants to make a statement to the commission.

CHAIRPERSON: I think let him be sworn in and let us get it – let us get that part out of the way and then he can – I will allow him to make some remarks or statements after that. Unless there is a particular reason why the sequence
10 should be different? There is no reason. Okay please administer the oath or affirmation first?

REGISTRAR: Please state your full names for the record.

MR MAKHUBO: Mobantoa Geoffrey Makhubo.

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

MR MAKHUBO: No.

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

MR MAKHUBO: Yes.

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

MR MAKHUBO: So help me God.

REGISTRAR: Thank you.

CHAIRPERSON: Good morning Mr Makhubo.

MR MAKHUBO: Good morning Chairperson and Mr Chaskalson.

CHAIRPERSON: And thank you for availing yourself to come and assist the commission. Thank you. I understand that you would like to take about five minutes to say something before Mr Chaskalson leads your evidence.

MR MAKHUBO: yes Chair.

CHAIRPERSON: I give you that chance now.

MR MAKHUBO: Thank you very much Deputy Chief
10 Justice and good morning to all. It is along the same lines
Chairperson that we would like to appreciate the
opportunity to appear before the commission and give
evidence and assist the commission wherever we can and
to say that on the record that we support fully the work of
the commission.

Any reference to delays in submission of documents
or comments on difficulties of accessing documents were
not deliberate. Some of the issues occurred between ten
and fifteen years ago so – so we wanted to put on record
20 that we are here to answer questions. Clear things that
are on the public discourse and of course I mean the
political space there will be political issues but I am here
to assist the commission where possible.

You know I have knowledge that I am duty bound to
come and assist the commission by the position I hold.

Even though the issues that are being referred to precede my time in government and of course being the Executive Mayor but I understand that the current role brings attention to the matters and habitually elevates the matters to be matters of public importance even though they had been prior to me holding this position.

So – so we just wanted to put that – that we are fully behind the commission and we will support its work. Thank you very much.

10 **CHAIRPERSON:** Thank you very much – thank you very much Mr Makhubo we appreciate that. Thank you. Mr Chaskalson.

ADV CHASKALSON SC: Thank you Chair. Mr Makhubo if we can possibly begin by simply confirming the two or the affidavit and the statement that you have submitted to the commission. If I can ask you first to go to page 424 of that File 2 and just confirm that that is your signature on page 424 at the end of the affidavit?

20 **CHAIRPERSON:** You – he knows that he must focus on the black numbers Mr Chaskalson?

ADV CHASKALSON SC: You do not have files? Does it say 2 or 3? 3 oh I beg your pardon let me get a file through to you.

MR MAKHUBO: Which page is that?

ADV CHASKALSON SC: 424.

MR MAKHUBO: 424.

CHAIRPERSON: Any reference to page numbers Mr Makhubo will be a reference to the black numbers at the top left corner of each page. You can disregard the red numbers unless Mr Chaskalson specifically refers to red numbers.

MR MAKHUBO: Yes it is my signature.

ADV CHASKALSON SC: And that is a signature which you signed deposing to the affidavit that starts at page 404?

10 **MR MAKHUBO:** Yes those are my initials I can confirm that.

ADV CHASKALSON SC: Thank you. Chair can we ask that that affidavit now be admitted as VV3.3?

CHAIRPERSON: The affidavit of Mr Moloantoa Geoffrey Makhubo starting at page 404 is admitted as Exhibit VV3.3.

ADV CHASKALSON SC: Thank you Chair. And then Mr Makhubo on – in fact yesterday on the 26 November your legal team furnished us a supplementary statement which you will find at – just after page 606. It is numbered
20 606.1.2.3.

MR MAKHUBO: Found it.

ADV CHASKALSON SC: And if I can ask you just to confirm that that is in fact on page 11 that is your signature again at the – at the foot of there and I have been calling it a statement I see in fact it is an affidavit.

CHAIRPERSON: You saying page 11 you mean 606.11
Mr...

ADV CHASKALSON SC: 606.11 indeed Chair. And then
can I ask you just to confirm the correctness of that
statement? Sorry before you do – before you confirm the
correctness can I take you just to page 6 because I think
there may an error on 606.6 in paragraph 20. I think I do
not want to put words into your mouth but I think there is a
reference to TSS that should be a reference to CCMA. So

10 in paragraph 20 you say:

“I have indicated in my founding affidavit
that Molelwane Holdings was established
together with Obakeng Shikhane Du Plessis
Investment deals. The TSS was the only
deal concluded by Molelwane Holdings as
per the teaming agreement referred to in
paragraph 6.2 of the year submission to
state capture.”

Is the reference to TSS correct?

20 **MR MAKHUBO:** Yes it is.

ADV CHASKALSON SC: It is correct.

MR MAKHUBO: That is correct.

ADV CHASKALSON SC: I apologise. Then can I ask you
to confirm the correctness of this statement? This affidavit
oh sorry.

MR MAKHUBO: It is correct.

ADV CHASKALSON SC: Thank you. And Chair can that then be admitted as VV3.4?

CHAIRPERSON: The affidavit of Mr Moloantoa Geoffrey Makhubo starting at page 606.1 is admitted as Exhibit VV3.4.

ADV CHASKALSON SC: Then Mr Makhubo before we get into the details of your statements there is one issue that I would like to canvass with you in advance because it is an
10 issue that is of particular importance to the commission and I have indicated to your Counsel and I want to put it on record here. That I am genuinely interested in your views as a – or I am – would hope the commission as someone who has been Treasury General of a region on this topic and I want to just make an undertaking to you that you speak completely freely and I will not refer to any of your answers in this section of your testimony at any other point in your testimony. I am genuinely looking for the benefit of your views and not talking about facts here, we looking for
20 views and possible advice.

And the issue that we – that I want to raise with you in this context is relating to political party funding which is why your experience as a Treasurer General is so important.

And in your second statement you make a point

which I think is a – a very good point in paragraph 26 of that second statement page 606.8. And there you say:

10 “As indicated in my founding affidavit I was elected as Treasurer of the ANC Johannesburg Region currently acting as the Chairperson. As a member of the ANC I am expected to make contributions towards the movement at all material times. However as a Treasurer I have the obligation to raise money and ensure that the financial needs and obligations of the ANC in my region are met. These financial obligations are not only limited to the operational monthly costs but many other costs that are related to day to day requests by ordinary members and branches. Some would refer to financial assistance for a burial of members.”

20 I must apologise I am taking you to the wrong – I am taking you to the wrong paragraph. There is a – there is passage in your affidavit where you speak to the fact that the ANC needs donations to fund itself in certain respects. And that the donations that it draws are primarily from black business people because ...[intervenes]

CHAIRPERSON: It might be paragraph 31 Mr Chaskalson.

ADV CHASKALSON SC: Thank you Chair.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: Thank you very much I – let me not put words into your mouth Mr Makhubo. The Chair has directed me to the correct paragraph.

10 “In so far as the funding of political parties are concerned sadly the regional offices are not receiving any financial assistance like the national office from local – from the local municipality. This creates a serious financial burden on the financial needs of regional offices. Further it is not unusual for the treasurer of the ANC to make requests for donations from individuals and from mostly black owned companies that are sympathetic to the ANC. Most of these black companies do not receive any work or tenders from the private sector but from the

20 public sector. It is therefore not unusual that these companies would be enabled to contribute or donate monies to the ANC from funds derived from award of tenders.”

Now I want to ask you some questions in that regard and I want to repeat that I – I am not going to refer

to your answers later in this cross-examination. Can you – can you give us an indication of what the budget – what the annual budget of your region was when you were Treasurer General?

MR MAKHUBO: Firstly I was – I was called a Regional Treasurer not the Treasurer General. The ANC only has one Treasurer General who is based at head office and because we are a unitary structure the – the fund raising efforts, the funding policies would be the National
10 Competency and the Treasurer General would be best placed to – to speak on the funding of the ANC generally as an organisation.

However as it relates to – to my responsibilities as a Regional Treasurer of the ANC the – the budget would differ from annual – year to year depending on the activities from – on that year.

So we would normally fund the operational expenses of the region on a month to month basis but there will be peaks. When there is a conference, when the
20 elections as we mobilise for members to attend certain events like January 8 events etcetera etcetera so ordinarily we would sit and focus at the beginning of the year. Is there a Youth League conference, is there a Women's League conference. Is there [00:24:02] Military Veterans Conference sitting – Veterans League is it sitting? Cosas

Sasko how do we help them? So it is never a constant amount it depends on the activities planned for the particular year.

And then of course there will be different campaigns that need to be funded and it is – you did not know from the statement of the President at the beginning of the year then you would know what the campaign should be of that year and what gives you that we would fund.

ADV CHASKALSON SC: But just roughly? I mean are you
10 able to give us a sort of – just an approximate figure of say
– what was your last year as Treasurer as I understand it
was 2000 – end of 2018? Do you have a sense of what is
the budget for the region was or – for that year?

MR MAKHUBO: I must think because normally we give a
report for three years and I think because there were –
there would have been elections and congress there would
anything between 30 and 50 million.

ADV CHASKALSON SC: I suspect it would have been
more than that because we have seen – we have seen a
20 letter just dealing with elections that talks about 50 million.

MR MAKHUBO: Yes these were the 2016 elections – very,
very difficult. And of course the prices and costs increase
and the sort of activities, the target – the targeted
audiences – the sorts of events that were planned were
very, very different from the past elections but for now you

are correct I remember vividly asking for – for that amount of money and it was not the only money we were trying to source. But just specifically for – for that election. I thought you asking me what is on average the...

ADV CHASKALSON SC: Let me tell you where I am.

CHAIRPERSON: Just one second. Just hold. Although he is asking the questions Mr Makhubo you are telling me.

MR MAKHUBO: Okay.

CHAIRPERSON: So do not.

10 **MR MAKHUBO:** Okay Chairperson.

CHAIRPERSON: So for – you know for me to hear you properly it is better as you give the answers you face this side.

MR MAKHUBO: Okay Chairperson.

CHAIRPERSON: Okay alright.

ADV CHASKALSON SC: I am interested in getting a sense of a complete budget including elections, included ad-hoc campaigns How much would it cost to run a political party on the scale of the ANC in this region over each of those
20 years? And I am not – we are not going to hold you to that at all but we just want to get a sense of it because ...

MR MAKHUBO: Ja I really will have to go back to my records. He knows that treasurer for a very long time so things have changed along the way. Chairperson I – I was first elected in 2008 so will have seen different [00:26:57]

itself changing, challenges being different, number of works increasing. So I really do not want to speculate as we speak here.

ADV CHASKALSON SC: Well can I then ask a separate question? How much of that budget is funded from membership dues and how much is funded from donations? Again I am not going to asking for anything exact but just a broad estimate.

MR MAKHUBO: You know there was an article by the
10 Treasurer General in the Sunday Times a few weeks ago who said nationally the ANC gets about 75% to 80% from the – from private donations. We pay R20 a year as a member. So if you have 50 000 members it really cannot sustain even one month. So – so majority of our funding in Johannesburg would come from private donations.

ADV CHASKALSON SC: You see that – I mean that is what I would have imagined and it does seem to me that there is a potential problem there because the membership to whom the organisation should be accountable are in
20 financial terms nothing like most important constituency in terms of funding the organisation. So that – would you comment on that?

MR MAKHUBO: I suppose that is the conference agrees on membership fees and it is R20.00 per annum.

ADV CHASKALSON SC: Sorry to interrupt. I am not for a

minute suggesting the membership fees should be more than R20.00 per annum because I do not think that membership should be a – if the membership fee should disqualify anyone from being a member. I mean there is a reality that a large number of members are not going to be able to afford much more than R20.00 as a membership fee. But I still want to go back to my other – my earlier question which is if you have a low membership fee to give access to everyone what that means is that membership
10 dues are going to be a relatively small percentage of the money that you need to run the organisation.

MR MAKHUBO: True Chairperson that the nature I think of political parties and I would like to think that all political parties in South Africa would have the same problem of having to go to the private sector to ask for donations hence I think Parliament has been debating this and there was [00:29:34] political funding deal or act now that is waiting for President to sign to regulate this political party funding over time I think there have been NGO's and
20 political parties talking about this reliance on the private sector and the potential problems not the real potential problems it might bring.

So that is... I mean, my answer will be that, it is being a discussion at the moment. I mean, in parliament, I think they have discussed, amongst political parties themselves.

There would have been one or two political parties who were against it but I think it was passed through maybe the ANC supporting it.

But there should be some regulation of political party funding. It is only national. Local government council does not fund any political party. I do not think the province funds any political party.

So I am unsure how that will be able to cover, the entirety of the needs of all political parties, registered
10 political parties, funding throughout the country. So I do not know what the future will bring.

ADV CHASKALSON SC: But while we are on donations. That point that you make at paragraph 31 is, I think, a particularly an important point.

I mean, we live in a profoundly unequal society. And we still carry a massive legacy from our apartheid's past. And so the bulk of the membership and the supports of the ANC do not have large amounts of money. It is not just the ANC. It is also the other parties representing black South Africans.

20 And you make the point here that black owned companies, generally, do not receive substantial work from the private sector but are dependent on the public sector.

Would you say – I mean, that is your point, not mine. But I – I mean, you presumable – you have made it. You must accept it.

What I want to put to you is that, if there is a model that depends on corporate donations for political party funding in a society like ours where the bulk of the population is still very, very poor and where the black companies, because of our legacy, our history, with very few exceptions, are dependent on public sector contracts for big contracts.

Is there not a risk that because of our model of political party funding that issues of procurement and party political funding, may...

10 I do not want to suggest that they do – that they do get confused but is there not a risk that it can look like procurement is being directed for political party funding purposes?

MR MAKHUBO: Chairperson, I suppose when you say there is a risk, there is always a risk. Let me make an example. The mining entity would still government for licenses and all that.

20 So do not really procure from government directly but they need regulatory environment, they need a particular policy framework, they need a license for carrying on with their mining operations.

So in any normal environment that risk could exist as well, that whoever is in charge at that point, would be lobbying for a particular type of policy.

ADV CHASKALSON SC: Indeed.

MR MAKHUBO: But it is not directly linked to procurement.

ADV CHASKALSON SC: Your point is ...[indistinct]
...[intervenes]

MR MAKHUBO: So I am saying that business, generally, whether buying from the state or private sector, would need a particular policy framework, would need a certain legal framework.

I mean, there is a cry from business about labour laws and say, they are not encouraging investment and all that.

10 So there is a lobby from business, whether it is procuring from private sector or – not what is in the private – from the public sector which is in the private sector.

So I am saying the risk, for me, is throughout that government, by its very nature, is needed for regulatory environment and then procurement.

When you say there is a risk of a direct link between procuring from the state and supporting. I can say, if we do – you take a procurement stand(?) list of any government department and you see, probably, how much goes through
20 previously white owned companies and previously... You will be shocked.

ADV CHASKALSON SC: No, I would not be shocked. We have been looking at the list for a very long time.

[Parties intervening each other – unclear]

MR MAKHUBO: The direct link, I think, for me. Yes, it

remains a risk but I do not think this casualty(?), it cause an effect there.

ADV CHASKALSON SC: Well, let me turn it around because you are talking about regulatory frameworks as well as procurement. My real point – the real point I want to put to you and get your comment on is.

Do you not think that if we could move away from a model of political party funding that depend on corporate donations for the most part, we could think of a different
10 model?

The potential for party policy to be influenced by big corporations, be that black or white, would be much less.

MR MAKHUBO: In an ideal world, I think that it will be slightly different. The situation would be completely different - or slightly different, let me say. I still believe that for the survival of business, generally, that economics politics nexus somehow and it is well right(?).

It is not similar(?) in South Africa, Chairperson. It is actually why – if you look at models in the Western Europe,
20 in the US.

In fact, in the US it is actually quite worse that, when it is the Republicans, you know that there will be this lobby of the Republicans for this policy.

So I think it is a debate, generally, the multi-lateral organisations must be discussing this. How would you list(?)

the business influence. Although you need economics to run, you need the economy to grow.

And of course, they need politics to be stable. They need democracy to thrive. So they have got an interest in the stability of the country.

Businesses has got interest in the stability of the country. It has got interest in the stability of our politics(?). The body(?) politics must be stable.

And I think, in doing so, some of them would say: I
10 support democracy. I know companies that will say: I am funding every political party that is in parliament in proportion to their representation.

Because they are interested in a stable democracy. And I think they must have a hand in stabilising our democracy.

ADV CHASKALSON SC: Can I put a notion to you and I just want your comments? What about a system, a party political financing that was in large parts based on central government grounds dispensed according to audited membership?

20 So you work out what a party needs to run on an efficient basis and you say if a party, you know, two million people nationwide would need this budget, if it – per member, central government or grant and political – and donations from the private sector will not be allowed. We will cut that off.

MR MAKHUBO: Is it possible that the fiscus can absorb that and be able to fund? I think in the last elections we had 60 or so registered parties and there were others that could not even raise because they did not have the funds but they wanted to contest.

I mean, if you look at the IEC Portal. I do not know how many parties have registered to the IEC but ...[indistinct] for those elections.

If the fiscus is big enough to carry that and that is
10 enough for political parties to run, it will be disadvantaged ...[indistinct] parties though because they will get a smaller proportion.

And I suppose that is why the public – the public – the Political Parties Funding Bill is trying to address that very part that you...

In fact, it is very specific that when you fund a political party over a certain amount, you must disclose it. Everyone must know. So it cannot happen in the dark, so to say. I cannot happen in secret. But anything below that amount...

20 You know, if it is a Spaza shop in Soweto, funds a branch, R 10 000,00 for their activity. You know, they do not have to – there is no duty to declare.

And I think those thresholds, for me, are quite important that we set. I believe in hybrid. I think the state must play a role. I still think that business – in fact, business must play

a role in funding political parties. Regulated, maybe. But I think the hybrid is quite important.

[Speaker is not clear.]

ADV CHASKALSON SC: You see, if state funding is dispensed according to audited membership – I mean, there remains a question of whether we would have the machinery to do that. But if it was, parties would then become much more accountable to their members.

When a member leaves, the ANC for EFF, the grant for that member goes to the EFF as well. What is your comment to that?

MR MAKHUBO: You see, it is an ideal situation. I think that if for accountability Chairperson, it is quite important, irrespective of where the funds come from and how they are distributed and allocated.

The issue of accountability to, firstly your members and secondly to the public is quite important which is why I think my organisation, its congresses being live and media is invited and we do account to the public.

You will even find our reports, including strategy and tactics were... You know, we plan our strategies but we make it public.

So I think accountability for me is key and central. So whether you use funds to try and keep a member from jumping ship, I do not know. I think when your values do no

reconcile to the values of the organisation, you are free to leave.

It should not be based on that you go and recruit on a sundry(?) so that you can get more money. People must agree to your values. People must want to be a member of the organisation.

They must live the principles of that organisation. It must not be based on funding. I do not think it is proper. Even though, the proportion of the funds you get from political party funding would be based on your representation in parliament which is a translation of the proportion of the votes you got during the last general elections.

ADV CHASKALSON SC: Well, that is one model based on your electoral support. Another one might be based on audited membership. So the one is – would remunerate parties in proportion to their electoral support. The other would remunerate them in proportion to their membership.

MR MAKHUBO: Yes.

ADV CHASKALSON SC: Which would then give the membership more power within the party.

MR MAKHUBO: Ja, maybe Chairperson, we should take this and put it in a discussion document in all political parties and then say, it is probably a model to promote the accountability to members.

I think the accountability is more to society than it is to

your own members. [Indistinct] members. As a Treasurer in the conference there are ...[indistinct] members through delegates but we have to account to the public.

Especially public funds are used. We really need some form of reports to Treasury. Reports to parliament. Reports to council. Reports to the legislature in order to account to the public.

So that is why... The model might work. It might be cumbersome. Every time a member joins, there must be
10 portals so that it can be audited.

You do not go to a graveyard and take names of – and dates of birth of people and, you know, for ghost memberships.

So it needs to be a robust system for it to work. Maybe South Africa should be the first to experiment with that.

ADV CHASKALSON SC: Well, you know, it is not really my role to [laughs] to put these out. So maybe we should get to the questioning. But I would welcome a public conversation around that because I do think that...

20 What we have seen in this Commission is that the link between political party funding and private donors can be abused in certain circumstances.

MR MAKHUBO: Ja.

ADV CHASKALSON SC: Can I then start the questioning which is now going to be less discursive and more focussed

on very specific facts?

You furnished a full statement to the Commission. The Commission was really interested in a range of topics. The relationship – primarily the relationship between your close corporation called Molelwane Consulting which was a corporation in which you held a 67% interest.

And companies within the EOH Group and companies within the Regiments Group and the relationship between those companies and The City of Johannesburg.

10 You furnished these two affidavits to us. You have also made a series of public statements on these issues because they have been issues that had been canvassed publicly.

And I would like to take you to those statements and just to clarify that you stand by what you have said in those statements.

So if I can ask you to go to – it is in File 2 at page 947. Sometime ago, I think it was in 2018, there were articles published by Ama(?) Bongani, raising questions about Molelwane Consulting and Regiments.

20 And at page 974, you issued a response. You did not write a reply. You issued a response at page 947. Can I ask you to look at that and just confirm to me that you stand by the contents of what you said in that statement?

MR MAKHUBO: Yes, large part. Except that we should have said for some reason, which is what I said in my

affidavit, that for some reason the Molelwane Consulting was not processed.

ADV CHASKALSON SC: Sorry. Your resignation from Molelwane Consulting was not processed?

MR MAKHUBO: Yes, as a holding member(?), ja. But as an executive, I did, ja.

ADV CHASKALSON SC: Sorry. As a holding member your resignation was not processed?

MR MAKHUBO: Was not processed.

10 **ADV CHASKALSON SC:** As an executive member... I mean, it is a close corporation, not a company.

MR MAKHUBO: Yes, yes.

ADV CHASKALSON SC: So you seized having an executive role in Molelwane Consulting.

MR MAKHUBO: Yes.

ADV CHASKALSON SC: And your interest as a member ought to have been... Are you saying, you gave up your interest as a member?

20 **MR MAKHUBO:** Yes, the issue here was that we seized to be a member but it was not processed and then it carried on.

ADV CHASKALSON SC: So the CIPC continued to reflect you as a member where it should not have?

MR MAKHUBO: Well ...[intervenes]

ADV CHASKALSON SC: Well, let us not blame the CIPC. Administratively within Molelwane, it – your withdrawal as a

member was not ...[intervenes]

MR MAKHUBO: It was not processed, yes.

ADV CHASKALSON SC: I think that is a point that you are making because there were, in fact, four statements that you issued because it was a running story.

Can I ask you to go to page 949, where there was a second statement. And again, can I ask you to take a look at that second statement and confirm that you stand by its contents?

10 **MR MAKHUBO**: It will be exactly the same response that I gave you the first time.

ADV CHASKALSON SC: That is subject to the qualification ...[intervenes]

MR MAKHUBO: Yes.

ADV CHASKALSON SC: ...that you resigned your membership interest...[intervenes]

MR MAKHUBO: Yes.

ADV CHASKALSON SC: ...that you – but that was not processed. You stand by that?

20 **MR MAKHUBO**: [No audible reply]

ADV CHASKALSON SC: There is then a third statement at page 951. And there, in fact, you make the point about your resignation at the foot of page 952. Can I ask you just to read the whole of that third statement and then confirm that you stand by it?

MR MAKHUBO: It is a similar reply from questions from Mokopane(?). I kept the same thing.

ADV CHASKALSON SC: Yes.

MR MAKHUBO: And I still... Yes.

ADV CHASKALSON SC: I am not suggesting that there is any inconsistency in your reply. I just want you to confirm that ...[intervenes]

MR MAKHUBO: Yes. Remember, it was – these were questions from the newspaper.

10 **ADV CHASKALSON SC**: Yes.

MR MAKHUBO: To myself.

ADV CHASKALSON SC: Yes.

MR MAKHUBO: And I was answering them in the manner that I was answering them for reasons best known to myself as well.

ADV CHASKALSON SC: Yes.

MR MAKHUBO: So, yes ...[intervenes]

ADV CHASKALSON SC: But there is nothing that you want to correct in there? There is nothing that was said there that
20 was incorrect?

MR MAKHUBO: No, no, no. I am must saying, subject to that qualification. Yes, the statement from Mokopane was – what I made, it is correct.

ADV CHASKALSON SC: Yes. In fact, in the third – if I understand you correctly, in the third statement, you do not

need that qualification because at the foot of what is page 952, you say:

“As stated previously, I tendered my resignation as a member of Molelwane Consulting and other business interests...”

Oh, no. No. The point about not – the resignation not being processed, is not in the statement. I am sorry. I take that back.

There is a very short fourth statement, again answering
10 specific questions at page 954. There is almost nothing said there but can I get your confirmation that you stand by what you said there?

MR MAKHUBO: Yes.

ADV CHASKALSON SC: My learned junior makes a point that you and I are having a conversation. We know what we are talking about but the world outside does not.

In due course, I am going ask you to explain your relationship with Molelwane and the relationship between Molelwane and Regiments and the EOH relationship to the
20 extent that there was one.

But for now, I just want to clarify what potential points of dispute are and what are not. So before we get into the details of your - well, of the relationship between Molelwane and Regiments.

Can I ask you also to look at a series of schedules that

had been prepared from bank transactions by the Commission? They start at page 985 of that file.

CHAIRPERSON: Did you say 985?

ADV CHASKALSON SC: 985.

CHAIRPERSON: Ja.

ADV CHASKALSON SC: And the first schedule on page 985 is a schedule of income that flowed from either Regiments Fund Managers or Regiments Capital into Molelwane Consulting.

10 You have had this document for some time. I just want to know if there was anything on there that you want to dispute?

I am not asking you to confirm the correctness of that. The bank statements, in due course, will be... Or, in fact, the bank statements are in this bundle.

But are there any items here that you would like to correct?

MR MAKHUBO: I must confess Chairperson, I... It is correct that we have this document since last week but I
20 have not ticked the ...[indistinct] figure, cross-referencing to the ...[indistinct] ...[intervenes]

CHAIRPERSON: You have not applied your mind?

MR MAKHUBO: I have not gone through the...[intervenes]

CHAIRPERSON: The figures.

MR MAKHUBO: Yes, I did see the bank statements but I

was looking at the substance of what was being said.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: But for present purposes, you are not disputing the contents here? I am not asking you to admit them but you are not disputing?

MR MAKHUBO: I have no reason to dispute them. As I said, I have not particularly looked at whether they are correct or not. But, ja.

ADV CHASKALSON SC: Yes.

10 **MR MAKHUBO**: They look correct.

ADV CHASKALSON SC: And what that schedule shows that over the period 2008 through to 2016, the total amount received by Molelwane from Regiments was R 35 710 919,00. I am not asking you to admit that figure but for present purposes, I just want to clarify that you are not actively disputing it.

MR MAKHUBO: Chairperson, I am not sure what – I do not dispute - verify...[intervenes]

CHAIRPERSON: Yes.

20 **MR MAKHUBO**: What the difference is.

CHAIRPERSON: I think from what you have said, the position is, as things stand, you do not have a reason to dispute these. But you reserve your right because you have not had – you did not go through item-by-item.

You would like to be able to dispute, if later on, you

think you have got grounds to dispute. Is that right?

MR MAKHUBO: That is right, yes.

CHAIRPERSON: Yes. Okay.

ADV CHASKALSON SC: Thank you, Chair. Can it be on the same basis? Can we go to the table on page 988 which refers to transfers from Molelwane into your account over the period 2011 to 2014? I want to emphasise this. It is from 2011 to 2014 because there is a fuller schedule later that goes past 2014.

10 Again, reserving your rights at a later stage to dispute it if you find errors. At present, are you in a position to dispute that this table is – that this schedule accurately reflects those transfers?

MR MAKHUBO: No, subject to that qualification ...[intervenes]

ADV CHASKALSON SC: Absolutely. I think we must just work on the basis that you, you know, if you come back later and if you pick up an error later, you are always welcome to make that correction. And so let us run...

20 And that table reflects payments from Molelwane to your personal account over this period, the period of 2011 to 2014 of R 270 000,00.

MR MAKHUBO: Ja.

ADV CHASKALSON SC: Can I then go to page 989?

MR MAKHUBO: [No audible reply]

ADV CHASKALSON SC: And this table reflects payments from Molelwane to the ANC and, I am going to say a Lion's organisation because I see, for instance, there is a donation to Posas(?) on one of the line items.

Again, are you in a position – reserving your rights to dispute later? Would you accept that the provision – you accept the correctness of this schedule?

MR MAKHUBO: As I say, it is subject to ...[intervenes]

ADV CHASKALSON SC: Yes. I am not suggesting
10 ...[intervenes]

MR MAKHUBO: ...more but ja. Subject to ...[indistinct]
...[intervenes]

[Parties intervening each other – unclear]

ADV CHASKALSON SC: And the amounts of those donations is R 654 564,00. Then the next – over the page, one sees a table...[intervenes]

CHAIRPERSON: Is that at 990?

ADV CHASKALSON SC: 990. That is correct Chair. There were several tables. The first table is a table of cash
20 deposits into Molelwane over the period 2009 to 2019. And that reflects a total of R 592 000,00 over that period.

Again, are you in a position to dispute – reserving your rights to do so at a later stage, are you presently in a position to dispute any of these – the records on that table?

MR MAKHUBO: No, I cannot even remember the, but ja. I

cannot dispute it.

ADV CHASKALSON SC: But the next two tables are – relate to TSS Management Services and ACSA. I am not going to be dealing with them today. So I do not – I am not going to ask you to respond there. If we do get back to them, you will have an opportunity.

Then, likewise, if we go over the page to page 991. There is a table involving Patrick Makhubedu and a table involving Zylek. Again, I am not going to ask you to
10 respond to those.

But can I then ask you to turn to the next file, Bundle 3? And go to page 847.

MR MAKHUBO: Okay. What page again?

ADV CHASKALSON SC: Page 847 in Bundle 3.

MR MAKHUBO: [No audible reply]

ADV CHASKALSON SC: And Chair, I am not sure if you have 847?

CHAIRPERSON: Yes, I do. Thank you.

ADV CHASKALSON SC: And on page 847, there is a table
20 that has the heading Annexure A. And that looks at transfers into Mlolwane from Regiments Fund Managers or Regiments Capital and transactions out of Mlolwane within a period of – I think it was 10 days after the transfers in from Regiments Capital.

Again – or Regiments Fund Managers – are you at

present in a position to dispute any of the entries on this table?

MR MAKHUBO: No, I am unable to – I cannot dispute because I would not – I have not gone through the details.

ADV CHASKALSON SC: Yes. It is a table that runs from 2011 to February 2016, it is period 2011 to 2016. What it shows is in that period the total inflows from Regiments Capital and Regiments Fund Managers were 18 871 570 and the outflows that are recorded on the table are
10 130 000 with the reference ANC donation. Amounts that are cashed is an aggregate amount of 850 000 and amounts that are transferred into your personal accounts are 5 917 183.

Can we then go to – we can ignore annexure B because again that deals with Zylek, Mr Makhubedu and related organisations which we are not going to be concerned today but annexure C is another schedule that I want to take you to. That is an extract of all transfers from Molelwane into – from the two accounts of Molelwane into
20 your personal accounts. It goes down from 859 to 850 and it runs from 2011 through to 2020. Can I ask again if there is anything on this table that you are presently in a position to dispute?

MR MAKHUBO: I have not even looked at schedule but I have no reason not to believe but [inaudible – speaking

simultaneously]

ADV CHASKALSON SC: If at a later stage you identify errors please feel free to come back to us.

What that shows in the period from November 2011 to January 2020 a total amount of R7 096 994 moved out of Molelwane into your account, your personal account.

I think at this point it probably makes sense to come to the relationship between Molelwane and Regiments Fund Managers and can you briefly tell the
10 Chair how Molelwane and Regiments Fund Managers came to work together?

MR MAKHUBO: Chairperson, as I say in my affidavit and in the statements that the Commission has referred me to confirm being asked from Amabhungane, Molelwane Consulting effectively started '97 and by 1998 established it from scratch in the space of finance, accounting and six years later we came together with a person I got to know much, much earlier in the '80s, executive chairperson of Regiments Capital and I do say it in my affidavit, Mr Litha
20 Nyhonyha who told me that they are moving into this space and we need to explore opportunities together, he is putting together a team of highly skilled individuals in the fund management side, stock broking, that type of business which is something that I thought I wanted to explore and expand over because I only had skills in one

component thereof and that was late 2004 early 2005 when we had this conversation and we of course started to look at opportunities especially in the public sector and when the RFP initially, you know, first went from RFI it was released by the City then, you know, or your thoughts on that redemption fund came through. Again there was a response, this is our thinking, so the different types of funds, passive, active funds and how then do you deal with them.

10 And later on an RFP was released by the City. We did our bit in contributing to the responses. But as a small company with no – not enough balance sheet to deal with the items we came together, it was evaluated and I think it was awarded – we thought we did not have the necessary – some qualifying papers and we thought it should not be part of the main, the main tender.

 They got one company to deal with the administration to be part of the main tender that will, you know, still played our role. So when it was awarded we
20 started talking but we could not finalise the memorandum of agreement because the pricing was not clear and that is how we came together.

 And then in 2005, late, we could not meet to sign the memorandum and early in January 2006 we right at the big kickoff of the fund itself, we came together, so that is –

and it is detailed in my affidavit what we did.

ADV CHASKALSON SC: Thank you and you talk about the memorandum of agreement, can I ask you to go to page 712 of volume 2 and just confirm that that was in fact the memorandum of agreement?

MR MAKHUBO: 71...?

ADV CHASKALSON SC: 712, but it is volume 2, I am not sure if that is volume 2 or 3.

MR MAKHUBO: Volume 2 and 3.

10 **CHAIRPERSON:** At 712 there is no memorandum on mine, Mr Chaskalson, on bundle 3 or is it bundle 2 we should look at?

ADV CHASKALSON SC: Bundle 2, bundle 2, Chair, sorry.

CHAIRPERSON: Okay.

MR MAKHUBO: Yes.

ADV CHASKALSON SC: So that is the memorandum of agreement between you and Regiments Fund Managers and if you go down to page 714, clause 2.2, the obligations of Molelwane are set out under this contract.

20 **CHAIRPERSON:** Well, Mr Chaskalson, maybe let us take the tea break now then you can go into more issues. I realise it is time for the tea break.

ADV CHASKALSON SC: Sorry, Chair, I apologise.

CHAIRPERSON: Let us take the tea break, it is about 19 minutes past eleven, we will resume at twenty five to

twelve. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let us continue.

ADV CHASKALSON SC: Thank you, Chair. Mr Makhubo, I can I ask you go to clause 2.2 of that agreement at page 714 of bundle 2?

MR MAKHUBO: Yes, I am there.

ADV CHASKALSON SC: And does that clause accurately
10 describe the obligations that Molelwane had in terms of its agreement with Regiments Fund Managers in relation to this Sinking Fund tender?

MR MAKHUBO: This was what we agreed on, Chairperson.

CHAIRPERSON: Well, Mr Chaskalson, it might be helpful for either you or Mr Makhubo to just read that paragraph so the people who are watching can understand. In full, ja.

ADV CHASKALSON SC: Yes, Chair. So it states the following and it is setting out the obligation. Well, let us
20 maybe start the previous page, 2.1 says:

“The respective roles and responsibilities of the parties in terms of this MOA are as detailed below.”

2.2, it says:

“Molelwane Consulting review and obtain the detailed understanding of the contents of the RFP

and the disclosed information.”

So that would be the RFP for the Sinking Fund contract and the information disclosed in relation thereto, is that correct?

MR MAKHUBO: Yes, that is accurate, the initial things that we did in 2005, 2006, ja.

ADV CHASKALSON SC:

“Identify and perform needs analysis of CoJ in terms of the RFP.”

10 And I presume that would be done in advance of submission of the tender because you are going to identify that needs so that you tender can match those needs.”

MR MAKHUBO: Yes, clarify in the RFQ, yes, that is right.

ADV CHASKALSON SC:

“Review and advise on the design of the Sinking Fund technical proposal to ensure that the needs of the CoJ as outlined in the RFP are met.”

And again that must be before submission of the bid because you are looking – you are trying to refine a
20 technical proposal to try to win a bid.

MR MAKHUBO: Yes, Chairperson.

ADV CHASKALSON SC:

“Review bid documentation and advise on relevant as considered appropriate.”

Again, as I understand that, that would be part of putting

together the final bid refining the final bid, is that correct?

MR MAKHUBO: That is correct, ja.

ADV CHASKALSON SC:

Review the contents of presentations that may need to be prepared for CoJ and advise on relevant aspects as considered appropriate.”

Are those presentations in the course of the bid or in implementation if you win the bid?

MR MAKHUBO: Well, if the presentation is called to come
10 and clarify your bid and basically in the setup and all that.

ADV CHASKALSON SC: Sorry, I did not hear you second part of the answer.

MR MAKHUBO: I am just saying in the setup if the client would want to know what the structure, the functionality because this was the first of its kind in that type of an active funding.

ADV CHASKALSON SC: Yes. And 2.2.6:

“In considered relevant, make presentations jointly with Regiments Capital to CoJ as may be required.”

20 Is that again presentations to a bid adjudication committee or a bid evaluation committee

MR MAKHUBO: Ja and post, yes.

ADV CHASKALSON SC: And post?

MR MAKHUBO: Yes, if relevant. That is why it says where may be required, whenever they call you for a

presentation.

ADV CHASKALSON SC: Before or after awarded the bid?

MR MAKHUBO: Say again?

ADV CHASKALSON SC: Before or after or both, awarded the bid?

MR MAKHUBO: It would have been both but in this case it would have been before.

ADV CHASKALSON SC: So you did not make presentations after award of the bid?

10 **MR MAKHUBO:** No.

ADV CHASKALSON SC: And then 2 ...[intervenes]

MR MAKHUBO: No, we did not do jointly because they said where relevant.

ADV CHASKALSON SC: I see.

MR MAKHUBO: Yes.

ADV CHASKALSON SC:

20 “Maintain an ongoing basis all strategic relationships with CoJ before, during and after completion of fund management mandate for the mutual benefit of the parties.”

And what did that contemplate?

MR MAKHUBO: Well, though we saw it was that we need to at a strategic level ensure that we understand the client, we understand their needs, we try and grow the fund, we know the future needs or funding needs, infrastructure

needs, etcetera, etcetera and just generally know the client.

ADV CHASKALSON SC: And would it be fair to say that this was the only obligation that carried on after the successful aware of the bid that it had obligations that you performed after aware of the bid?

MR MAKHUBO: Well, 6 and 7 - 5, 6 and 7 were meant to – when considered appropriate 5, 6 and 7 would have been the ones that would have had to be active on.

10 **ADV CHASKALSON SC:** But earlier you said there were not any presentations.

MR MAKHUBO: Yes.

ADV CHASKALSON SC: The 5 and 6 did not – whereas there may have been an obligation it was not one that you ever performed after the bid.

MR MAKHUBO: Yes, there was no presentation required, ja, at that time.

ADV CHASKALSON SC: Yes. But his maintenance of strategic relationships, was that something that you did do
20 after the bid?

MR MAKHUBO: Well, actively as I watched to see what was going on, I got interested in the funding patterns of this, yes.

ADV CHASKALSON SC: Thank you. And what were the payment arrangements in terms of this contract?

MR MAKHUBO: Well, the first it says there on paragraph 3, it is a structuring fee and of course there is a management fee which it had split and the outperformance fee so the bulk of the fees would from the outperformance that we negotiated upfront with Regiments but the first where you would know how much they are because you would know the fund is under management but outperformance fee, which is the bulk of fees are risk-based and unknown, that is how this fund is structured or
10 was structured.

ADV CHASKALSON SC: Can I – so the fee structure presupposes a successful bid. If you succeed you then get fees, if you do not succeed you do not get fees.

MR MAKHUBO: Yes, the 3.3 which is outperformance fees presupposes that what the City gives you as a benchmark, as a watermark, you would be able to outperform, so you will perform up to what they expect as a City.

ADV CHASKALSON SC: Sorry, Mr Makhubo, I think we
20 might be talking past each other because I am not at this stage talking about the fee structure in the ultimate Regiments' contract with the City. I will get there but now I am talking about your arrangement with Regiments.

MR MAKHUBO: It depended on their performance, yes.

ADV CHASKALSON SC: Well, no, no, no, it is not just the

outperformance, even the management fee, if you do not win the bid you get nothing from Regiments.

MR MAKHUBO: Yes, I suppose on winning the bid, ja.

ADV CHASKALSON SC: So the structure of you – well, let us start at you did win the bid, that is correct, is it not? This consortium won the bid.

MR MAKHUBO: Yes.

ADV CHASKALSON SC: And the arrangement that the consortium had with the City was that the City would pay
10 the consortium a monthly – I think it was a monthly fund management fee which would be determined by assets under management, fixed percentage of assets under management would be your fee. That would be the fund management fee, is that correct?

MR MAKHUBO: Yes, it is normal in the industry.

ADV CHASKALSON SC: No, I am not [inaudible – speaking simultaneously]

MR MAKHUBO: Every fund manager gets a fund management fee.

20 **ADV CHASKALSON SC:** A percentage of funds under management and then there was the outperformance fee and as I understand that, there were certain benchmarks or targets that were set and if the fund performed than those targets a certain percentage of the margin above the target would be paid to the consortium, is that correct?

MR MAKHUBO: That is correct, if you outperform the benchmark there will be a split the City taking like 75% of the outperformance of that proportion.

ADV CHASKALSON SC: Yes.

MR MAKHUBO: Yes.

ADV CHASKALSON SC: So 25% of the over target achievement goes to the fund manager and 75 % stays with the City.

MR MAKHUBO: That is correct.

10 **ADV CHASKALSON SC:** And if you do not beat the target you get nothing.

MR MAKHUBO: Yes if you do not meet the target or if you perform at target you get nothing.

ADV CHASKALSON SC: Yes. Can I ask how the outperformance fee was structured? Was it structured on a quarterly basis?

MR MAKHUBO: Yes, there were – the evaluation happened on a quarterly basis, performance over a quarter and there would be the risk department of the City and
20 evaluating together with the consortium and then they would agree looking at the scripts and all that, yes, it was quarterly.

ADV CHASKALSON SC: And so what you would do is you would look at the asset value at the start of the quarter, the asset value – the total asset value at the start of the

quarter, the total asset value at the end of the quarter and if it had increased above a certain target percentage you would look at that margin above the target percentage and turn it into a number and 25% would go to the consortium, 75% would stay with the City, is that correct?

MR MAKHUBO: Simply yes but it is much more complex than this, this is an asset liability balance so remember even the liabilities themselves, the movement [inaudible – speaking simultaneously]

10 **ADV CHASKALSON SC:** Ja, ja, call it net ...[intervenes]

MR MAKHUBO: So that when the assets themselves have movement so you look at the net movements.

ADV CHASKALSON SC: Yes.

MR MAKHUBO: And you see the value of the fund would have increased or not and then at that point that is when it is determined. If the value of the fund has not increased by more than benchmark then ...[intervenes]

ADV CHASKALSON SC: Sorry, just talking, the asset was the wrong term, it is net value of the fund.

20 **MR MAKHUBO:** Net value because it is an asset liabilities matter.

ADV CHASKALSON SC: Yes. But can I ask this, assuming there is a market crash and the value of the fund drops by 30% because there is a market crash, obviously you will not get an outperformance fee, is that correct?

Well, you will not get an outperformance fee because the value will go down.

MR MAKHUBO: The outperformance would be the fund performing at above the bottom mark or the benchmarks given by the City. So there is an opening balance, the performance of this quarter, driver plus whatever.

ADV CHASKALSON SC: Yes.

MR MAKHUBO: And then anything over and above that. so anything less than that watermark, that benchmark, you
10 get nothing.

ADV CHASKALSON SC: But after the crash, you are now 30% lower than you were in the previous quarter, is the benchmark for the next quarter that 30% lower figure or is there a structured benchmark that says - we will look at what would have happened on the assumption that you did not lose anything this month.

MR MAKHUBO: I suppose later in the evaluating the fund, I think there was advice from an auditing firm that dealt with exactly that because it was not part of the
20 contract to say in future you must look at capital erosion. That did not happen, by the way, there was no capital erosion, at least till that time, so we must look at that crash which will not only deal with the returns but will deal with the capital invested, it is a 30% crash in the market and how do you then have a lower base but what happens,

what you have lost in between, so ...[intervenes]

ADV CHASKALSON SC: Exactly but that this original contract did not provide for that.

MR MAKHUBO: No.

ADV CHASKALSON SC: So there was a 30% loss one quarter and then market readjusted and went back to there with a 30 – with a gain so that over the two quarters it was net zero, you would still get your outperformance on the 30% gains ...[intervenes]

10 **MR MAKHUBO:** It did not happen, but that is how the structure – that is why later on you said how do you claw – what is the claw back between what you have lost and where the base was before.

ADV CHASKALSON SC: Yes. And these amounts that we are talking about are amounts that get paid to the consortium, what this agreement says, within the consortium those amounts are split 90% Regiments, 10% Molelwane.

MR MAKHUBO: That is correct.

20 **ADV CHASKALSON SC:** So Molelwane is going to get 10% of the management fee, 10% of the outperformance fee over the life of the consortium's contract with Jo'burg.

MR MAKHUBO: Ja, for five years, that was the life of the contract, correct.

ADV CHASKALSON SC: Right. Now at the time that the

consortium concluded this contract with Jo'burg you were not in politics – sorry, not you were not in politics, you were not in government, is that correct?

MR MAKHUBO: Yes, I was an ordinary member of the public and an entrepreneur of six years.

ADV CHASKALSON SC: Yes, I would not call you – I would not suggest you describe yourself as an ordinary member of the public because you were – I think you were already Treasurer of the region, were you not?

10 **MR MAKHUBO:** No.

ADV CHASKALSON SC: When did you become Treasurer of the region?

MR MAKHUBO: 2008.

ADV CHASKALSON SC: 2008 and this contract was awarded 2006.

MR MAKHUBO: '05.

ADV CHASKALSON SC: 2005?

MR MAKHUBO: It kicked off January 2006.

20 **ADV CHASKALSON SC:** Kicked off January 2006. And initially it was due to run for five years.

MR MAKHUBO: Yes.

ADV CHASKALSON SC: And terminate and at the end of January 2011.

MR MAKHUBO: January 2011, yes.

ADV CHASKALSON SC: And you first went into

government after the municipal elections was it May 2011?

MR MAKHUBO: That is correct, the elections were in May 2011.

ADV CHASKALSON SC: And that chronology has been quite important in explaining your response to allegations of a conflict of interest because, as I understand your response in your various statements and maybe we can go to one, maybe at page 947.

CHAIRPERSON: What bundle?

10 **ADV CHASKALSON SC:** Of bundle 2, Chair.

CHAIRPERSON: And what is the page number?

ADV CHASKALSON SC: 947, Chair.

CHAIRPERSON: Thank you.

ADV CHASKALSON SC: And if I can read what you say there, it is a paragraph, about three or four paragraphs down:

20 “There was never a conflict of interest as the term of Molelwane’s agreement with Regiments on the first Sinking Fund would have lapsed in January 2011, the year I took public office. Molelwane Consulting did not continue providing services to Regiments on the second contract as it did not participate in the RFP.”

We are talking about the second contract there.

“Further to this I declared all my private interests

upon taking public office as required by law. In addition to this I subsequently resigned as a member of Molelwane Consulting and director of all other companies in November 2011. This was in line with my decision to use my skills as a public representative. I also made a commitment to the Mayor of the day and the ANC when I was appointed MMC that I will unwind my interests and resign all my directorships. Political office bearers are by law
10 precluded from participating in procurement processes hence I could not have been involved in overseeing the renewal of the Sinking Fund contract.”

And then there is an issue lower down in relation to Colourfields that we do not need to get to.

So would it be fair to say – well, let us take a step back. The contract was with Regiments and the City’s contract with Regiments and Molelwane was due to terminate in January 2011. Did it terminate in January
20 2011?

MR MAKHUBO: No, it did not.

ADV CHASKALSON SC: Why did it not?

MR MAKHUBO: As far as my recollection goes, the initial tender was out in 2010 and everyone responded, the one that I say I was not part of, and what I was told is that

when I enquired was that there was moratorium placed by the then MEC on big contracts being awarded before elections, that is what I – therefore then the extension happened.

ADV CHASKALSON SC: And so the existing contract which was essentially being run by Regiments but in terms of which Molelwane was getting 10% of the revenue contained into 2011.

MR MAKHUBO: That is correct.

10 **ADV CHASKALSON SC:** And how much longer did that contract continue?

MR MAKHUBO: Well, it is common cause that it continued till 2015 because of an interdict on the second award by a certain company.

ADV CHASKALSON SC: Okay, so Regiments continued with the fund management contract with the City all the way through to 2015 and through that period the 10% continued to be paid to Molelwane.

MR MAKHUBO: Yes, there was a contractual obligation
20 on the first contract between Regiments Consulting and Molelwane Consulting - Regiments Capital and Molelwane Consulting so as the month-on-month extensions went – are waiting for the conclusion of the legal challenge, it continued, yes.

ADV CHASKALSON SC: Yes. And from May 2011, as I

understand it, you were now a councillor in Jo'burg and also the MMC for finance.

MR MAKHUBO: That is correct.

ADV CHASKALSON SC: And this contract would have fallen under your jurisdiction as MMC for finance or political oversight jurisdiction, not a hands-on administrative jurisdiction.

MR MAKHUBO: Yes, it was managed by Treasury which was one of the units in finance, yes.

10 **ADV CHASKALSON SC:** And you were politically responsible for overseeing that.

MR MAKHUBO: Well, generally I do not watch the contract, I did not watch the contracts but yes, would be getting reports on performance and all that.

ADV CHASKALSON SC: So there had been suggestions that that presented a conflict of interest but you have answered those suggestions in your statement and can I put to you how I understand your answer and if I have got it wrong please correct me. It seems to me that you had –
20 that there are really two parts to your statement – to your explanation as to why there was not a conflict.

The first was that you had resigned from Molelwane Consulting, although that resignation for reasons, that we do not need to go into at present, was not processed.

The second part you say is that – and in any event,

councillors, political officials do not have involvement in procurement issues so there would not have been a conflict there. Have I got your explanation correct?

MR MAKHUBO: I will explain the first one, Chairperson. I suppose one of the ways you obviate a conflict is to declare your interests and two, if there is any decision that affects you at that time you will excuse yourself, that is one.

Two, is that we – yes, I would be - code of conduct
10 precludes anybody that is an office bearer from participating in any procurement. I think the MFMA does that.

A (Pty) Ltd is quite easier to deal with because you can resign your directorship and keep your shareholders, can remain a shareholder. With a CC it is not that easy because when you resign your membership even for – it is like a partnership, you forego your member's interest, you forego your share which is why then you can cease to be a very active member of a CC and then I suspect – I do not
20 have – that would have been the complication. So that is how I explained and I think what the issue is here for me, Chairperson, my responses here are not – you do not even have the questions to say what were the questions. They just posted the responses because it would have been interesting but yes, this was my response.

Two questions from Amabhungane and I was answering a newspaper article, Amabhungane.

ADV CHASKALSON SC: Well, can I just clarify what you – I mean, one of your answers was I had resigned but my resignation was not processed, was not reflected at CIPC, if I understand you correctly, it did not get to CIPC to be reflected.

MR MAKHUBO: Correct.

ADV CHASKALSON SC: Yes. So I presume that what you
10 mean there is that what you intended to do is to divest yourself of your interest as a member in Molelwane CC.

MR MAKHUBO: Quite correct that at the end of the contracts which basically would have ended around February or so, 2012, I wanted to divest myself, initial intention, but it was never to be.

ADV CHASKALSON SC: Sorry, you say it was never to be?

MR MAKHUBO: I did not happen.

ADV CHASKALSON SC: Did it not happen because you
20 did not implement your intention or because you tried to implement your intention but somewhere along the line it did not get to CIPC?

MR MAKHUBO: Chairperson, the intention was not implemented, so it continued.

ADV CHASKALSON SC: No, no, but did you subjectively

think that you had divested yourself of your interest?

MR MAKHUBO: If you look at the emails, I knew that it was not done. Of course I did ask the person who was dealing with it via email and asked them if it was divested and they told me stories and then it did not happen.

ADV CHASKALSON SC: Yes but that – that relates to how things are reflected at CIPC, sub...[intervenes]

CHAIRPERSON: Maybe, Mr Chaskalson, maybe we should go back to precisely what you did and precisely
10 what your understanding was of what was supposed to happen if you were to resign. So, as I understand it, you signed a letter of resignation, is that correct?

MR MAKHUBO: Yes, I said to a person that – yes, we signed a resolution and said look, let us divest.

CHAIRPERSON: Yes but was there a letter of resignation or a resolution? Or a resolution of the CC?

MR MAKHUBO: Yes.

CHAIRPERSON: Okay. And what was your understanding of what should happen for the resignation to take effect?

20 **MR MAKHUBO:** Well, I had asked a person within Molelwane who subsequently appointed somebody to process. My understanding at that point was I would resign but would then start valuing and seeing what stood to Molelwane, a company that I had worked for for eleven years and built from scratch, how do I get back my sweat

capital, how do I get whatever is due to me but – and then over time would unwind it but the issue was I could not leave and say what is due to me is not there because I was building wealth, I was not building – I was not just working.

CHAIRPERSON: Yes.

MR MAKHUBO: Yes.

CHAIRPERSON: Now – so if you could just tell me step-by-step what your understanding was of what needed to be done and who needed to do it in order for the resignation
10 to take effect. Now if you are talking about an employee in a company, when you want to resign you might do a letter, sign it, hand it over to your employer and then you know that that resignation happens. So that is what I am looking for. In terms of this resignation, what was your understanding of the various steps that needed to be done for it to be effective?

MR MAKHUBO: Chairperson, I was active in four companies – well, three companies and a CC. I followed the same process. I said to this person who was helping
20 me please get somebody to resign my directorships in Molelwane Holdings, in Acsolve(?), in Present Perfect Investments and my membership and then they made us sign a resolution. I expected them to submit the same to CIPC but I was very full aware that with a CC you might take a bit of time to start unwinding especially if you want

to take your member's interest out because you have to value – because member's interest, it is not like directorship, it is linked to your shares in the company so you do not just leave and leave your equity and equity in the close corporation. That part I understood but the intention was to get rid of the 67% and take the money.

CHAIRPERSON: Would I be correct in saying what you are saying is you understood that there needed to be a resolution reflecting that you were resigning but that the
10 resignation, as far as you were concerned, was not going to take effect until you had clarified certain issues such as what happens to your financial and capital and whatever, whatever, is that correct?

MR MAKHUBO: That is correct, Chairperson.

CHAIRPERSON: Yes, yes. Okay, alright.

MR MAKHUBO: If it was a company I would know that I am selling this share, it is worth x but I would have resigned a director.

CHAIRPERSON: Yes, yes.

20 **MR MAKHUBO:** I do not have to be a director to be a shareholder.

CHAIRPERSON: Yes.

MR MAKHUBO: But you have to be a member and a shareholder at the same time in a close corporation.

CHAIRPERSON: Yes.

MR MAKHUBO: I suppose at that time there was even a review there of the Companies Act to deal with that close corporation and issue, that is always a problem.

CHAIRPERSON: Yes. And at that time of that resolution of resignation, were you the only member of the CC?

MR MAKHUBO: No, I had 67% shares.

CHAIRPERSON: You had 67% shares and there was one or more other members?

MR MAKHUBO: Well, there was one person who just held
10 an interest there.

CHAIRPERSON: Oh, okay, alright. Thank you, Mr Chaskalson, I hope that has clarified a bit.

ADV CHASKALSON SC: Thanks, Chair, and maybe if we can just clarify that other person, as I understand it, is Florence Matlakala Makhubo who is your mother.

MR MAKHUBO: That is correct.

ADV CHASKALSON SC: Thank you. Now from your answers to the Chair I understood that you were wanting to divest yourself of your interest which would then complete
20 your withdrawal from Molelwane.

MR MAKHUBO: Yes, after evaluation, yes, that is correct.

ADV CHASKALSON SC: So what steps did you take to divest yourself of your interest? Who were you going to sell your interest to?

MR MAKHUBO: Quite honestly we wanted to shut it down

and keep it dormant because initially I did not know what is going to happen after five years, I wanted to go back into business, I never saw myself as a career – what I am doing now, not seeing myself as that but the issue was, I was central to the business and part of the work that it did basically, when the contracts were finished, we thought we would divest. So that was the initial thing, value, what is there, what are the outstanding contracts, how much present value can we get from them, if at all, and then we
10 divest.

ADV CHASKALSON SC: But I am not sure I understand your answer because you said you had one idea of leaving the company dormant and then I presume going back to rejoin, if you left politics at a later stage, is that what you meant?

MR MAKHUBO: Give myself options Chair, I could probably go to Corporate, I do not know I just wanted to give myself options.

ADV CHASKALSON SC: But what were you going to
20 leave dormant?

MR MAKHUBO: All I am saying is that when we say we diverse, shut it down or leave it dormant or - but completely that stops operating.

ADV CHASKALSON SC: And your interest in it would be what?

MR MAKHUBO: Would be what is outstanding and the value of contracts.

ADV CHASKALSON SC: So you would either I presume find someone who is going to buy that interest and then give you value for it, was that an option?

MR MAKHUBO: That as an option or whoever you have got a contract with you sell that contract, you see that contract with somebody else you get value, there would have been different options that we look at.

10 **ADV CHASKALSON SC:** What steps did you take to explore any of those options, can you describe that to us?

MR MAKHUBO: No I had left the person with it Molelwane Holdings to help, I was more focused on dealing with the billing problems in the city of Johannesburg.

ADV CHASKALSON SC: So was that person Mr Chikani?

MR MAKHUBO: That is correct.

ADV CHASKALSON SC: So you left it in Mr Chikani hands as to what was going to become of your interest in Molelwane.

20 **MR MAKHUBO:** What to do with Molelwane and how to proceed and what are the steps we going to follow, yes.

ADV CHASKALSON SC: And what did Mr Chikani report to you in relation to those steps?

MR MAKHUBO: As and when some contracts especially the Regiments one was continuing we could not find the

lady that we gave power of attorney to, having an email saying this thing is going to take time to happen and there is an email proof to that. So we just looked at and said let us wind down whatever we have and if possible but this contracts continue just continue them.

ADV CHASKALSON SC: So can I take you to a document at page 946, is that the resolution that was adopted to record your resignation from Molelwane?

MR MAKHUBO: Yes, that is the resolution that we
10 advised that we signed.

ADV CHASKALSON SC: Yes, and if you go up a page you will see that there was due notice of a meeting of Molelwane Consulting in advance with that resolution being adopted.

MR MAKHUBO: That is correct.

ADV CHASKALSON SC: And if you go up a page further to 944 you will see a power of attorney.

MR MAKHUBO: That is correct.

ADV CHASKALSON SC: And that one is actually a power
20 of attorney given by you and if you go up to page 943 there is a similar power of attorney given by your mother.

MR MAKHUBO: That is correct.

ADV CHASKALSON SC: Is that the power of attorney that you were referring to earlier?

MR MAKHUBO: Yes.

ADV CHASKALSON SC: And no other powers of attorney other than these two?

MR MAKHUBO: No.

ADV CHASKALSON SC: And the person who you were speaking to is the person who you asked to act on this power of attorney is this Televalie Getrude Ralibekwa?

MR MAKHUBO: That is correct.

ADV CHASKALSON SC: Can we go down to your power of attorney the one that you gave on page 944. So special
10 power of attorney for resignation of directors of course there are not directors in a close corporation, were you aware of that at the time?

MR MAKHUBO: Chair I was aware and I asked the second one is this what we must sign that is what I got.

ADV CHASKALSON SC: Okay but let us leave that aside for a moment it says:

20 “Special power of attorney. I the undersigned Moloantoa Geoffrey Makhubo being a director of Molelwane Consulting do hereby nominate constitute and appoint Ms Ralibekwa, her ID, with full power of substitution to be my lawful agent in my name place instead. To deliver to the registrar of companies the original COR39 and or any other documents or form that maybe required for the appointment of directors. To make such amendment

additional alteration to the COR and such other documents and forms which my said agent may deem fit or which may be required by the registrar of companies and to initial or sign as maybe required each of such amendments additions or alterations.”

This was the only power of attorney that you gave?

MR MAKHUBO: That is correct.

ADV CHASKALSON SC: So this power of attorney was
10 really enabling Ms Ralibekwa to go to the CIPC and effect
whatever changes were necessary to reflect your
resignation as a member.

MR MAKHUBO: That is correct.

ADV CHASKALSON SC: It was not giving her any power
of attorney to dispose of your interest or to do anything in
that regard?

MR MAKHUBO: That is correct.

ADV CHASKALSON SC: And your explanation as I
understood it earlier on was that that is what failed to
20 happen but she did not act on this power of attorney. So
she did not go off to the CIPC and say please remove Mr
Makhubo as member of the CC that was the problem.

MR MAKHUBO: That is what happened yes.

ADV CHASKALSON SC: And if she had that would have
happened at the CIPC.

MR MAKHUBO: That is correct.

ADV CHASKALSON SC: Or that is what you wanted to happen at the CIPC.

MR MAKHUBO: Correct, Chair.

CHAIRPERSON: But was she meant to go there, as she meant to do that as yet or was she meant to wait until all the issues that needed to be sorted out, were sorted out.

MR MAKHUBO: Chair I just signed this to say look we need to effect this however as I say we needed to value
10 and do all those sorts of things and see what we can take out in the company.

CHAIRPERSON: So what is the answer to the question whether she was meant to take this resignation or send this resignation, resolution to the intellectual property office before those issues were sorted out or she was not meant to do that until those other issues are sorted out.

MR MAKHUBO: We did not specify on that process Chair I did not think it was...[intervene]

CHAIRPERSON: Why did you not know, what was your
20 contemplation. If you found out the day after the resolution that she had taken the resolution to the CIPC office, what would have been your reaction before this other issues were sorted out?

MR MAKHUBO: I suppose it would be speculative but for me the CC and its employees were still people I know as

you say so the winding down would not have been – because the 100% delivery back track to the other member according to the member's interest who could still value and still do what we wanted to do.

CHAIRPERSON: Mr Chaskalson.

ADV CHASKALSON SC: So the CIPC would still continue but your 67% interest would have gone away.

MR MAKHUBO: The way I understand CC's is that your membership is linked to your percentage shareholder that
10 is how I understand it.

ADV CHASKALSON SC: No that is correct but if your membership had been removed at CIPC then suddenly you would have lost your interest in Molelwane is that not the case.

MR MAKHUBO: I suppose we still got it back in terms of valuing and closing it, ja but on the CIPC it is correct.

ADV CHASKALSON SC: Yes but as a matter of law when that happened you would no longer have a legal interest on Molelwane and if your mother at that stage fell out with you
20 and took the attitude that she was going to keep all of Molelwane for assault you would have no legal recourse.

MR MAKHUBO: Correct.

ADV CHASKALSON SC: Did you want that to happen?

MR MAKHUBO: No.

ADV CHASKALSON SC: So you wanted to retain your

67% interest until you could have found some suitable way of disposing it?

MR MAKHUBO: I wanted to get value out of what I worked for.

ADV CHASKALSON SC: Yes no I am not suggesting that you did not work for it. But you did not want to give up that interest you wanted to hang onto it until you got value for it.

10 **MR MAKHUBO:** I wanted to get value for what I worked for yes.

ADV CHASKALSON SC: Yes, so the fact that your resignation was not reflected at CIPC maybe because Mrs Ralibekwa did not implement her instructions but as a matter of underlying reality you did not want to give up your 67% interest in Molelwane until such time as you received value for it.

MR MAKHUBO: In reality I wanted value out of it and this power of attorney meant exactly what it meant it did not add on it.

20 **ADV CHASKALSON SC:** But the point is that if you did not get value for your 67% you were not intending to give up that 67%, is that not right?

MR MAKHUBO: Chairperson I suppose my statement very clear. I wanted to get value out of Molelwane Consulting and this power of attorney needed to have acted in a

particular way whether the intention or not that I wanted to hold on I do not think that is correct I said I wanted to get value out of, I was weighing the semantics I wanted to hold on to get this.

ADV CHASKALSON SC: No, no...[intervene]

CHAIRPERSON: Okay let me try and see if you would agree with my formulation of what you mean. The one thing you were clear about you did not want to lose your – to forfeit your 67% interest whatever happened you did not
10 want to forfeit that.

MR MAKHUBO: I wanted value for it Chairperson.

CHAIRPERSON: Yes, you wanted – if it went to somebody else you wanted to get the financial equivalent of it you wanted to sell it or whatever. You did not want it to go to waste, you did not want it to be acquired by somebody without you getting anything for it.

MR MAKHUBO: I did not want to give it away for free.

CHAIRPERSON: Ja you did not want to give it away for free yes, yes now that is one thing that is quite clear.

20 **ADV CHASKALSON SC:** That is correct.

CHAIRPERSON: Ja and if resigning your membership of the CC was going to mean that you give it up for free then you did not want that resignation. You wanted the resignation to happen at a time when you would get value for your 67% interest.

MR MAKHUBO: Chair it is correct that divesting it means I would need to divest to get value from the company because like it happened in the other one if it was that I would simply resign my directorship and still hold onto my share the certificate up until I can, that is correct but in this case because they are intertwined maybe that is when you will say you will hold on to your interest because they are intertwined. That is correct or could give somebody and say look I will pay you in future something like that but
10 you are correct say eleven or twelve years of hardship and building and working for me I did not want it to go to waste, that is correct.

CHAIRPERSON: Ja, okay Mr Chaskalson.

ADV CHASKALSON SC: If that was the case Mr Makhubo so long as you had not disposed of that interest, you had not found someone to give you value can you not see that there was a potential for conflict. That you had an interest, you had an ongoing interest in Molelwane and you were as MMC presiding over a contract which provided a
20 very steady income stream to Molelwane.

MR MAKHUBO: Personally I do not preside over a contract, secondly at that point I do not see that as a – or as a conflict. It led that I owned Molelwane Consulting and I would not do anything to benefit the contract in the city.

ADV CHASKALSON SC: To benefit the contract in the city,

I see but we will come to that a little bit later but I want to clarify a – I want you to get to the second half of your explanation first. We dealt with your interest as I understood the second part of your response to the question of conflict is that you said councillors do not have say over procurement decisions so there could not be a conflict there.

MR MAKHUBO: Councillors do not participate in specification, they do not participate in bid evaluation they
10 do not participate in executive acquisition committee. The only time that a report would come to a Mayoral Committee and council is when like the banking tender that goes more than three years and a Section 33 of the MFMA would have been a public participation for comments National Treasury, Provincial Treasury is to be informed of those responses to a contract going beyond three years. That is the only time that a report will come to say we have done Section 33 and Section 33 has found nothing and we agree to that, that is owing.

20 **ADV CHASKALSON SC:** So saving the Section 33 situation councillors do not have any hands on involvement in procurement decisions.

MR MAKHUBO: Yes, I mean there is another section I cannot remember whether it was Section 16 or something where when you change the material...[intervene]

ADV CHASKALSON SC: Yes, could it be 43?

MR MAKHUBO: I cannot remember the section well let us say one chooses the amount or something like that then again you go to public, you ask the public and then councillors get to be told that the public have been consulted and there has been no problem that are those participations that I know of.

ADV CHASKALSON SC: Yes, now while you had this intention to resign as soon as you could find someone to
10 give you value did you remove yourself from active management of the affairs of Molelwane?

MR MAKHUBO: I was not on a day to day basis but I remained the only signatory.

ADV CHASKALSON SC: So you remained the only signatory in Molelwane's account?

MR MAKHUBO: Would not change, ja but there was somebody dealing with the online banking thing.

ADV CHASKALSON SC: Yes, so after 2011 no one other than you had authority over Molelwane's accounts as far as
20 FNB who ran those accounts was concerned?

MR MAKHUBO: Yes, as I say internally there was somebody who used to do payments and all that using the online system.

ADV CHASKALSON SC: Yes, but ultimately you were the only one with signing power?

MR MAKHUBO: Signing yes.

ADV CHASKALSON SC: Can I take you to a document in that regard can you go to volume 3 page 64.

CHAIRPERSON: Is that page 364 or?

ADV CHASKALSON SC: Bundle 3 of page 64, sorry about that.

CHAIRPERSON: Okay.

MR MAKHUBO: 64 you say?

ADV CHASKALSON SC: 64, yes three dash six four.

10 **CHAIRPERSON:** Oh okay.

ADV CHASKALSON SC: And do you recognise that document at Bundle 3 page 64? It says at the front in contacts set up screen.

MR MAKHUBO: I see my signature but I cannot remember what it is all about.

ADV CHASKALSON SC: So this is a document that FNB it is an in contact setup screen which records authorisations and customer details from FNB in relation to its customers. In this case Molelwane Consulting and in
20 contact is the feature that FNB has where they send you an SMS's in relation to your transactions. You see your signature down there and the date is 20/09/2018, 13 September 2018. So as late as 13 September 2018 that is a good seven years after you were intending to resign from Molelwane you were issuing instructions to FNB in relation

to the Molelwane Consulting account.

MR MAKHUBO: Chair the account is still as we speak under my own profile my personal profile.

ADV CHASKALSON SC: It is under your personal profile?

MR MAKHUBO: It is under my profile, yes my FNB logging profile.

ADV CHASKALSON SC: So you have your personal bank account on that profile, you also have Molelwane?

MR MAKHUBO: They are all linked.

10 **ADV CHASKALSON SC:** They all linked.

MR MAKHUBO: At some point were linked when I was a signatory of the ANC they are all linked.

ADV CHASKALSON SC: Yes, but this particular account is Molelwane's account and I just want to clarify with you that as of September 2018 you were still the sole signatory on the Molelwane account as far as FNB was concerned.

MR MAKHUBO: That is correct.

ADV CHASKALSON SC: As we stand today are you are you the sole signatory on the Molelwane account?

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

ADV CHASKALSON SC: And do you play a role in relation to Molelwane financial affairs do you administer those affairs?

MR MAKHUBO: There is very little happening but I watch what is happening yes.

ADV CHASKALSON SC: And there may be very little happening now but from 2011 until the start of 2016 there was a contract with Regiments fund managers in relation to management of the sinking fund of the city and I imagine quite a lot was happening, would you be keeping an eye on that?

MR MAKHUBO: To see what is going on, yes that is correct.

ADV CHASKALSON SC: You would?

10 **MR MAKHUBO:** Yes and they would come and tell me what is going on as well.

ADV CHASKALSON SC: Yes, can I take you to page 16 of volume 3. At page 16 you see the photocopy the front and back of a cash cheque drawn on Molelwane Consulting for 300 000,00. So it is a cash cheque for 300 000,00 dated 3 August 2013 and on the back there is in handwriting with a stamp from FNB cheque confirmed with Mr Moloantoa Makhubo and then there is a cell phone number and the time is 12:23, 3 August 2013. Can I ask is that cell phone
20 number - we do not need to mention it - but is that your cell phone number?

MR MAKHUBO: That is my number, yes.

ADV CHASKALSON SC: And do you recall authorising FNB to pay R300 000,00 in cash out against this cheque on Molelwane Consulting?

MR MAKHUBO: I cannot remember that far back about the date of the cheque on the 3rd of August 2013, I cannot.

ADV CHASKALSON SC: Were there a lot of cheques for 300 000,00 cheques been cashed for Molelwane Consulting?

MR MAKHUBO: There were cheques, that is right.

ADV CHASKALSON SC: No, no I am talking about R300 000.

MR MAKHUBO: Chair I cannot say at the time even
10 50 000 or so answer.

ADV CHASKALSON SC: But would you accept against this photocopy that chances are that FNB phoned you and confirmed with you that they could cash this cheque of R300 000 drawn on Molelwane Consulting on 3 August 2013?

MR MAKHUBO: Chances are that but I mean I cannot verify that they indeed called me.

ADV CHASKALSON SC: Can I ask what Molelwane Consulting was doing that needed a cheque for R300 000
20 to be cashed?

MR MAKHUBO: I cannot remember exactly what this cheque would have been for but as I say in my affidavit that would have been various things where we used cash or to assist members of the organisation, to assist all other people asking for help.

ADV CHASKALSON SC: Can I take you down a page, page 17 you will see a cheque on the 24th of October for 200 000,00 also cash and that one has got your signature on it.

MR MAKHUBO: Yes, I would have signed cheques but my detail were not right.

ADV CHASKALSON SC: Yes and if we go to the next page 18 another one for a 100 000 and this time in March 2014. Is that your signature on the cash cheque?

10 **MR MAKHUBO:** Yes, I was a sole signatory.

ADV CHASKALSON SC: Now earlier you said or in your affidavit you described the business of Molelwane as being in the accounting space. Is that correct?

MR MAKHUBO: That is correct.

ADV CHASKALSON SC: What is a business in the accounting space doing that requires amounts this large to be turned into cash?

MR MAKHUBO: As I said Chair I would need to think but there were various things that we would have done
20 depending on the date when volunteers ask for money I would help from here we would – but we would assist a whole lot of people.

ADV CHASKALSON SC: Let me take you to how you explained this in your affidavit. If you go to volume 2 page 423 at paragraph 62.

MR MAKHUBO: Paragraph?

CHAIRPERSON: Did you say paragraph 62?

ADV CHASKALSON SC: 62.

CHAIRPERSON: Yes, on page 423.

ADV CHASKALSON SC: 423.

MR MAKHUBO: 423.

ADV CHASKALSON SC: I think you maybe in the incorrect file, Bundle 2 so it should be two dash four to three of not three dash four two three but if you are in the
10 right. So you were asked to answer a question; cash cheque withdrawals from the FNB, Killarney account of Molelwane Consulting aggregating to more than 3.5million in the period 2009 to 2017. Your answer was:

“I have not quantified the amounts of cash withdrawals over the said period and my response thereto should not be construed as an admission of the aforesaid amounts.”

Fair enough.

20 “However any amount if withdrawn was in the course of business of Molelwane and would also be withdrawals for personal expenses.”

So let me ask two separate question what business of Molelwane would require Molelwane to cash a cheque for R300 000?

MR MAKHUBO: Chair I must say we would assist as

Molelwane Consulting people and there is no – I do not say that there is a business transaction that we needed but we draw money and that is for the people.

ADV CHASKALSON SC: So Molelwane assist people in the course of its business?

MR MAKHUBO: Well that is what we did.

ADV CHASKALSON SC: And so this 300 000 was dispersed to individuals on behalf of Molelwane?

MR MAKHUBO: Well it could be or ja well they come to
10 me and say look and then I would assist yes.

ADV CHASKALSON SC: Personal expenses do you have any personal expenses that would ever require you to have cash in hundreds and thousands of rands?

MR MAKHUBO: That period you are talking about there were expense that were especially 2013, 12, 2013 ja.

ADV CHASKALSON SC: 13/14 but what sort of personal expense were you paying cash for in these amounts?

MR MAKHUBO: Furniture, promulgating pool etcetera.

ADV CHASKALSON SC: And you were paying cash for
20 that?

MR MAKHUBO: Yes, I mean my bill was to pay him cash.

ADV CHASKALSON SC: Okay let us – that was a bit of a detour in cash but let us back to the conflict. As I understand your version you have continued to play an active role in the management of Molelwane's finances

after 2011. Is that correct?

MR MAKHUBO: Well I continued to watch them, ja.

ADV CHASKALSON SC: You continued to watch them beyond watching what did you do or beyond watching and authoring the cashing of cheques from time to time and drawing cheques what did you do?

MR MAKHUBO: What did I?

ADV CHASKALSON SC: What did you do beyond watching?

10 **MR MAKHUBO:** How do you mean?

ADV CHASKALSON SC: Well you said you kept an eye on the accounts.

MR MAKHUBO: Yes, you just see now that they would come to me to sign cheques.

ADV CHASKALSON SC: Yes.

CHAIRPERSON: I think Mr Chaskalson may have meant whether there was any work that you did for the CC apart from watching well he might not have meant that but take the question is coming from me if he did not mean that.

20 **MR MAKHUBO:** No I did not work for the CC.

CHAIRPERSON: You did not do any work for the CC?

MR MAKHUBO: No.

ADV CHASKALSON SC: Did you give any directions to the CC in relation to the accounts?

MR MAKHUBO: That is correct.

ADV CHASKALSON SC: So you were still in control of the financial affairs of the CC?

MR MAKHUBO: Largely yes, you know they come to me for certain things but operationally they overcame worse.

ADV CHASKALSON SC: And you could see from being in control of their accounts that the primary source of revenue of the CC continued to be the Regiment Fund Managers accounts. Is that not correct?

MR MAKHUBO: We knew that yes.

10 **ADV CHASKALSON SC:** Yes. Can I take you now to 2015?

CHAIRPERSON: Which bundle do you want us to go to Mr Chaskalson?

ADV CHASKALSON SC: We will still be in Bundle 2.

CHAIRPERSON: Oh okay.

ADV CHASKALSON SC: And earlier in your evidence you mentioned Section 33 of the MFMA. And Section 33 of MFMA gives council as a very important role in contracts which impose financial obligations on a municipality of more than three years. Is that correct?

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

ADV CHASKALSON SC: Council has an active role in this.

MR MAKHUBO: That is correct.

ADV CHASKALSON SC: And I presume the MMC for finance has a particularly active role because the MMC for finance would have to assess any documents that go before council

before they reach council in relation to contracts of this nature.

MR MAKHUBO: Yes the department would ask the MMC to say we request council to approve a contract for three years and then you will say yes let us take it to council but it has got no authority to say so.

ADV CHASKALSON SC: Can I ask you to go to page 492 of Bundle 2? Are you there?

MR MAKHUBO: That is correct.

10 **ADV CHASKALSON SC**: Can you confirm that this is an invoice that Molelwane issued to Regiments Fund Managers on the 30 June 2015 for an amount of R609 177.73 plus VAT giving a total of R694 462.61?

MR MAKHUBO: That is correct.

ADV CHASKALSON SC: And then if you go over the page at 476 you will see a statement?

MR MAKHUBO: 4 47?

CHAIRPERSON: 493?

ADV CHASKALSON SC: 476.

20 **MR MAKHUBO**: 476.

ADV CHASKALSON SC: 476. I am sorry I am jumping around.

CHAIRPERSON: You said we go over the page.

ADV CHASKALSON SC: Yes it is over the page in my notes. It is not over the page in anybody else's notes I apologise

for that. 476. There is an end of year statement for 2015 from Molelwane a Regiments Fund Managers account. Will you confirm that that is correct it is at 31 December 2015 statement issued by Molelwane to Regiments Fund Managers?

MR MAKHUBO: Here is it here. Ja I mean they would have sent it here.

ADV CHASKALSON SC: And that – this is a Molelwane statement is – can you confirm that?

10 **MR MAKHUBO**: Yes I confirm it is but I ...

ADV CHASKALSON SC: Let us look at 30 June 2015. There we see that out performance the invoice of R694 462.61 reflected as a debit and at that point Regiments Fund Managers balance – in other words what they owned to you at Molelwane was R993 370.47, is that correct?

MR MAKHUBO: Well I see it here Chair.

ADV CHASKALSON SC: So Regiments Fund Managers owed Molelwane at that point just under a million on 30 June 2015.

20 **MR MAKHUBO**: I am saying I am seeing it here yes. That is correct.

ADV CHASKALSON SC: You seeing it here well you have no reason to doubt that that is the – that this statement is accurate?

MR MAKHUBO: Yes.

ADV CHASKALSON SC: Let us go to page 614 of this bundle? And 614 it is a City of Johannesburg Mayoral Committee Report or a report that served at the Mayoral Committee on the 23 July 2015 and this in fact is a report under Section 33 or to – to – for the purposes of Section 33 of the MFMA and the report said:

“That the approval of the Portfolio Management Agreement for the appointment of the Redemption Fund Asset Managers a strategic thrust well governed and managed city objective
10 purpose of this report is to obtain council approval to enter into the five year Portfolio Management Agreement for the City’s Redemption Fund now.”

So this is finally the contract that is going to take the place of that old 2006 Regiments Fund Managers contract, is that correct?

MR MAKHUBO: Say again.

ADV CHASKALSON SC: This is the contract that is going to take the place of that original contract first awarded to Molelwane and Regiments back in 2006?

20 **MR MAKHUBO:** [00:05:25] the second one here.

ADV CHASKALSON SC: And then there is a bit of a summary and at 3 and it says:

“The required notice of advert in terms of Section 33(1)A containing the information was published in local and national

newspapers. Cities projected financial obligations referred to in Section 33(1)B 1 and 2 for the five year contract was stated in the financial implications. Terms of 33(1)C City needs to determine whether it will secure significant capital investment.”

On and on it goes and there are legal implications and financial implications and if we come to the resolution at page 625 we see that the Mayoral Committee made a
10 resolution that the contract and Item 17 attached hereto is Annexure C to manage the City’s Redemption Fund between the City of Joburg and Regiments Fund Managers is approved. And that the City Manager be authorised to sign the contract referred to in Annexure C on behalf of the City. Is that correct?

MR MAKHUBO: Yes that is correct to approve any period beyond three years.

ADV CHASKALSON SC: Yes.

MR MAKHUBO: That goes to council from there ja.

20 **ADV CHASKALSON SC:** Yes do you recall who chaired this meeting of the Mayoral Committee?

MR MAKHUBO: I saw in the minutes that I chaired the first part and then the former Mayor Parks Tau chaired the latter part.

ADV CHASKALSON SC: Yes and – and where did this item

fall in?

MR MAKHUBO: When I read these minutes because I cannot recall the Councillor Tau was chairing the meeting at that time.

ADV CHASKALSON SC: Yes did you participate in the meeting at that time?

MR MAKHUBO: Sorry?

MR MAKHUBO: Did you participate in the meeting at that time?

10 **MR MAKHUBO:** I would think I was there but I cannot recall what the – whether the item was approved or not.

MR MAKHUBO: Yes.

MR MAKHUBO: I cannot recall but I was chairing the meeting that time.

ADV CHASKALSON SC: So you were not chairing but you were part of the Mayoral Committee?

MR MAKHUBO: Yes.

20 **ADV CHASKALSON SC:** Can we then go forward to the council meeting of the 30 July. So that recommendation from this Mayoral Committee meeting in which you participate goes to council on 30 July. Were you present at council at 30 July 2015?

MR MAKHUBO: I tried to check the – what page is that?

ADV CHASKALSON SC: Sorry it is at page 610.

MR MAKHUBO: I cannot tell Chair if I would not have – we

do not have the – I can go check if we do not have the attendance register.

ADV CHASKALSON SC: Okay. Well we will get the attendance register. Can we just go to the resolution? That the resolution at page 611 is that the contract hereto is Annexure C to manage the City's Redemption Fund between City of Joburg and Regiments Fund Managers is approved. And the City Manager is authorised to sign the contract. Do you remember that resolution?

10 **MR MAKHUBO:** Well I see it here yes.

ADV CHASKALSON SC: Yes. So Regiments was having had the original contract from 2006 was then given the second contract in 2015, is that correct?

MR MAKHUBO: Yes through the process of the EOC and all that yes.

ADV CHASKALSON SC: Sorry through the process of?

MR MAKHUBO: Of the EOC.

ADV CHASKALSON SC: What – the EOC.

MR MAKHUBO: Executive Opposition's Committee.

20 **ADV CHASKALSON SC:** Executive yes but because this was a Section 33 contract it was also a contract that went to council and Mayoral Committee?

MR MAKHUBO: That is correct.

ADV CHASKALSON SC: Yes so if Mayoral Committee said no it would not – well if Mayoral Committee and council said

no it would not have gone through.

MR MAKHUBO: Yes.

ADV CHASKALSON SC: And do you recall whether any of the bidders other than Regiments Fund Managers were – made it through to round 2 of this adjudication?

MR MAKHUBO: I would not know Chair. I saw for the first time in this bundle the EOC report.

ADV CHASKALSON SC: I see.

MR MAKHUBO: For the first time.

10 **ADV CHASKALSON SC:** Well it would not be the first time because you were at the Mayoral Committee meeting that considered the report.

MR MAKHUBO: The EOC report does not serve at Mayoral Committee.

ADV CHASKALSON SC: It does not serve at Mayoral Committee.

MR MAKHUBO: No.

ADV CHASKALSON SC: It serves at council.

20 **MR MAKHUBO:** No, no even the EOC reports does not serve at council. They bring a report we will [00:09:49] recommendations.

ADV CHASKALSON SC: Yes. So Mayoral Committee – so Mayoral Committee and – and council do not even get to see the EAC report.

MR MAKHUBO: No.

ADV CHASKALSON SC: They exercise their own independent discretion.

MR MAKHUBO: In the time I have been a Mayoral Committee member no.

ADV CHASKALSON SC: I see but Mayoral Committee and council must exercise their own independent discretion in relation to these decisions. It is not just rubber stamping the EOC.

MR MAKHUBO: The report you see is the report that gives a
10 recommendation.

ADV CHASKALSON SC: Yes but the – my question is does Mayoral Committee and council just rubber stamp that recommendation or do they exercise an independent invest – an independent discretion?

MR MAKHUBO: Except when there is a obligation to the financial obligation on the sitting post beyond three years which is what we concern ourselves with.

ADV CHASKALSON SC: Yes so in this case Mayoral Committee and council had to look at the matter with an
20 independent discretion is that not correct?

MR MAKHUBO: The discretion of whether three years or five years?

ADV CHASKALSON SC: No a discretion as to whether they are going to authorise the contract to Regiments?

MR MAKHUBO: The discretion whether it is three years or

five years that is what [00:11:01].

ADV CHASKALSON SC: No, no

MR MAKHUBO: We do not see Regiments or we – we do not do that. At least I do not do that.

ADV CHASKALSON SC: Well what you could say is we are not going to give this to Regiments we – we have investigated this contract we are not satisfied that Regiments should do it. Go out to tender again.

MR MAKHUBO: But that you can say go to tender again but
10 generally when they come and say you have done the whole process it has got probity, people looked at it as being – so you believe what they say they have done because the Accounting Officer is accountable at the end of the day.

ADV CHASKALSON SC: Yes but – well we can have a legal debate inside the commission later. I am telling that at legal level the Mayoral Committee and the council have to exercise an independent discretion in these cases.

MR MAKHUBO: Chairperson I am sure discretion is – yes we can say take this thing back to tender I suppose you
20 ultimately have to say yes it is five years or not but why you go to Section 33 is because you are imposing a financial obligation on the city more than three years. If it was less than three years it will not even reach Mayoral Committee. If it was less than years do not reach Mayoral Committee nor council. So you only get involved on that period extension

anything that is beyond three years.

ADV CHASKALSON SC: Now with respect – with respect Mr Makhubo the legal position is because binding the City to a commitment of more than three years is sufficiently important to require the attention of the council. The council must look at the obligation that the City is going to carry for three years and more and must decide whether the City should carry that obligation. It is not an issue of deciding well we will only give three years. The issue is are we going
10 to undertake this obligation to Regiments Fund Managers on this contract?

MR MAKHUBO: So your contention Chair is that the obligation is not the financial obligation over three years it is a financial obligation and the person that it is going to. Is that what we [talking over one another].

ADV CHASKALSON SC: It is – there is an obligation that the City will carry for a period of five years on this recommendation. Is the City prepared to carry this obligation on that contract? Why the – the Section requires
20 the whole contract to be put before the council.

MR MAKHUBO: The conditions of the contract yes.

ADV CHASKALSON SC: No in fact the exact contract that is going to be signed with Regiments is what the Section requires.

MR MAKHUBO: That is correct.

ADV CHASKALSON SC: So the council has to scrutinize that contract and say do we want to bind the council on that contract?

MR MAKHUBO: That is correct. That is correct.

ADV CHASKALSON SC: And part of that question is do we want to bind on these terms to Regiments Cap – to Regiments Fund Managers for five years?

MR MAKHUBO: Well I would not choose one over the other. I am saying that it says looked at the conditions, the
10 financial obligations, the whole contract is there. Yes we will
[?] Regiments but I do not think we can turn it back at least
in my experience never have been that we do not want this
bank we want this bank, we do not want this developer we
want this developer.

ADV CHASKALSON SC: Well you cannot say we do not
want Regiments we want Colour Fields because the contract
and the – has to be advertised to the public and the only
contract that has been advertised to the public is the
Regiments contract. But you can say we looked at this and
20 we do not want – we do not want Regiments – we do not
want to be in this relationship with Regiments for five years.
And in fact your obligation is to examine whether you want to
incur this obligation on behalf of the City to that counter
party.

MR MAKHUBO: Ja I never looked at it like that. I have

never looked at it like that that I can like the conditions and the money and the financial obligations and then would say just because I do not like this person at that point we do not. I mean it has happened, banking, many of that Section 33's we looked at.

ADV CHASKALSON SC: Well let me – let me give you an example. You are aware – well I will get to my example – let me get to my example a little later let me not do it now. I – you participate in the process that awards this contract to
10 Regiments Fund Managers.

MR MAKHUBO: Yes I was in a – assumed that I was in the council meeting and a Mayoral Committee that time that approved that – the obligation of five years and the conditions of the contract going to Regiments must – must be approved.

ADV CHASKALSON SC: Yes. Let us then go to the situation in your private affairs not your council affairs. Can you turn to page 774? Remember that council – the Mayoral Committee was 23 July, the council was 30 July. Page 774
20 is an extract from Regiments bank statement. And what we see is that on the 28 August less than a month after the council approves Regiments pays Molelwane R799 197.00. Do you recall that payment?

MR MAKHUBO: Well I see it here I cannot say I recall.

ADV CHASKALSON SC: Well maybe let us go back to 492

which is that end of year.

MR MAKHUBO: Statement.

ADV CHASKALSON SC: Statement.

MR MAKHUBO: 4?

ADV CHASKALSON SC: And you see on 28 August

MR MAKHUBO: 4 what? Is it 492 and it is not.

CHAIRPERSON: Ja 492

ADV CHASKALSON SC: 492.

CHAIRPERSON: I think Mr Chaskalson when you say 249.

10 **ADV CHASKALSON SC**: Oh sorry Vol – sorry Volume –
Bundle 2, 492.

CHAIRPERSON: Ja it is better that way.

ADV CHASKALSON SC: Bundle 2, 492.

MR MAKHUBO: My 492 is a – is that invoice.

CHAIRPERSON: 492 is ...

ADV CHASKALSON SC: Is a statement not an invoice.

CHAIRPERSON: Statement. Bundle 2?

ADV CHASKALSON SC: 492 if you turn around the other
page- the other side?

20 **MR MAKHUBO**: 493.

CHAIRPERSON: If you look at the – on the spine of the
bundle is it written Flow of Funds Bundle 02? If you just
look – I just want to make sure you are...

MR MAKHUBO: Yes that is..

CHAIRPERSON: Okay.

MR MAKHUBO: 02 I am on FOF 02, 492.

CHAIRPERSON: Okay then you are – you must be on the right page. I – does it not look like your page Mr Chaskalson?

ADV CHASKALSON SC: It is

CHAIRPERSON: Just show it towards me because Mr Chaskalson is looking at the computer.

ADV CHASKALSON SC: No, no I can – but I will see the same page there. It looks a little bit shorter. Well let me
10 describe to you what I see on 492. It is a statement that we looked at a short while ago when I pointed out to you that at 30 June Regiments owed Molelwane R993 370.00. Do you recall that?

MR MAKHUBO: That statement – that is correct ja.

ADV CHASKALSON SC: Yes. Well the same statement – it is the same document says that after this payment the amounts outstanding by Regiments had now dropped to only R101 000.00. R101 925. 976 so this payment came in on the
20 28 August according to the statement and – and as of the 28 August what had once been a balance of just under R1 million was now just over a R100 000.00.

CHAIRPERSON: Mr Chaskalson I am not sure.

ADV CHASKALSON SC: Am I looking at – have I got the wrong document?

CHAIRPERSON: There are some things you are saying

which do not appear on page 492. Are you looking at 492 too?

ADV CHASKALSON SC: I am looking at my 492 it may be 476. If we – can we try 476? Is the statement on 476?

CHAIRPERSON: Yes I have got 476.

ADV CHASKALSON SC: So this is the end of year statement of 2012 and can we – let us just rewind a little bit. We looked at 30 June 2015.

CHAIRPERSON: Of 2012 or 2015 Mr Chaskalson?

10 **ADV CHASKALSON SC:** 2015 Chair.

CHAIRPERSON: Ja.

ADV CHASKALSON SC: 30 June 2015. The outstanding balance that Regiments owed Molelwane was R993 370.47. There are then some movements on the account but the biggest is a payment of R799 197.00 on 28 August less than a month after the resolution to reappoint Regiments leaving a balance of R101 925.00. So in the period over which the Mayoral Committee considered the Regiments renewal contract and awarded – and the council awarded it the
20 outstanding – well – a month before this the outstanding balance was R993 370.00 that Regiments owed Molelwane and a month later the outstanding balance was R101 925.00. Do you not see the potential for an appearance of a conflict of interest there?

MR MAKHUBO: The way I see it here I mean you are

winding down an existing contract and transferring to the second one – monies outstanding again finalised. I really do not.

ADV CHASKALSON SC: You had sent – you had sent an invoice at the end of June.

MR MAKHUBO: The – this part I was not involved in but what I can say is that it makes sense to me that the first quarter payment that comes at the end of June must be billed.

10 **ADV CHASKALSON SC:** Yes but would it not make sense for that payment to be paid in July?

MR MAKHUBO: Chair I would not – I would not – as I say I would have assumed that is the first quarter – I do not know the details of what – what the issue is but when it gets paid July or June I would not answer for that.

ADV CHASKALSON SC: Right. Well let us go on on the chronology. We have – we have seen a payment from Regiments to Molelwane of R799 197.00 on the 28 August. Can I take you to Bundle 3 page 849?

20 **MR MAKHUBO:** I am there.

ADV CHASKALSON SC: And if we go – just hang on a minute. If we go to the 29 August 2015 the day after Regiments pays Molelwane. Can you go up to 29 August 2015?

MR MAKHUBO: Yes.

ADV CHASKALSON SC: This is a table of payments that go from Molelwane into your personal account. And we see on 29 August 2015 the day after Regiments pay Molelwane half a million rands is transferred from Molelwane into your personal account. Do you have a comment on that?

MR MAKHUBO: Without having the details big amounts would go to the call account for her interests in the same profile so that is – that is that. What – there is no other comment.

10 **ADV CHASKALSON SC:** Sorry big amounts go to the call account on the same profile. So you are treating the accounts of Molelwane as essentially interchangeable with your own personal accounts?

MR MAKHUBO: No.

ADV CHASKALSON SC: You moving R500 000.00 from an account in the name of Molelwane into an account in your personal name.

MR MAKHUBO: Yes that is what happened but I was not treating them the same no.

20 **ADV CHASKALSON SC:** Sorry you are not treating them as the same?

MR MAKHUBO: Ja.

ADV CHASKALSON SC: But you have just taken R500 000.00 that belongs to Molelwane and you put it in an account that belongs to you.

MR MAKHUBO: I would have thought it went it into the call account then you asked me to comment Chair around this. As I say I am seeing this I do not have underlying detail I am assuming it is gone to a call account.

ADV CHASKALSON SC: Sorry whose call account? Is it your call account – your personal call account or Molelwane's?

MR MAKHUBO: It is in my name.

ADV CHASKALSON SC: It is in your name?

10 **MR MAKHUBO**: Ja.

ADV CHASKALSON SC: Yes. So R500 000.00 has gone out of Molelwane's account into your – an account in your name the day after Regiments has paid Molelwane R799 000.00 which in turn is less than a month after you participated in a decision to give Regiments a Fund Management contract for the City for another five years. Is that correct?

MR MAKHUBO: I think the context it not correct. Regiments owed Molelwane Consulting. Regiments – Regiments Capital owed Molelwane Consulting the money that was duly
20 invoiced and paid. So I suppose what you are saying is that what happens between Molelwane and myself – I do not know how it links to the council decision. They have got no relationship. Not at all.

ADV CHASKALSON SC: You say they have got no relationship. Looking from the outside I want to put it to you

that there is an appearance that they may very well have a relationship at least in appearance. But they may very well have a relationship.

MR MAKHUBO: It is a very wrong appearance and it is incorrect.

ADV CHASKALSON SC: So you say it is incorrect.

MR MAKHUBO: I maintain it is incorrect.

ADV CHASKALSON SC: Okay. I am – Chair I see that we have reached one o'clock. There are some more questions
10 that I want to – to pursue along this line but...

CHAIRPERSON: Yes.

ADV CHASKALSON SC: Would it be a convenient time to take the lunch adjournment?

CHAIRPERSON: Let us talk about that. We have the other witness coming later on but you – you know how you want to manage the time. Do you propose that we take the adjournment – the lunch adjournment now and you continue with Mr Makhubo at two or did you want to continue a little bit or for a certain time and we – or what do you have in
20 mind?

ADV CHASKALSON SC: Chair if we could continue for another half hour now I might be able to complete this section with Mr Makhubo and then we can come back.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: At a later stage.

CHAIRPERSON: Yes. Well in terms of the other witness maybe it is not going to impact much because I – from what I understood from you yesterday we should be able to finish with him as well.

ADV CHASKALSON SC: Yes we certainly will be able to finish.

CHAIRPERSON: Okay maybe let us take the lunch break, come back at two you continue with Mr Makhubo and then maybe we finish with him at half past two or thereabout –
10 quarter to three and then when we are done with him then we will – I will hear the other witness.

ADV CHASKALSON SC: Thank you Chair.

CHAIRPERSON: Is that fine?

ADV CHASKALSON SC: I wonder if we might not notify – we will try to notify [?] Ramosebudi and his attorneys.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: To – to come later.

CHAIRPERSON: Ja. Okay alright. Alright we are going to adjourn for lunch we will come back at two. We adjourn.

20 **INQUIRY ADJOURNS**

INQUIRY RESUMES:

CHAIRPERSON: Okay let us continue.

ADV CHASKALSON SC: Thank you, Chair. Shortly before the break Mr Makhubo, we were looking at a payment of R 799 000,00 that went into Molelwane's – the day before, a

payment of – from Regiments, the day before, a payment of R 500,000,00 went out of Molelwane into your personal account.

And your answer to me was that you would have moved it into the call account to get more interest. That you treated the call account in your personal name as a place where you could house Molelwane funds for getting better interest.

Is that a fair answer – a fair summary of your answer?

MR MAKHUBO: Chair, generally, that would happen. I was
10 saying that you need more interest. But specifically on this one, I would have to check on which account it went to specifically.

However, I can indulge yourself Chair that, even before we closed, the chair tried – the council tried to misread the statement that seven, ninety-nine came as Regiments was owing Molelwane hundred thousand.

The statement does not say that, the way I read it.

ADV CHASKALSON SC: That is not what I said at all. I
said after the R 799 000 came, what was left owing was
20 hundred thousand.

MR MAKHUBO: Yes. So I want to categorically state that all the monies that flew from Regiments Capital to Molelwane Consulting were in relation to contract that was signed in 2006.

No other contract that we were part of. We were not

part to contract number 2. And that, giving that same contract Chair, would have been through the processes that we described earlier.

And the award is not made by council. The award is made by the EAC subject to Section 33, that if – if the Commission can hear it on the record what Section 33 requires of council to do.

I think it will be quite important that no monetary benefit - and I had not opportunity to influence because the EAC and
10 Probit(?) and all that. Then those documents are all there.

The Commission would have wanted them. I mean, in the same way – EAC report here says they worked through property.

So I thought it is quite important that we clarify that. But everything else was in relation to contract – contract number 1 and we had no opportunity to influence contract number 2.

ADV CHASKALSON SC: But if... Well, you did have an opportunity to stop contract number 2.

20 **MR MAKHUBO:** [Indistinct] ...[intervenes]
[Parties intervening each other – unclear]

ADV CHASKALSON SC: ...your mandate(?) is on the Mayoral Committee and on the council.

MR MAKHUBO: Chair, I say, if you can read Section 33, what council and council has to do. And then maybe then, I

would say I had no opportunity to say:

Do not award to Regiments because Regiments – awards of contracts are the privy of the city(?) manager, who is the accounting officer.

And they are done subject to the Specification(?) Committee, the Evaluation Committee, the Executive Adjudication Committee, Probitry and of course, the award by The City Manager.

ADV CHASKALSON SC: I do not think we need to debate
10 the terms of Section 33 with you. You have given us your
view on Section 33. What Section 33 actually requires is a
legal issue which we can address later. But what I
...[intervenes]

CHAIRPERSON: Do we have it at hand?

ADV CHASKALSON SC: I do have it at hand Chair.

CHAIRPERSON: Oh, okay.

ADV CHASKALSON SC: Would you like me to read it into
the record?

CHAIRPERSON: Ja, maybe you could just read it, ja.

20 **ADV CHASKALSON SC:** It says the following Chair:

“The municipality may enter into a contract which would impose financial obligations on the municipality beyond the financial year but if a contract will impose financial obligations on the municipality beyond the three years covered in the

annual budget for that financial year, it may do so only if:

A:

1. The municipal manager has at least 60 days before the meeting of a municipal council at which the contract is to be approved in accordance with Section 21(a) of the Municipal Systems Act, made public the draft contract.
2. And then information statement summarising the municipality's obligation in terms of the proposed contract.
3. Invited the local community and other interested person to submit to the municipality comments or representations in respect of this proposed contract.
- 4, As solicited the views and recommendations of AA, the National Treasury and the relevant Provincial Treasury.
5. The National Department responsible for local government.
6. The contract involves where CC is not applicable."

B is crucial.

"1. The municipality is taken into account the municipality's projected financial obligations in

terms of the proposed contract for each of the financial year covered by the contract.

2. The impact of those financial obligations and municipal fees, municipal tariffs and revenues.

3. Any comments or representations on the proposed contract received from the local community and other interested persons.

10 4. Any written views and recommendations on the proposed contract by the National Treasury, relevant Provincial Treasury and National Department responsible for local government and any national department referred to in paragraph AA.”

And then C is – there is the provision that invest the power in the council. C says:

“The municipal council has adopted a resolution in which:

20 1. It determines that the municipality will secure a significant capital investment or will derive a significant financial economical financial benefit from the contract.

2. It approves the entire contract exactly as it is to be executed.

3. It authorises the municipal manager to sign the contract on behalf of the municipality.”

So the power to conclude or not to conclude these contracts is quite clearly controlled by the council of the municipality.

CHAIRPERSON: H'm, h'm. Thank you. Well, in fairness to Mr Makhubo. Maybe you could put that last proposition and hear what he has to say. What do you say Mr Makhubo to the ...[intervenes]

MR MAKHUBO: No, no, no ...[intervenes]

CHAIRPERSON: ...position that ...[intervenes]

10 **MR MAKHUBO:** No, no, no. I was responding to ...[intervenes]

CHAIRPERSON: Hang on, hang on. Let me finish first. What do you say to Mr Chaskalson's proposition that when he reads Section 33, it seems that the final decision, whether the – such a contract should be concluded or not, seems to lay with the council?

MR MAKHUBO: Yes, we say council approves.

CHAIRPERSON: Yes.

20 **MR MAKHUBO:** But exactly why we have to do Section 33, Section 33(1). Yes, I agree that the council approves.

CHAIRPERSON: Yes.

MR MAKHUBO: But what I was contending.

CHAIRPERSON: Ja.

MR MAKHUBO: There was an earlier discussion that we have the power to say no to Regiments or to whoever it is

awarded or to the bank or the financier. So we do not award.

By the time the contract comes to council, the award is already made. What we are bringing is a council – is a contract. That is how I understand it. That is how I understood it. That is how it has been operating.

CHAIRPERSON: Well, Mr Chaskalson I will leave it to you.

ADV CHASKALSON SC: Thanks, Chair. I mean, as a matter of law, Mr Makhubo's understanding is incorrect. I
10 can put that very firmly but I do not want to debate law with Mr Makhubo.

CHAIRPERSON: Yes, okay.

ADV CHASKALSON SC: Mr Makhubo, earlier I took you to a schedule which showed that in this period from November 2011 when you were attempting to resign from Molelwane, through to January 2020, amounts of R 7 million or just a little over R 7 million were paid from Molelwane into your personal account. And you will recall, you were not able to dispute that.

20 **MR MAKHUBO:** When you said no verify. Sorry, no verifying. I said that I had not verified but it was not in dispute. So...

ADV CHASKALSON SC: You will come back in due course to deal with the EOH side of the evidence. In between now and then, if you have any dispute over that amount, you will

have the opportunity to raise it.

But will you accept that over the same period, the primary source of revenue into the Molelwane account was the Regiments contract?

MR MAKHUBO: I will have to check that. Maybe it was a larger one. If you say primary means that.

ADV CHASKALSON SC: Well ...[intervenes]

MR MAKHUBO: [Indistinct]

[Parties intervening each other – unclear]

10 **ADV CHASKALSON SC**: Was there any other source of revenue into Molelwane bigger than Regiments?

MR MAKHUBO: None that I can recall. I was, as I say, I did not check the docs.

ADV CHASKALSON SC: Well, we actually went and looked at the numbers and we saw that in this period the income from Molelwane to Regiments page 985, aggregated... Let me just get the exact figure.

Well, that figure of R 35 million goes back to 2006. Let me see if we have ...[intervenes]

20 **CHAIRPERSON**: Okay. Where are you looking now Mr Chaskalson? 985?

ADV CHASKALSON SC: 985, Chair.

CHAIRPERSON: Of Bundle 2?

ADV CHASKALSON SC: Of Bundle 2, indeed.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: We do not have a figure for the period after 2011, but I can say with considerable confidence that it is more than R 7 million and I can also put to you that there was no remotely comparable source of revenue into Molelwane, apart from Regiments.

If you want to dispute that once you have looked at your bank statements in more detail, you will have the opportunity to do that when you come back.

I want to take you now to an interview you gave to
10 Power FM shortly before you became Executive Major. And can we turn to page 941 of the bundle?

MR MAKHUBO: [No audible reply]

ADV CHASKALSON SC: Do you recall giving an interview to Power FM shortly before you – I think it is 3 December 2019.

MR MAKHUBO: I have given many interviews. I might have. I stopped at Jozi FM, Tata FM. I gave many interviews.

ADV CHASKALSON SC: This was shortly before you were
20 appointed Executive Mayor. Can I take you to line 12 on page 941?

MR MAKHUBO: [No audible reply]

ADV CHASKALSON SC: The presenter says:

“I am sorry to push you. It is just that we are out of time. So I am just trying to put, you know, just

encapsulate, basically, what is that you are saying that is not true? That I resigned in 2019. I actually resigned on such and such a date.”

Your answer is:

“Ja. I resigned. The final resignation was around 2013/2014.”

Was that correct?

MR MAKHUBO: I cannot remember if I said that but if you have seen the transcripts.

10 **ADV CHASKALSON SC**: Well ...[intervenues]

MR MAKHUBO: It is not correct. That is not correct.

ADV CHASKALSON SC: So it is not correct? So what you told Power FM shortly before you were made Executive Mayor is not correct?

MR MAKHUBO: Chair, I am reading this. I am not even sure that I have said this to Power FM.

ADV CHASKALSON SC: Yes. Well, if you want to hear the transcript, we can give it to your attorneys. You can come back. Assume for present purposes, this is an accurate
20 transcript.

If it is an accurate transcript, is what you said there, correct or incorrect?

MR MAKHUBO: Well, I mean, it is quite clear that the dates are not correct.

ADV CHASKALSON SC: The dates are not correct?

MR MAKHUBO: No.

ADV CHASKALSON SC: Why would you have told Power FM it is not correct?

CHAIRPERSON: I am sorry. It is important to make it clear in terms of what is correct and what is not correct when you mean what is written here is not what you said. Or when you say you accept that what is written here is what you said. But what you said then was then correct.

So I just want to make sure that we are all on the same
10 page when you say it is not correct, which one is it?

MR MAKHUBO: Thank you, Chair. I say that if it is indeed what I said.

CHAIRPERSON: Yes.

MR MAKHUBO: What is written here is indeed what I said, it is not correct.

CHAIRPERSON: Yes, okay alright.

MR MAKHUBO: I must have been mistaken here.

CHAIRPERSON: Okay alright. Mr Chaskalson.

ADV CHASKALSON SC: You must have been mistaken?

20 **MR MAKHUBO**: [No audible reply]

ADV CHASKALSON SC: Can we go a little bit lower down onto page... Well, let us continue. The presenter then says:

“Alright. So the time you were already MMC at the time you resigned?”

You say:

“Yes, yes.”

The presenter says:

“Which means you continued to derive benefit from a company doing business with The City?”

Your answer over the page on 942 was:

“I did not derive benefit. In fact, if any fees came – because the fees came, they went into staff and all that. I did not derive any benefits from that time. I, Geoff Makhubo, did not.”

10 If that is what you said, would that have been true or false?

MR MAKHUBO: No, no. I will have to be – that will not be true. But what is true here is that I did not get undue benefit.

ADV CHASKALSON SC: Sorry, what is true here?

MR MAKHUBO: Is that I did not get undue benefit from this contract.

ADV CHASKALSON SC: Okay that is not what you said.

MR MAKHUBO: I am just saying, if that is what I said. But
20 that is what I meant. Effecting... Then I do not know the thing that... This is the ...[indistinct] of broadcast. I wonder what the issues are. But I mean undue benefit here.

ADV CHASKALSON SC: You meant undue benefit?

MR MAKHUBO: If this is what I said.

ADV CHASKALSON SC: “I did not derive any benefit from

that time. I, Geoff Makhubo, did not.” How would that be reconcilable with the notion that you did get a benefit but it is not it is not an undue benefit?

MR MAKHUBO: Chair, I have no idea but what I am saying, I meant here, undue benefit. I mean, I was not sure what this interview has got to do with this. But undue benefit it meant in the interview with the radio.

CHAIRPERSON: From what you are saying, it seems to me that your approach is that if you received benefits, there was
10 nothing wrong with that as long as it was not undue benefit. Is that right?

MR MAKHUBO: That is... You know, if – as I say Chair – if that is the temperature at that time, especially from the case – the issues that ...[intervenes]

CHAIRPERSON: The evidence leader is raising...

MR MAKHUBO: H'm?

CHAIRPERSON: The evidence leader is...[intervenes]

MR MAKHUBO: The evidence leader. Yes. No, thank you.

CHAIRPERSON: Oh, ja.

20 **MR MAKHUBO**: The evidence leader started with – I mean, he started with Ama Bongani and my response to Ama Bongani.

CHAIRPERSON: H'm.

MR MAKHUBO: And everything – the threat has always been what was said in the newspaper and the applications

made by Ama Bongani, which is... So that is really what the response was here.

CHAIRPERSON: H'm. But you see, in the transcript, as I read it. I do not know if there is something that I have not picked up. There is no reference to undue benefit. There is reference to benefit. But what you have, in your response, emphasised is, that you meant to say, you did not receive any undue benefit.

MR MAKHUBO: That is correct, Chair.

10 **CHAIRPERSON**: And I am saying. That seems to suggest to me that you do not think there would have been any problem with receiving a benefit as long as it was not an undue benefit.

So that is why I am seeking to try and establish whether that is the distinction that you want to make or you do not wish to make any distinction. You are just saying, you meant you did not receive any undue benefit.

Of course, the next question will be: Did you receive benefit that you regarded as due?

20 **MR MAKHUBO**: That is the distinction I wanted to make.

CHAIRPERSON: Oh, that is the distinction you wanted to make?

MR MAKHUBO: Yes.

CHAIRPERSON: And the importance of the distinction? What is the importance of the distinction?

MR MAKHUBO: Well, it is very clear that we had a running contract and there were benefits. That is why I am saying, they were not undue.

CHAIRPERSON: Yes, yes.

MR MAKHUBO: They are benefits(?).

CHAIRPERSON: Yes. Mr Chaskalson.

ADV CHASKALSON SC: Can I then go back to your first statement to Ama Bongani, at page 974?

MR MAKHUBO: H'm.

10 **ADV CHASKALSON SC**: And if you go to the foot, the second last paragraph – the third last paragraph.

“There was never a conflict of interest as the term of the Molelwane Agreement with Regiments on the first Sinking Fund would have lapsed in January 2011, a year I took Public Office.

Molelwane Consulting did not continue providing services to Regiments on the second contract as it did not participate in the RFP.

20 Further to this, I declared all my private business interest upon taking Public Office as required by law.

In addition to this, I subsequently resigned as a member of Molelwane Consulting and director of all other companies in November 2011.

This was in line with my decision to use my skills as

a public representative.

I also made a commitment to the Mayor of the ...[indistinct] ANC when I was appointed MMC that I unwind(?) my interest and resign all my directorships.”

This was a statement you gave in 2018. I want to put it to you that it is materially misleading.

MR MAKHUBO: [No audible reply]

ADV CHASKALSON SC: In 2018, you were still controlling
10 the financial affairs of Molelwane Consulting. Is that not correct?

MR MAKHUBO: I thought we have canvassed that I agreed that the resignation did not happen. And we have canvassed, yes.

ADV CHASKALSON SC: So ...[intervenes]

MR MAKHUBO: So it is not misleading.

ADV CHASKALSON SC: Well, there is a difference between a technical deficiency and a resignation not being registered at CIPC. And a material non-resignation.
20 Because what you were doing in 2018, was continuing to run the financial affairs of Molelwane. Is that not correct?

MR MAKHUBO: I did say at the beginning of the engagement that whatever was due that I have worked for, in my view, the equity would have been withdrawn. So I had not mislead anyone.

ADV CHASKALSON SC: Let us read that sentence again.

CHAIRPERSON: I am sorry. You will remember to face this side so that I can hear you.

MR MAKHUBO: Sorry. Sorry, Chairperson.

CHAIRPERSON: Okay, ja, ja. Yes, okay. Mr Chaskalson.

ADV CHASKALSON SC: But nobody reading this statement that you gave to a response to an allegation of conflict of interest, would know that you had retained your equity in Molelwane Consulting. It is – the of this statement is exactly
10 the opposite of that.

MR MAKHUBO: Hence I said when you started that it is a pity that you did not look at the questions, one, two. I was answering in the best way that my advisors gave me. And three was that at that time you(?) did not even know what the allegations come from in the floor(?). So this and what I was referring to earlier on, I ...[indistinct] So I do not agree with you.

[Speaker is not clear.]

CHAIRPERSON: Maybe let us take this at the same page
20 947, the second paragraph from the end. You say:

In addition to this, I subsequently resigned as a member of Molelwane Consulting and director of all other companies in November 2011.

This was in line with my decision to use my skills as a public representative.”

Blah-blah-blah. By 2018, you would have known that the resignation had not happened although there was a resolution, is it not?

MR MAKHUBO: Correct, Chair.

CHAIRPERSON: Yes.

MR MAKHUBO: Which is why in the beginning, I qualified.

CHAIRPERSON: Yes.

MR MAKHUBO: I think the evidence leader dealt with this matter right at the beginning of the...

10 **CHAIRPERSON**: Yes.

MR MAKHUBO: And I qualified it.

CHAIRPERSON: Yes.

MR MAKHUBO: That point, yes.

CHAIRPERSON: Yes, but what I am saying is. I can understand a situation where you had taken the steps that you believed were necessary in order to effect a resignation, like signing the resolution or signing the letter of resignation and asking somebody to send the letter off.

20 And for some time after that, you do not know that that person did not actually sent the letter off. So you think you had resigned.

But by 2018, I take it that you knew that the resignation had not happened. You had signed but it had not happened. So the question would arise, how you would say in 2018 you did resign in circumstances where one expects that you know

that the resignation resolution was not acted upon.

You understand where my concern is?

MR MAKHUBO: Yes. Chair is asking about my knowledge at the time and I was responding to Ama Bongani.

CHAIRPERSON: Ja in 2018.

MR MAKHUBO: That is basically what DCJ is asking me.

CHAIRPERSON: Yes.

MR MAKHUBO: And Chair, I must say. What I – when I want to engage when the questions came in and I gave to
10 the team. What I do not deny is that the financial affairs was, I was still in the ownership ...[intervenes]

CHAIRPERSON: Yes.

MR MAKHUBO: But when I asked the team about where is the process and how is the process. And they told me – when we checked, that is not done.

In fact, when the journalist asked me, I saw it when it was done. But this I said: Look, it was an attempt that happened and that is what I sent to Ama Bongani.

And the context of that Chair was such that I did not
20 believe in the innocence of these questions from Ama Bongani.

I thought they were loaded with lots of politics especially that I – I was made aware, even before the questions came, about a process in The City where they were sitting together with my opponents.

So at that time, when these things came Chair, the context of that, for me, it was valid but I wanted to respond.

CHAIRPERSON: But sitting there, you would accept, would you not, that in 2018, it would not – it was not correct to say you had resigned?

MR MAKHUBO: Well, I have qualified it the way that it is qualified now.

CHAIRPERSON: Yes.

MR MAKHUBO: Yes.

10 **CHAIRPERSON**: Ja, to say, you had made an attempt.

MR MAKHUBO: Yes.

CHAIRPERSON: But the resignation resolution had not been acted upon.

MR MAKHUBO: Yes.

CHAIRPERSON: Okay. Mr Chaskalson.

ADV CHASKALSON SC: Yes, Mr Makhubo. Well, I put it to you that that is a materially misleading statement. But let us look at the next paragraph. There you say:

20 “Politically office bearers are by law precluded from participating in procurement processes. Hence, I could not have been involved in overseeing the renewal of the Sinking Fund contract.”

As a matter of fact, you were involved in the renewal of the Sinking Fund Contract. Is that not correct?

MR MAKHUBO: That is completely incorrect.

ADV CHASKALSON SC: You say it is incorrect?

MR MAKHUBO: Yes.

ADV CHASKALSON SC: Did you not sit on the Mayoral Committee that recommended to the council that it adopt the contract in terms of Section 33?

MR MAKHUBO: Again, I differ with you how you interpret Section 33. The award was already made. There was BAC, there was BEC, there was EAC. There was Probity. There was everything else. I do not agree with you.

10 **ADV CHASKALSON SC:** So, what did you understand your function to be on the Mayoral Committee? Just to rubberstamp a decision that had been taken at BAC and BEC level?

MR MAKHUBO: To check whether the financial obligations to The City are not ...[indistinct] and that is it. And to convey to council.

[Speaker is not clear.]

ADV CHASKALSON SC: Well, even if you had misunderstood your obligations in that sense. I submit to
20 you, that you were overseeing the renewal to that extent.

MR MAKHUBO: And I am saying that I do not agree with you. I was not overseeing and I do not think I misunderstood my role, as we have done it all the time.

ADV CHASKALSON SC: The fact that you acted unlawfully several times in the past, does not make it lawful for when

you do it again Mr Makhubo. What is lawful and what is not, is a matter of law and not a matter of your past practise. But we can move on.

Do you not accept that in your role as MMC, that you had a responsibility at a political level to have oversight of this Sinking Fund Contract?

MR MAKHUBO: There are various contracts in The City that have got officials overseeing them. I did not think specifically this one out of many was my responsibility to
10 oversee it. The Treasury of The City had to oversee this.

ADV CHASKALSON SC: And if it came to your attention that Regiments had been guilty of any impropriety, would you not as a – the MMC under whose jurisdiction that contract resides, had the responsibility to order investigations and the appropriate action?

MR MAKHUBO: I would have probably asked City Manager to do something, to say we hear this news. Please look at it and do something about it. It is the City Manager's responsibility to do.

20 **ADV CHASKALSON SC:** I see. Can I put you two possible cases of impropriety which might have triggered a political response?

MR MAKHUBO: [No audible reply]

ADV CHASKALSON SC: Are you aware of the R 290 million Denel bond that Regiments took out on behalf of The City?

MR MAKHUBO: I only became aware of it when it was raised in council by the former Mayor after there was potential default.

ADV CHASKALSON SC: I see. So there was a potential default by Denel in repaying this – was it R 290 million or R 270 million? Do you recall?

MR MAKHUBO: I do not. I think it was the figure. I mean, I just know that he made a lot of noise in the media and he came to council about it but I do not know all the details.

10 **ADV CHASKALSON SC**: Were you aware that Regiments were acting on both sides of transaction for The City borrowing the money and for Denel lending the money to The City?

MR MAKHUBO: No, I was not.

ADV CHASKALSON SC: Facing the debt with The City.

MR MAKHUBO: No, I was unaware of the investment details of what the Sinking Fund was investing in. Which paper(?) they are buying. I thought the dealers(?) would do that.

20 [Speaker is not clear.]

ADV CHASKALSON SC: I see. Were you aware that Regiments took one percent commission from Denel for borrowing in the name of The City, the money that they placed with The City?

MR MAKHUBO: No, I was unaware of that.

ADV CHASKALSON SC: If you had been made aware of that, what would you have done?

MR MAKHUBO: I think that is speculative. I do not know what I would have done.

ADV CHASKALSON SC: No, no. I am asking a question. If you had been made aware of that, what would your political view have been?

MR MAKHUBO: I would have applied my mind(?) that time but if it happened now, of course, we would have been to the
10 Treasury and The City Manger to investigate and take up a big action.

ADV CHASKALSON SC: Yes. But of course, you were continuing to derive the benefit in your personal capacity from the contract which Regiments had abused at the expense of The City. Would that not have been a conflict of interest?

MR MAKHUBO: But I did not know that saying that I abused the... Chair, I was unaware. I think the evidence leader is asking me something I was unaware of. And he
20 says: Please suppose, you would have done that. And then ...[indistinct] back. No, I was not aware of that.

ADV CHASKALSON SC: No, what I am putting to you is that your position was a manifest conflict of interest. The fact that you did not know about certain facts, does not detract from the fact that there was a manifest conflict of

interest between you deriving a benefit from this contract at the same time as you were supposed to be overseeing it in your capacity as MMC.

MR MAKHUBO: Again, I deny that. I do not agree with you. I mean, what about the manifest conflict of interest? I mean, what we would have done to – and of course if there was wrongdoing would have acted. I mean it does not mean that – you are presupposing that I would have looked away from the wrongdoing because of x, y and z and I say I
10 disagree with that.

ADV CHASKALSON SC: I see. In due course we will bring other evidence of other wrongdoing on behalf of – well, let me put a scenario to you which in due course we will substantiate with evidence. Were you aware of the evidence that was led yesterday in relation to ACSA?

MR MAKHUBO: No, I did not watch.

ADV CHASKALSON SC: We heard yesterday about contracts at ACSA where Regiments were representing ACSA were borrowing money from Nedbank and were
20 taking a 10 basis point payment from Nedbank which ACSA in turn was repaying to Nedbank. So Regiments were being paid a fee by Nedbank which Nedbank would recover from ACSA while Regiments were ostensibly representing ACSA's interests in raising money for ACSA. Would you have regarded that as a conflict of interest if you were at

ACSA?

MR MAKHUBO: Again, I need to hear the – I need to see the details regarding ...[intervenes]

ADV CHASKALSON SC: Well, let me ask you ...[intervenes]

MR MAKHUBO: I cannot really answer on behalf of Regiments and I am not involved on that, ja.

ADV CHASKALSON SC: Okay, were you aware that Nedbank was doing the same thing in Johannesburg?

10 **MR MAKHUBO:** No.

ADV CHASKALSON SC: You were not.

MR MAKHUBO: No.

ADV CHASKALSON SC: So you were not aware that Nedbank was borrowing money for the City – sorry, that Regiments were borrowing from Nedbank for the City and being paid a fee which they took from Nedbank but which Nedbank recovered from the City?

MR MAKHUBO: Well, I suppose that origination business I would not be part of and I was unaware. I mean, if
20 Treasury did not bring that to our attention I would not be aware.

ADV CHASKALSON SC: Right. Do you not see the potential conflict in this situation when the primary source of revenue of your company is derived from a company that is managing one of the biggest funds at the disposal of the

City?

MR MAKHUBO: Which debt origination you mean? Sorry, I do not understand.

ADV CHASKALSON SC: Sorry?

MR MAKHUBO: You see, the debt origination thing or the ACSA thing, what ...[intervenes]

ADV CHASKALSON SC: Just generally, the structural relationship. Your company derives its revenue from Regiments' contract with the City. Your role as MMC for
10 finance is in the name of the City to oversee that contract in the interests of the City.

MR MAKHUBO: Chair, if I have to oversee every contract with the seven departments of finance I would spend my day overseeing contracts. I do not think that was my role in the first place.

ADV CHASKALSON SC: Is there a bigger contract at the City?

MR MAKHUBO: Pardon?

ADV CHASKALSON SC: Is there a bigger financial
20 contract at the City?

MR MAKHUBO: How do you mean, sorry, I do not understand?

ADV CHASKALSON SC: Does the City – does the City have any other fund the size of the Sinking Fund?

MR MAKHUBO: Not that I am aware of.

ADV CHASKALSON SC: So this is the biggest fund that you are aware of that the City has.

MR MAKHUBO: The Sinking Fund is the fund of the City, yes.

ADV CHASKALSON SC: Yes.

MR MAKHUBO: But there are counterparties, there are sweeping of bank accounts every night, there is a lot that is happening in Treasury. If I have to oversee the back office, the middle office and the front office, I mean, I
10 would spend my life in Treasury only not even in Revenue or in Rates and Taxes and all that.

ADV CHASKALSON SC: Ja, I am not asking you to do the nuts and bolts but I am suggesting to you that a contract of this importance to the City requires political oversight by someone who does not have an interest in that contract.

MR MAKHUBO: And I am saying if there is any political principal who tries to oversee contracts at that primary level is actually interfering in the [indistinct] 03.46.

ADV CHASKALSON SC: We may have to leave this point
20 here but let us move to something else. Can I take you to a document at page 659 of bundle 2?

CHAIRPERSON: Is it 639 or 649?

ADV CHASKALSON SC: 659, Chair.

CHAIRPERSON: 659, okay.

ADV CHASKALSON SC: And there you will see an

internal Regiments' email from Eric Wood to Niven Pillay saying:

“Geoff Makhubo briefing.docex”

And below that page, if you go to 660 you will see the document that was attached to that email. We will get to the contents of the document in a minute but I would first ask you to go up to page 918 where the document appears again. Sorry, before we go to 918, just note the time there. The time on the email at page 659 is 12.36. If we then go
10 up to 918 we see a slightly later email. Sorry, do you know who Niven Pillay is, the recipient of the last email. Do you know who Niven Pillay is?

MR MAKHUBO: Yes, I do.

ADV CHASKALSON SC: Can you tell the Chair?

MR MAKHUBO: He is a director at Regiments Capital.

ADV CHASKALSON SC: And was he primarily responsible for the fund management of the Sinking Fund on behalf of Regiments Capital?

MR MAKHUBO: Well, there was a team and I think he
20 was overseeing it.

ADV CHASKALSON SC: Yes. Let us go to 918. That is an email ...[intervenes]

CHAIRPERSON: I am sorry, I am sorry, did you say 918?

ADV CHASKALSON SC: 918, Chair, yes.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: It is from Eric Wood to Mr Litha Nyhonyha 19 November 2010. The heading is:

“CoJ Cheat Sheet”

And the attachment is Geoff Makhubo briefing document and the email says:

“Hi Litha, as discussed...”

Sorry, Litha is Mr Litha Nyhonyha, I assume. Well, it says so in the address.

10 “...as discussed I have attached the one pager that we gave to Geoff.”

Maybe we can go up to see what this one pager that was given to Geoff was, 917. It says:

“Loan to CoJ from DBSA, stored because Parks made some negative comment re the pricing. In fact pricing is 45 basis points better than DCM pricing, 1 billion of 20 year funding provides a better asset liability match for CoJ and the DCM alternative.”

20 :(d) Direction needs to be provided to Treasury to proceed with this line.

2. Interest rate hitch. Seeks to convert existing floating rate exposure to fixed at optimum all time low yield curve.

(b) Will protect CoJ from interest rate increases in the imminent business cycle upturns.

(c) Treasury has approved the transaction in principle, needs mandate from Mayoral Committee.

3. Fund management fee, third quarter 2010. Amount of 27 million VAT inclusive due to Regiments Fund Managers Molelwane and JP Morgan has been withheld by Treasury on JPC instructions. JPC alleges that this is in accordance with the surety agreement provided by Regiments Capital for the obligations of Cedar Park Properties, Kgoro Consortium. In terms of the agreements between JPC/CoJ and the Kgoro Consortium there are no funds due until transfer, which has not taken place yet. If transfer had taken place JPC would have first had to summon the Kgoro Consortium and fully discuss before surety becomes executable. Further, these funds are due by CoJ to totally different parties to the debtor or surety, therefore the withholding of these fees is unlawful and needs to be released forthwith.

10

20

4. Sinking Fund tender needs to be adjudicated, an appointment needs to be

made. You see around splitting the mandate between two managers needs to be killed, cannot be done due to counterparty risk limits and lack of risk consolidation capacity within CoJ Treasury.

5. JPC property fund tender needs to be adjudicated. An appointment needs to be made.”

You will see that Mr Wood writing to Mr Nyhonyha on the
10 19 November 2010 said:

“As discussed I attach the one pager that we gave to Geoff”

And the document is headed:

“Geoff Makhubo Briefing.”

Do you recall receiving this one pager in 2010?

MR MAKHUBO: No, I do not recall, I answered the same to amaBhungane that I cannot recall receiving this. In fact then they sent me the sheet but actually first time I see some of these issues here.

20 **ADV CHASKALSON SC:** First time you saw some of this?

MR MAKHUBO: Some of these issues that are raised here, first time that I saw them.

ADV CHASKALSON SC: So amaBhungane had sent this sheet to you.

MR MAKHUBO: They did.

ADV CHASKALSON SC: Yes. Did you not find it strange that emails were flying around inside Regiments saying that they had given it to you whereas you had no recollection of it?

MR MAKHUBO: Well, I found it strange in 2018 when I received this that what is this because I do not even know what a cheat sheet is.

ADV CHASKALSON SC: Yes.

MR MAKHUBO: In business I do not even know what a
10 cheat sheet is.

ADV CHASKALSON SC: You do not know what a cheat sheet is. Did you Mr Litha Nyhonyha and say what is this, I am seeing a document that is embarrassing me which apparently was circulating in Regiments?

MR MAKHUBO: Well, I did say look, I did not receive this document, did you send it? And said look, I will find out. That is it. We left it there, 2010.

ADV CHASKALSON SC: You did not follow it up?

MR MAKHUBO: No.

20 **ADV CHASKALSON SC:** You did not follow it up?

MR MAKHUBO: No, I did not.

ADV CHASKALSON SC: I see. You were not interested to know whether Regiments had sent it or had not sent it?

MR MAKHUBO: No, I knew – I had said look, they have not sent it, I have not seen it, I have not seen some of the

issues that are here. Some of the issues I know about, especially the 27 million and all that, in 2010 I knew about.

ADV CHASKALSON SC: Yes.

MR MAKHUBO: But the rest of the things, what would they have to do with me, Kgoro, JPC.

ADV CHASKALSON SC: Well, it is a good question, what did they have to do with you.

MR MAKHUBO: Yes.

ADV CHASKALSON SC: But people in Regiments clearly
10 thought that it had something to do with you.

MR MAKHUBO: I cannot speak for them, Chair.

ADV CHASKALSON SC: I see. Can we go back to your contract with Regiments? Do you remember that clause 2.2 which gave you responsibility for relationship management at the City? Do you think that is what Regiments may have had in mind there, page 714?

MR MAKHUBO: I would not know, I remember the contract and that. I do not know what they meant but this was not for me, what they should have meant. Some of
20 these things have nothing to do with me.

ADV CHASKALSON SC: 2.2.7:

“Maintaining on an ongoing basis all strategic relationships with CoJ before, during and after completion of the fund management mandate for the mutual benefit of the parties.”

What sort of strategic relationships were you going to maintain?

MR MAKHUBO: Chair, we have canvassed earlier, in my mind I told you that I needed to know City, the strategic level, where it is going, what the funding plan is, how to grow the fund, how to invest because that was my primary interest at that time, nothing else.

ADV CHASKALSON SC: I see. And you never followed this up with Litha Nyhonyha when he did not come back to
10 you?

MR MAKHUBO: Well, at that time – remember, when the amaBhungane thing came I had to ask him what is going on and he was telling me he was receiving the same questions as well, he is [indistinct – dropping voice]

ADV CHASKALSON SC: Sorry, I did not hear that last answer?

MR MAKHUBO: I am saying that I did speak with them, when the amaBhungane things came and said what is going on here, eight years later, the contract is finished, why,
20 what are they following up and then of course he told me that they are receiving the similar questions from [inaudible – speaking simultaneously] person and all that, that is why I said look let me answer to the best, I will answer to the best of my ability and leave it at that.

ADV CHASKALSON SC: Yes but when I read the

amaBhungane article, the one key piece of evidence that is very damning of both you and Mr Nyhonyha is the cheat sheet, did you not think that you needed to get to the bottom of this cheat sheet?

MR MAKHUBO: No, I responded, I have a response and I do not see it in the bundle. I responded and [indistinct] 12.35 and I thought my response was adequate.

ADV CHASKALSON SC: What your response suggests is – let me get the response. It is at page 952. It says at the
10 last sentence in the second last paragraph:

“I have no recollection of the so-called cheat sheet and the issues raised have nothing to do with me, the Molelwane, nor our agreement with Regiments Capital.”

Why did you not say ...[intervenes]

CHAIRPERSON: I am sorry, Mr Chaskalson, you said 952?

ADV CHASKALSON SC: 952, Chair, yes.

CHAIRPERSON: And that is bundle 2?

20 **ADV CHASKALSON SC:** Bundle 2, yes.

CHAIRPERSON: You say last sentence in the last paragraph?

ADV CHASKALSON SC: Second last paragraph.

CHAIRPERSON: I see:

“This was in line with my decision to utilise my

skills as a public representative. I also made a commitment to the Mayor.”

That is not what – is that the paragraph?

ADV CHASKALSON SC: 952, I have, am I on the wrong page again?

CHAIRPERSON: Ja, page 952, the last paragraph ...[intervenes]

ADV CHASKALSON SC: No, no, the sentence before the last paragraph, Chair.

10 **CHAIRPERSON:** Oh, the sentence before the last paragraph. Oh, the second paragraph from the end of the page.

ADV CHASKALSON SC: That is correct.

CHAIRPERSON: The last sentence.

ADV CHASKALSON SC: the last sentence.

CHAIRPERSON: “I have no recollection of the so-called cheat sheet and the issues raised have nothing to do with neither Molelwane nor our agreement with Regiments Capital.”

20 Okay, now I see it, ja.

ADV CHASKALSON SC: Thank you. So you said you cannot recall the so-called cheat. That was your answer. You cannot recall and these issues have nothing to do with Molelwane and Regiments.

MR MAKHUBO: That is what I responded and after the

article of amaBhungane I personally penned an article that was published in the Daily Maverick and I was referring to that. When I say it is not part of the bundle, this is what I responded to the questions from Susan Comrie.

ADV CHASKALSON SC: I see. But what your answer is, is I have no recollection of the so-called cheat sheet, it is not I never received a cheat sheet like this. Why did you not deny receiving the cheat sheet?

MR MAKHUBO: I mean, if you cannot recall something
10 you say I have never – I mean, what is... It is a recollection but these issues has got nothing to do with me, in fact ...[intervenes]

ADV CHASKALSON SC: No, but ...[intervenes]

MR MAKHUBO: I do not think I have because what you do again, you go to your emails and you check but the MC email server is down, so I do not know.

ADV CHASKALSON SC: Would it not have struck you as very, very critical if - would it not have struck you as a particularly important fact that you would remember for a
20 long time if you got this sort of document from a business partner essentially inviting you to interfere in council processes which were none of your business?

MR MAKHUBO: Chair, as I say, these things have nothing to do with me, neither with our agreement with Regiments and I do not recall receiving it but, I mean, it did not strike

me at that time and for me it was immaterial. When I saw this I knew that I would never – I would not have seen this, I do not recall it at all. I would have recalled it if ever the issues of Kgoro, JPC, I would have recalled if I was required to do something, I do not remember anything like that.

ADV CHASKALSON SC: You do not remember anything like that?

MR MAKHUBO: I cannot remember anything, no.

10 **ADV CHASKALSON SC:** Would you not have remembered if you received this cheat sheet? Is it not something that would definitely have stuck in your memory?

MR MAKHUBO: What sticks in my memory, what does not, 20 years later – I mean, 10 years later, with all due respect, Chairperson, there are lot of things that are happening in my life every day, I would not remember a specific paper or a detail that happened in 2010. I mean, I do not know what is the expectation of me to remember.

20 **ADV CHASKALSON SC:** Mr Makhubo, let me put it this way. If the business partner sent a letter to you inviting you improperly to influence council affairs is that not something that would be so shocking that you would remember?

MR MAKHUBO: For me that has never happened. I do

not recall anything like that and I would not say when you say it is shocking but, I mean, this thing did not happen so it is not in my mind, I do not recall it.

ADV CHASKALSON SC: I see.

MR MAKHUBO: I do not want - presuppositions for me are a problem because I - you know, you are taking me to a fact and then you move to presupposition and I think it is a bit unfair on ourselves.

CHAIRPERSON: I think Mr Makhubo Mr Chaskalson in
10 part is trying to establish what would shock you, you know, different people get shocked by different things. What might shock me might not shock you, what might shock you might not shock me. So because maybe if a business partner sent you a letter or email saying certain things, those things might shock you and you would never forget that once upon a time he or she sent you such a thing, such an email. So he is saying if they sent you something that says interfere in the affairs of the City or use your position improperly would that not be the kind of thing that
20 would shock you and therefore you would remember it easily because it would be something that you would have found so unacceptable for them to do, to expect you to do.

MR MAKHUBO: Chair, I do not know what the word shock, I am trying to think as you speak.

CHAIRPERSON: Yes.

MR MAKHUBO: In the line of what we do, especially when in public office, every day or every week you receive an email of this proposal or the other, you transfer them to the relevant people to follow process, you would receive one lobby or other of wanting or the other, you transfer it to the right people to process. People will ask you to do certain things and you say no, no, I cannot, I want to do a thing – you know, at the beginning of Covid a good friend of mine that I grew up with Robville with sent me a
10 Whatsapp and says I have 13 tubs(?) of sanitizer. My answer to him was that look, I do not even know who is buying and how they are buying it. This is a guy I grew up with in Soweto. Ordinarily we received these things, he says but you are Mayor, you have influence, said no, you cannot do it. But what do you is like you – and then this Whatsapp, you move forward, you just transfer and do all sorts of things. So when you say what would shock me in business, in politics, there are couple of things in politics when you get betrayed by your trust comrade. That shocks
20 me, I will never forget that. When you expect a certain behaviour from a comrade and they do the opposite, which is fundamental, not they voted against you in the conference, that will not shock me, but there is something very fundamental. So there have been very fundamental things. In business in 2010 some things you receive you

just ignore and you move forward, especially if you cannot do but this one, I do not remember seeing at all, so how would I felt with this thing because when I saw it from amaBhungane I just thought it is one of those things and I ignored it. I must be quite honest, for me that did not – I just answered the way I answered and I just moved on.

CHAIRPERSON: Mr Chaskalson?

ADV CHASKALSON SC: But this is not just some friend of yours, this is the counterparty in the biggest contract
10 that your company has. Would that not raise a concern from you if it happened?

MR MAKHUBO: It did not happen with due respect, evidence leader, and which is why I would have asked what is this thing, what are you discussing? If you want to give it to me, why would you have given it to me, what do you expect me to do with it? And surely if I can do nothing about something, why should I occupy my brain space with things I cannot change? I believe in the Serenity Prayer, accept things I cannot change.

20 **ADV CHASKALSON SC:** So you now say very clearly that this was not sent to you?

MR MAKHUBO: Well, I am saying that I have no recollection but I do not think it was sent to me.

ADV CHASKALSON SC: I see. Did you not raise an issue with Litha Nyhonyha? Was it not sufficiently

damaging that you wanted to get an answer from Litha Nyhonyha on?

ADV MPHAGO SC: Chair, maybe I should object and say that I think Mr Makhubo has answered and this boils down cross-examination of some sort. I know that there has to be a probe but I think that there is a repetition of the same question.

CHAIRPERSON: Mr Chaskalson?

ADV CHASKALSON SC: I am happy to move on, Chair.

10 **CHAIRPERSON:** Yes, okay.

ADV CHASKALSON SC: Can we then go to page 952?

MR MAKHUBO: 950...?

ADV CHASKALSON SC: 952, that is the amaBhungane article itself. No, it is not –I am sorry, no, 968, where they discussed the cheat sheet. And if you go five paragraphs from the bottom, the report reads:

“Yet over the next...”

Oh sorry, well let us start under: No influence.

20 “By law there is meant to be a Chinese Wall between political office bearers and the procurement departments and municipalities they control. Even Tau, the then MMC for finance, could not legally interfere with the City’s tender processes yet over the next year Regiments received almost everything on its wish list. In

January 2011 the City agreed to release 18.4 million of Regiments' fees."

Do you know if that is correct?

MR MAKHUBO: I would not have known at that time but I read it in the bundle of the City Manager there.

ADV CHASKALSON SC: Yes.

"In March Regiments facilitated a smaller 250 million loan for the City and received 1.25 million as a raising fee."

10 Do you know if that is correct?

MR MAKHUBO: No, I cannot remember that.

ADV CHASKALSON SC: I see.

"And in December Regiments was one of two bidders awarded Johannesburg property company tenders."

Do you know if that is correct?

MR MAKHUBO: Again, I have no – I had no idea of it up until I saw it in the papers that you sent my attorney.

ADV CHASKALSON SC: I see.

20 "The only hiccup was the tender for new Sinking Fund contract. Under the Regiments the fund had performed well but a review conducted by KPMG in 2010 criticised Regiments' fees for being excessive when the bids for the new tender to replace Regiments' first contract were adjudicated.

Regiments Fund Managers was not a preferred bidder and had in fact been disqualified. Isaac Mogashoa the City Group here at legal and contracts told us. But just as the goose laying the golden eggs appeared to be running out of luck, Tau discovered a fundamental flaw with the tender process. The MMC finance's views that the evaluation around the process must include social investments to uplift the communities around the City, Khomotso Letslatsi, the head of Treasury told colleagues in an April 2011 memo.”

Are you aware of that memo?

MR MAKHUBO: I am unaware of that memo, Chair.

ADV CHASKALSON SC: Yes.

“The award of new Sinking Fund contract was already months overdue but according to Letsatsi's memo Tau halted the tender on grounds it did not include a programme to address transformation in the City's procurement practices.”

20 Are you aware of that?

MR MAKHUBO: No, I am not aware of that, Chair.

ADV CHASKALSON SC: Earlier you said to me it was stopped because there was a moratorium on the award of tender before the 2011 elections.

MR MAKHUBO: That is what I was told, yes. I am not

aware of this part.

ADV CHASKALSON SC: So in 2011 that tender was supposed to be awarded but it was not and is it not correct that Regiments then stayed on under your MMC portfolio month-to-month for more than another four more years until the council on the back of a recommendation of the Mayoral Committee, that you participated in, gave Regiments a new five year contract in 2015. Is that not what happened?

10 **MR MAKHUBO:** What happened was that it was on a month-to-month because of a particular reason and the reason being that there was a court challenge from Colourfields and the Colourfields withdrew its court action. When the City Manager brought the report to the Mayoral Committee to approve a financial bidding on the City build, yes.

ADV CHASKALSON SC: So a tender that should have come to an end in 2011 eventually only came to an end four years later and it came to an end with an award to the
20 same party for another five years and that party was in business with your company on the contract that had run for nine years.

MR MAKHUBO: That is correct, sir, we canvassed that earlier and the reasons and it was on a month-to-month because of particular reason that the City was defending

but the evaluation of the new party – in fact the tender was advertised in 2012 and the advert said for five years and the evaluation happened just before the award, there was an interdict or at least a court challenge. That is how – that is what we were told and then it was awarded when that was settled.

ADV CHASKALSON SC: Thank you, Mr Makhubo. Chair, there are further questions that I would like to ask about donations to the ANC by Regiments solicited by Mr
10 Makhubo but I am anxious at this point that we may run out of time for Mr Ramosebodi and Mr Makhubo is going to be coming back any way to deal with the EOH question, so with your leave I would ask that we move to Mr Ramosebodi here and my understanding to Mr Makhubo and his legal representatives is the only remaining issue unrelated to EOH that I will be canvassing is the questions of donations to the ANC solicited from Regiments.

CHAIRPERSON: Oh, no, that is fine, that is fine. Alright, then we are going to release you Mr Makhubo for today as
20 you hear, arrangements will be made for you to come back in due course. But thank you very much for coming and thank you to your legal team, you are now excused. You are excused, thank you.

MR MAKHUBO: Thank you.

CHAIRPERSON: What earlier should not happen again.

No, they will talk to you about whether you can take those bundles or not, Mr Makhubo, but I think generally they do not go but I am not hundred percent sure, somebody must know.

ADV CHASKALSON SC: I am told they do not go but my offer to Mr Makhubo and his legal team is we can [inaudible – speaking simultaneously] electronically.

CHAIRPERSON: Ja, ja, ja. Maybe Ms ...[intervenes]

ADV CHASKALSON SC: No, no, I think you are entitled.

10 **CHAIRPERSON:** Mr Chaskalson, I guess I should probably adjourn for five minutes for you to get settled with...

ADV CHASKALSON SC: Thank you, Chair, sorry.

CHAIRPERSON: ...bring in another witness. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Good afternoon Mr Ramosebudi, and good afternoon to your counsel.

MR RAMOSEBUDI: Good afternoon.

20 **CHAIRPERSON:** Yes, your counsel continues to represent you, as was the case yesterday. Mr Chaskalson are you ready? Mr Ramosebudi the oath you took yesterday will continue to apply today. Is that fine?

PHETOLO RAMOSEBUDI [s.u.o.]

CHAIRPERSON: Okay, thank you.

ADV CHASKALSON SC: Thank you Chairperson. Mr Ramosebudi today we are going to be talking about some of the arrangements to finance the purchases of the Chinese locomotives that were part of the 1064 deal, and I want to take you through some stages of that – of the relevant transactions and is it correct that the – that an arrangement was made with China Development Bank to borrow 1.5billion dollars and to get a facility for another billion dollars to finance Transnet’s purchase of the
10 locomotives from CNR and CSR. Can you answer that question?

MR RAMOSEBUDI: Thank you Chairperson. Yes indeed there was a ...[intervenes]

CHAIRPERSON: Speak up a bit.

MR RAMOSEBUDI: There was a discussion you know with the China Development Bank and between Transnet and China Development Bank to finance the part of the 1064 locomotive deal.

ADV CHASKALSON SC: Mr Ramosebudi I’ve been asked
20 if you can just move the microphone a bit closer so that your voice is picked up better. And indeed for the purposes of negotiating that loan I understand that you went to China, is that correct?

MR RAMOSEBUDI: Yes Chairperson there was a delegation that went to China for the negotiations of the

funding of the 1064 locomotives, part of the 1064 locomotives.

CHAIRPERSON: And you were part of that delegation.

MR RAMOSEBUDI: I was part of the delegation.

ADV CHASKALSON SC: Who else was in the delegation?

MR RAMOSEBUDI: If my memory you know serve me well it was myself, from Transnet, I know Singh from Transnet, Eric Wood from Regiments, Tedross Scheeper-Selassie from Regiments and another gentleman from J P Morgan,
10 his name just escape me.

ADV CHASKALSON SC: I'm afraid his name escapes me too, I understand he was the one who took a photograph of the team and then sent it to you all?

MR RAMOSEBUDI: I don't know who took the photograph.

ADV CHASKALSON SC: Can I just for the purposes of the record I think the fourth name that you mentioned was Tedross Scheeper-Selassie from Regiments.

MR RAMOSEBUDI: That's correct.

ADV CHASKALSON SC: And trip to China was successful
20 and in the end a loan was concluded, a loan agreement was concluded is that not correct?

MR RAMOSEBUDI: True.

ADV CHASKALSON SC: And it provided for a facility of 1.5billion dollars with access to another facility of one billion should that be required.

MR RAMOSEBUDI: True.

ADV CHASKALSON SC: What then happened as I understand is that Transnet decided that it didn't want exposure in dollars and so instead of taking the extra one billion facility from China Development Bank it decided to try to raise a Rand debt of R12billion through what became to be known the Club Loan, is that correct?

MR RAMOSEBUDI: True.

ADV CHASKALSON SC: Do you recall the banks that
10 participated in the Club loan?

MR RAMOSEBUDI: I can recall a few names, I think Nedbank was part of it, Future Growth was part of it, the Bank of China I think was part of it, I think Old Mutual also was part of it, I just can't recall.

ADV CHASKALSON SC: Sorry I didn't get the last one.

MR RAMOSEBUDI: Old Mutual.

ADV CHASKALSON SC: Old Mutual, it was a rand loan and so there was a lot of local financial institutes that were involved or there were some local institutions involved.

MR RAMOSEBUDI: Yes that's a Rand denominated loan
20 les.

ADV CHASKALSON SC: And I think alongside the Club loan there was possibly a loan from was it the Export Development Bank of Canada or – is that correct, does that ring a bell?

MR RAMOSEBUDI: No, that was not part of this transaction.

ADV CHASKALSON SC: I see, what was the Export Development Bank of Canada transaction about?

MR RAMOSEBUDI: It was funding other part of the 1064 locomotives.

ADV CHASKALSON SC: Yes, I imagine it would have been funding Bombardier because Bombardier are a Canadian company, do you know that?

10 **MR RAMOSEBUDI:** Ja, they were funding part of the Bombardier transaction.

ADV CHASKALSON SC: The Club loan, the 12billion Club loan was taken out with a floating interest rate, is that not correct?

MR RAMOSEBUDI: Yes it was taken with a floating interest rate.

ADV CHASKALSON SC: And then at a certain point Transnet decided that it wanted to swap the floating rate exposure with interest swaps, is that correct?

20 **MR RAMOSEBUDI:** Yes Transnet concluded in ...[indistinct] Club loan.

ADV CHASKALSON SC: And I think Transnet concluded four interest – four tranches of interest swaps which swapped the floating exposure under the Club loan and under the loan to the Export Development Bank of Canada

and its counter parties on the first tranches it swaps were Nedbank and on the last two tranches it swaps the Transnet Second Defined Benefit Fund?

MR RAMOSEBUDI: Ja, there's the counterparties for the swaps that we transacted was Nedbank and this Transnet Second Defined Benefit Fund.

ADV CHASKALSON SC: So can I take you through that process. On the China Development Bank loan, we will get there in due course, but is it correct that a fee was
10 paid to Regiments of R189million inclusive of VAT, I think it's a R166million plus VAT.

MR RAMOSEBUDI: True.

ADV CHASKALSON SC: You said true?

MR RAMOSEBUDI: Yes true.

ADV CHASKALSON SC: And on the Club loan a fee was paid to Trillian of R82million plus VAT which came to around R93million.

MR RAMOSEBUDI: True.

ADV CHASKALSON SC: And on the interest swaps a fee
20 was paid or a decision was taken by Transnet to pay a fee which would have been around R229million to Regiments, is that true?

MR RAMOSEBUDI: That one – how much did Regiments earn on the fees in Rand terms I don't know.

ADV CHASKALSON SC: It was a 20 basis points on the

swaps.

MR RAMOSEBUDI: That's true.

ADV CHASKALSON SC: But in the end the full amount of that fee it turns out was paid to Trillian and ...[indistinct] are you aware of that?

MR RAMOSEBUDI: That I am not aware.

ADV CHASKALSON SC: Let us go through the logic of these transactions. The China Development Bank loan was dollar denominated.

10 **MR RAMOSEBUDI:** True.

ADV CHASKALSON SC: The Club loan was taken out because Transnet didn't want that much dollar exposure it wanted.

MR RAMOSEBUDI: True.

ADV CHASKALSON SC: Can we go back a step all of these loans were to finance locomotive purchases.

MR RAMOSEBUDI: They were part of the funding plan or the funding requirement for the year and as part of that the 1064 was also part of the funding plan so we used to
20 finance that.

ADV CHASKALSON SC: No but these weren't specifically linked to the locomotive procurement, it wasn't – it is not like you could use this money for something else.

MR RAMOSEBUDI: The China Development Bank and the CDC loan yes were specifically linked for the locomotives.

ADV CHASKALSON SC: So I am – but I am talking now about China Development Bank – well China Development Bank and CDC were specifically linked to locomotives.

MR RAMOSEBUDI: Yes.

ADV CHASKALSON SC: Are you aware of the business case that was put to the Board in April 2013 for the locomotive procurement, April 2013?

MR RAMOSEBUDI: I am aware that the document exist but I did not go through it.

10 **ADV CHASKALSON SC:** Are you aware that – and were you aware that the price in that business plan for the whole transaction was fixed by the McKinsey Consortium at R38billion?

MR RAMOSEBUDI: As I said Chairperson I did not go through the documents so I just heard the numbers everywhere spoken about.

ADV CHASKALSON SC: But is the number that you hear spoken about R38billion.

MR RAMOSEBUDI: That is true.

20 **ADV CHASKALSON SC:** Are you aware that that R38billion included provision for rand hedges.

MR RAMOSEBUDI: Chairperson I am not aware that it included for its component in rate.

ADV CHASKALSON SC: Are you aware that the locomotive procurement, that one of the terms of the

locomotive procurement was that the locomotive price was going to be fixed in rands, not dollars or any other international currency?

MR RAMOSEBUDI: As I heard that the locomotives contract was Rand based yes I am aware of it.

ADV CHASKALSON SC: So the purchase price was rands.

MR RAMOSEBUDI: True.

ADV CHASKALSON SC: And whatever happened to the
10 Rand against the dollar Transnet would pay Rands.

MR RAMOSEBUDI: True.

ADV CHASKALSON SC: And a fixed number in rands, it wasn't like Rands, and if dollar goes strong against rand you have to pay more Rands.

MR RAMOSEBUDI: That is what I have learnt and then I commended Transnet for doing that as a Treasurer.

ADV CHASKALSON SC: Are you then aware of a decision finally taken by the BADC in I think it was March or February, I think it was February 2014, February or March
20 2014, to approve the procurement at a price which was then R52billion?

MR RAMOSEBUDI: I just heard it Chairperson but I did not get any official information about that, I just heard it about that.

ADV CHASKALSON SC: And are you aware that one of

the reasons given for the increase from 38billion in the April 2013 business case to the 52billion in March, February/March 2014 was that there was a need to provide – because the purchasers were going to be bound to a Rand purchase price their price they took the hedging risk and the price had to include provision for the purchases hedging cost.

MR RAMOSEBUDI: Chairperson I am not clear what the question is.

10 **ADV CHASKALSON SC:** There was an increase in the amount from the business case amount of R38billion to the ultimate amount which started at 52 but then because of some Transnet engineering cost became 54 one of the reasons given for that increase was that the price to be paid by the purchases would be Rand based so the purchasers need to factor into their purchase price their cost of hedging because they were the ones who were going to take the Rand exposure.

20 **MR RAMOSEBUDI:** That's true I got to learn that immediately I joined that there is a fixed price that has been agreed and is a determinence of a number of components and those some of those components is the hedges but I got to learn it.

ADV CHASKALSON SC: So if we take a step back Transnet had provided – had essentially provided for a

hedge in the 38billion business case, it was going to pay Rands and it had factored into that 38billion what the increase to the purchase price would be because it wanted to pay Rands not dollars. Do you accept that?

MR RAMOSEBUDI: Chairperson without knowing the details of the business case the absolute figure in terms of the correctness of the figure that was included in the business case and what was in the final price that I did not examine.

10 **ADV CHASKALSON SC:** Well let's then look at the 52billion and 54billion in 2014, that definitely had quite a large number built in for the cost of hedging so that Transnet could pay in rands, not in dollars, will you accept that?

MR RAMOSEBUDI: Yes, the price difference was there, so Transnet had paid what was the final price concluded.

ADV CHASKALSON SC: So Transnet according to the reasoning of the Board that adopted that 54billion or adopted a 52billion purchase price justified the price
20 because it was necessary to pay that amount to be able to have a purchase price in rands which meant that the risk – the rand – the forex risk with the locomotive providers, not with Transnet.

MR RAMOSEBUDI: Chairperson for indulgence I don't understand the questions.

ADV CHASKALSON SC: Sorry I am not very good at asking questions about complex financial transactions, because it is not my strength but in that 54 billion that was adopted or sorry – I keep on saying 54, initially BADC was 52, but in that 52 there was an increase, part of the increase from 38 to 52 was justified on the basis if this is the number we have to pay to make sure that our purchase price can be in rands not in dollars.

MR RAMOSEBUDI: Chairperson just need a bit of
10 correction, I think earlier on I said I don't know much about the numbers that have been spoken about, because I didn't go into the detail of the business case but what I heard Mr Chaskalson speaking about is two numbers 54 and 52 and 38 which is one of those is the base number. I just want to understand which of the two, 52 or 54 we are talking about?

ADV CHASKALSON SC: In truth the heading was irrelevant to the difference between 52 and 54, it was relevant to the difference between 38 and either 52 and 54.
20 The ultimate price was 54, what the BADC approved was 52, the other two are related to I think Transnet Engineering costs which were completely unlinked to finance.

MR RAMOSEBUDI: Chairperson I think I wanted to help the Commission because at some point in 2018 I was

requested to look at those numbers, so I wanted to help Mr Chaskalson on those numbers, is it 52 or 54, because the one number that I was requested at some point ...[indistinct] into when the Board of Transnet was appointed in 2018 around May in June they requested a presentation about the 1064. While I was not part of the development of the business case and any other numbers that are around the 1064 the then CEO at the time says can you help us to unpack these numbers so one of the
10 numbers that I remember very well is the 38billion plus ...[indistinct] numbers and 49billion plus [indistinct] numbers so those are the two numbers that I can candidly help you Chairperson to try to unpack some of the numbers around that, but 52, 54 is not clear to me which of those numbers that is why I can – I might be cagey in responding to those ones, but here I want to assist the Commission.

ADV CHASKALSON SC: Thank you Mr Ramosebudi, I don't want to get into the precise number whether it was 49, 50 or 52 it is not relevant for present purposes. What
20 is relevant though is that the purchase price agreed by the Board in 2014 included a component which had provided for putting the forex risk on the purchasers, in other words it was the purchasers' rand hedge cost.

MR RAMOSEBUDI: You are correct there Mr Chaskalson.

ADV CHASKALSON SC: So in that purchase price

Transnet had essentially paid to have a purchase price that they could rely on being in Rands.

MR RAMOSEBUDI: You are correct.

ADV CHASKALSON SC: So the effect of taking out the China Development Bank loan, which was denominated in dollars was to undo what Transnet had paid for by requiring a purchase price in Rands, is that not correct?

MR RAMOSEBUDI: No Chairperson.

ADV CHASKALSON SC: Well let me put this question to
10 you, if you wanted to pay for a rand hedge to the equivalent of 2.5billion dollars in 2005 how much would that have cost you approximately?

MR RAMOSEBUDI: Well 2.5 I remember at the time
Chairperson without you know absolute figure for 2.5billion dollar at the time we are looking at about I remember something in the region of about R30billion, when we were discussing the 2.5billion dollar with China Development Bank, it just out of the numbers that we bandied around was about R30billion you know, around there, because the
20 Rand was between R11/R12 somewhere there.

ADV CHASKALSON SC: No I am talking about a Rand hedge, not an exchange rate, I am talking about a Rand hedge. You want – you have an exposure of 2.5billion dollars, you want to pay that in Rands, what would it have cost you in terms of hedging to be able to hitch that over

the life of the Transnet, of the locomotive loan.

MR RAMOSEBUDI: Chairperson it is not a – I hear Mr Chaskalson what he is talking about, he does not want a translation number, he wants the cost currency hedge number which is not a simple – I cannot do a simple calculation, it needs a model that needs to be built with cash flows and then I can then explain how much that will be in total, but from a translation point of view at the time that 2.5billion dollar was around R30billion that is the
10 simple answer I can give now but what he is looking for is – it needs a model to be built and I can show the cash flows and all that because it is a 15 year old, we need interest for the – the Chinese interest rate or the Dollar interest rate at the time, Rand interest rate, work out what the cash flows are and then what would be the total in Rand terms.

ADV CHASKALSON SC: But would you accept that if Transnet had this 2.5billion dollar exposure and it wanted to convert that into a fixed rand exposure at current rand
20 rates it would have cost billions of rands not millions. The cost of that hedge would run into billions of rands.

MR RAMOSEBUDI: Chairperson I guess if you have got to exchange rands, I mean dollar to rands of course there is a cost to it and the cost to it depends on the differential of the interest rate between the dollar and the rand so that is

why I am saying I cannot at this point quantify that, but all I can say is of course it cost money, even if you travel you want to change the rands at the airport to dollars, it will cost you money.

ADV CHASKALSON SC: But on 2.5billion dollars over how long was the term of that ...[intervenes]

MR RAMOSEBUDI: That was a 15 year loan.

ADV CHASKALSON SC: Over 15 years and you want a fixed rand exposure, are we talking hundreds of millions of
10 dollars – sorry hundreds of millions of rands, billions of rands?

MR RAMOSEBUDI: Chairperson when we discuss the funding and in terms of the funding plan you know which is well documented in the PFMA document, or Treasury regulation it will tell you that any funding that you need to – it needs to comply with the regulation and funding – funding sources are vast, you can fund in rand, dollar, Chinese in any other country currency as long as it meets your requirements, so the first determinant is to what
20 extent would that bundling or funding or growing is comparable to your own funding, that is when you determine whether is it costly or not costly and then can you ...[indistinct] with the cost or not costly, so if you look at the funding from China Development Bank Chairperson that was a 2.5billion dollar we only drew 1.5billion dollar

but the cost of that when we changed it into rand was ranging between ...[indistinct] plus 330 basis points to 360 basis points at a 15 year loan. Maybe the question is how comparable to that to a rand if you funded that in your domestic market, maybe that question you can ask me.

ADV CHASKALSON SC: Well we do know that Transnet decided that it didn't want the dollar risk, which is why it took the one billion Club loan to negate some of that dollar risk, is that not correct?

10 **MR RAMOSEBODI:** One of the key principles as a treasurer is to diversify your sources of funding. The other principle is to make sure that you blend your cost of funding. Blending your cost of funding is to make sure that what you borrow outside the country and what you borrow in the domestic market the overall cost of funding is within your benchmark, and then that is exactly what we did. We had the 2.5billion dollar facility with China Development Bank, and then what we did we then said we cannot borrow the whole lot at 257 basis points ...[indistinct], instead let
20 us see what we can get in the local market so that we can blend that, that is exactly what we did.

ADV CHASKALSON SC: Let me put to you what my concern is. Transnet had a Rand exposure for which it had paid billions of rands in the original business case, and in the contract that it concluded with the locomotive

manufacturers, you will accept that?

MR RAMOSEBODI: Yes I do.

ADV CHASKALSON SC: It then took the Rand exposure and converted 2.5billion of that into a dollar exposure with China Development Bank, you accept that?

MR RAMOSEBODI: Which was swapped back into Rand Chairperson.

ADV CHASKALSON SC: Yes at a cost each time.

MR RAMOSEBODI: Maybe the question is how relative to
10 the bench mark in your domestic market could you have done 2.5billion Dollar.

ADV CHASKALSON SC: That may be a question but why would you when you have a Rand exposure borrow, get a 2.5billion facility and then a few months later swap one billion of that 2.5billion facility back into a rand – into a rand exposure, why would you go from rand 2.5billion dollars back to 1.5billion dollars and the equivalent of one billion dollars in Rand in a space of a few months. What logic was there?

20 **MR RAMOSEBODI:** Chairperson that is not how it works. We had 2.5billion dollar facility with China Development Bank, out of the 2.5billion dollar facility with China Development Bank we decided that we will only draw 1.5billion dollar, we will leave the one billion dollar as a standby facility.

However that one billion dollar we will replace it in the domestic market with a rand equivalent, so that dollar was not swapped back into dollar and back into rand. The only one which was swapped from dollar is 1.5 billion dollar which we have drawn and we swap it back into Rand. Why did we do that Chairperson? We did that because South African regulations, Reserve Bank Regulations does not allowed State Owned Entities even companies in South Africa to trade in hard currency so you need to swap back
10 into Rand. And why did we do that? We needed to make sure that we afford an opportunity to pay our own obligations in terms of the ...[indistinct – dropping voice] that we contracted with CNR and CSR.

ADV CHASKALSON SC: But what you contracted for and what you paid was a price in rands?

MR RAMOSEBUDI: Precisely true.

ADV CHASKALSON SC: So if you had not first taken out the dollar exposure and then converted the dollar exposure back into the rand exposure you could have borrowed in
20 rands at the beginning to pay for the locomotives?

MR RAMOSEBUDI: Chairperson I have been in this market for more than 25 years. South African markets is not deep and liquid to an extent that it can provide in one particular period of time an institution R30 billion at a go. So this market is not that liquid. To that extent for South African

institutions to diversify their sources of funding they need to explore other sources of funding. Multiple institutions – we have seen government in the last three couple of months they went to IMF and the World Bank and the National – and the New Development Bank. It is to diversify the sources of funding. That is exactly what we were trying to do as Transnet at that point.

ADV CHASKALSON SC: Why then pay billions of rands in your purchase to be able to pay in rands not dollars if you
10 are going to have to go and borrow dollars to pay anyway?

MR RAMOSEBUDI: I do not understand Chair – the question
Chairperson.

ADV CHASKALSON SC: That you say 49 – 49 billion. Let us use your 49 billion number. That included a component which was the purchase – which was the manufacturer's hedge cost included billions of rands in that price which were what the manufacturers demanded to be willing to sell locomotives in rand not dollars.

MR RAMOSEBUDI: That is true and it has to be that way. It
20 has to be that way Chairperson. Why because Transnet at the time they wanted to fix their obligation. Should they not fix their obligation and leave their prices in dollars they not have appointed – afforded to pay – they were still paying even at our next – next generation be paying for that. Instead what they did is to fix the rand amount of the

contract so that they can pay it in rand without the fluctuations and currency. One particular example that I – maybe just to share it is we hear mostly of institutions that have borrowed – they went to buy arms deal in dollars and that number today is [00:02:29] because they did not fix in rand.

ADV CHASKALSON SC: I agree with you completely it made a lot of sense to – for Transnet to require a rand purchase price even it meant that the purchases hedge cost
10 would put billions of rands onto the purchase price. But having done that it negated that benefit by going out and borrowing in dollars which exposed it to the dollar – the rand dollar fluctuation.

MR RAMOSEBUDI: I do not see it that way Chairperson. Because the manufacturer prices in rand fixed Transnet goes and borrow in dollars and fix it in rand and then there is a match currency payment. I do not see the negative of the transaction that has been done with that one.

ADV CHASKALSON SC: It has to repay China
20 Development Bank in dollars is that not correct?

MR RAMOSEBUDI: Because of the cross currencies transactions that was done with the bank Transnet pays the bank rand and the bank pays China Development Bank dollars. So there is no exposure to Transnet on that particular transaction.

ADV CHASKALSON SC: Transnet had to pay for a cross currency swap to be able to pay back – to pay rands to get dollars.

MR RAMOSEBUDI: It is a normal transaction in the market and they are there. The cost associated with it they are very easily transparent you can look at. I do think it is astronomical figures that have been paid for for the cross currency. The hedge that was done at 337 basis points not even a single institution could have afforded to finance that
10 transaction at that level at the point in time.

ADV CHASKALSON SC: Alright Mr Ramosebudi let me tell you where I want to go on this. Can I take you to page 729?

MR RAMOSEBUDI: 700?

ADV CHASKALSON SC: 729. In fact start at 727.

MR RAMOSEBUDI: I am here.

ADV CHASKALSON SC: So you will see that on the 14 April 2015 middle of the page to Wandross Gebresellassi that was the man who went with you to China is that – or one of them went with you to China emailed Eric Wood another member
20 of the China delegation saying:

“Hi Eric, please find attached the draw down schedule under 1.5 billion China Development Bank loan Column G in the attached Excel spread sheet provides the drawn down schedule. Please note that an

exchange rate of R12 to the dollar is used to determine the draw down schedule. Regards Ted.”

And if you go to the next page 728 you will see the draw down schedule that Mr Gebresellassi had produced. Do you see that/

MR RAMOSEBUDI: I can see it Mr Chairperson.

ADV CHASKALSON SC: Then let us go back up to 727 and you will see that on the same day at 3:20 in the afternoon
10 Eric Wood forwarded message with the draw down schedule to Salim Essa. Did Salim Essa have any business dealing with this?

MR RAMOSEBUDI: I am not aware of that.

ADV CHASKALSON SC: Let us go down to 729 now. And halfway through the page we see Salim Essa’s response to Eric Wood. Do you see the email from Salim Essa 15 April 2015 10:39 am to Eric Wood?

MR RAMOSEBUDI: I see that.

ADV CHASKALSON SC: It is cc’d to someone Walemse or
20 Walemse@gmail.com do you know whose address that is?

MR RAMOSEBUDI: I do not know that.

ADV CHASKALSON SC: Sorry you say you do not know?

MR RAMOSEBUDI: I do not know that Chairperson.

ADV CHASKALSON SC: If I put it to you that it is Mr Ashok Narayan – Ashok Narayan do you know Ashok Narayan is?

MR RAMOSEBUDI: No I do not know them.

ADV CHASKALSON SC: Okay.

CHAIRPERSON: Hang on one second Mr Chaskalson I think I have lost you. I thought you were at a certain page and discovered that I did not have the right page – just tell me again.

ADV CHASKALSON SC: 729.

CHAIRPERSON: Oh 729 okay I have got it now.

ADV CHASKALSON SC: And we are on the second half of
10 the page of 729 Chair.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: It is an email from Salim Essa to Eric Wood copied to Walemse@gmail.com and in due course we will bring evidence to show that this is Ashok Narayan. It is has got the same subject as the previous email and the body of the email says:

“Sir please add a column for what our fees will be at each draw down please.”

Was Salim Essa due any fees in relation to the China
20 Development Bank?

MR RAMOSEBUDI: I am not aware of that.

ADV CHASKALSON SC: Let us go to the top of the page still on the 15 April 2015 Eric Wood replies to Salim Essa and Ashok Narayan and he says:

“Will do but please understand this is only

our first shot at a proposed draw down schedule. This still has to be agreed by both Transnet and CDB before it becomes the final agreed cash flows. Regards Eric Wood.”

Can we then go down to page 731 towards the foot of the page – there is another email string.

MR RAMOSEBUDI: 700?

ADV CHASKALSON SC: 731.

10 **MR RAMOSEBUDI:** I am here Chair – Chairperson.

ADV CHASKALSON SC: And do you see an email from Louis Skutter to Wandross Gebresellassi and Eric Wood 17 April 2015 09:41 am.

MR RAMOSEBUDI: Yes I see that.

ADV CHASKALSON SC: Do you know who Louis Skutter is?

MR RAMOSEBUDI: Ja he used to work for Regiments.

ADV CHASKALSON SC: Yes. And it is copied to someone called Grant Joseph do you know who he is?

MR RAMOSEBUDI: No I do not know Grant Joseph.

20 **ADV CHASKALSON SC:** Any Mr Skutter says:

“Hi Eric, please see the fee table below. I have used two methods for reconciliation purposes. Delta of each draw down as a loan times 15 basis points and 15 basis points on the outstanding nominal of each

draw down as a loan. The latter is slightly lower but more accurate.”

And then do you see a table underneath on page 732?

MR RAMOSEBUDI: Yes I see that.

ADV CHASKALSON SC: And do you want to explain to the Chair what this table – what this table does?

MR RAMOSEBUDI: This table shows the cash flows draw down per month from the 1 May 2015 down to the 2 May 10 2017 in dollar terms and what the rand equivalent of that is going to be. So that is what the draw down are on the first three columns. And then the next columns shows the – the basis points that they have been paid on a PV basis for the loan which was – here I see two numbers. One is 166 million the other one I see 175 million. And then the last two columns also show the 15 basis points on the outstanding numbers or the outstanding notional numbers to be drawn.

ADV CHASKALSON SC: And the PV and the FV are present value and future value.

20 **MR RAMOSEBUDI:** Ja.

ADV CHASKALSON SC: But let us look at Delta times 15 basis points PV. Do you see that total at the bottom 166 019 505?

MR RAMOSEBUDI: Yes I see that.

ADV CHASKALSON SC: Does that figure ring a bell to you?

MR RAMOSEBUDI: Ja I see it is equivalent to you know without comparing the exact numbers it looks like the fee that was owed by Regiments on this – on the loan.

ADV CHASKALSON SC: Yes. Were you aware at this stage that Regiments was going to earn a fee of R166 million on the loan? I am talking about 17 April 2015.

MR RAMOSEBUDI: 17 April 2015 no I was not aware.

ADV CHASKALSON SC: You were not. Can we go back up to 731 – the top of 731? It is Salim Essa he has seen the
10 table and later in the day he writes to Eric Wood.

“Hi Eric this is for one stream what about the other two. The \$1 billion CPI and the hedge on the \$1.5 billion. Thanks S.”

Can you tell the Chair what he is saying there? What – do you understand what he is referring to there?

MR RAMOSEBUDI: So here he is talking about the two transactions that are outstanding. There is \$1 billion CPI and the hedge on the \$1.5 billion.

ADV CHASKALSON SC: And how do those fit in? Do you
20 know how they fit in?

MR RAMOSEBUDI: Come again.

ADV CHASKALSON SC: Do you know how they fit in? Do you know what the \$1 billion CPI was and what the hedge on the \$1.5 billion was?

MR RAMOSEBUDI: I will not know which one was this one.

ADV CHASKALSON SC: So you do not know what he is referring to?

MR RAMOSEBUDI: No I do not know.

ADV CHASKALSON SC: But – well let us go down. Well before we go down. Would it – let me put to you what I read there. Salim Essa has seen the table produced by Louis Skutter with its draw schedule and the fee for Regiments PV on Delta time 15 basis points at R166 million and then he says but this is just one of three transactions we are going to
10 do what about the other two. The \$1 billion CPI and the hedge on the \$1.5 billion. Is that a fair – is that how you read it too?

MR RAMOSEBUDI: That is how I read it Chairperson.

ADV CHASKALSON SC: So he is saying where are my other two fees is that not what he is saying?

MR RAMOSEBUDI: That is what I see here yes.

ADV CHASKALSON SC: Yes. And were you aware that Salim Essa was going to get any fees in relation to this transaction?

20 **MR RAMOSEBUDI:** No I am not aware of that.

ADV CHASKALSON SC: So let us go to page 735 and it starts with an Essa email but that response – there is a line that says:

“On 18 April 2015 at 9:31 Eric Wood wrote.

Will get the team to draft the draw down

schedule for the ZAR syndicated loan and send through.”

That – what is the ZAR syndicated loan?

MR RAMOSEBUDI: Probably he is talking about the – the anticipated club loan that was the \$1 billion that we were talking about here.

ADV CHASKALSON SC: Yes. Mr Wood knew that there was a club loan coming and the club loan would attract a fee would it not?

10 **MR RAMOSEBUDI:** That is what it is yes.

ADV CHASKALSON SC: Yes. And Salim Essa’s response at 932 on the 18 April.

“Cool if they can split all three streams please.”

So he wants to see each of the three transactions with a fee in respect of each stream is that not correct? Is that not how you read it?

MR RAMOSEBUDI: That is how I read it yes Chair.

ADV CHASKALSON SC: Can I take you then to page 595?

20 And that is the spread sheet that we discussed yesterday in relation to the fees that went into Regiments and out to various shell entities controlled by Salim Essa.

MR RAMOSEBUDI: I am here.

ADV CHASKALSON SC: Page 595 you see the very top line on that list it says:

“2 June 15 TRXF 00000 1 China
Development Bank.”

You see that line?

MR RAMOSEBUDI: I see that line.

ADV CHASKALSON SC: The amount inclusive of VAT
R189 200 – R189 240 000.00.

MR RAMOSEBUDI: Yes I see that Chairperson.

ADV CHASKALSON SC: And then if you go across you will
see an entry under Albertime R147 607 607 200. Do you
10 know who Albertime are?

MR RAMOSEBUDI: No we still started talking about it
yesterday I do not know who Albertime is.

ADV CHASKALSON SC: Yes. Well Albertime is run by
someone called Mr Kuvan Moodley and he would usually
take a small cut relative to the cut taken by Mr Essa's
company. So if we look for instance down the table it says:

“For sure or Hustaf or Magool”

You will see that the corresponding entry on
Albertime is usually 10% of the entry for the cut of the – by
20 the shell company nominated by Mr Essa. But in this
particular case Albertime took the primary cut and the
secondary cut and if you look at that number 147 607 000
inclusive of VAT you will see that it comes to 75% plus 3% -
78% of what Transnet paid Regiments. And in due course
evidence will be shown how 122 million plus VAT of this 147

million was laundered onto Sahara Computers. Were you aware that – of the fee that Transnet was going to pay Regiments for the China Development Bank 122million would go to Sahara Computers?

MR RAMOSEBUDI: No I was not aware of that Chairperson.

ADV CHASKALSON SC: Let us look at what was happening above ground in relation to these transactions as opposed to in the emails between Mr Essa and Mr Wood. Can we go now to page 300? And in fact if we can go – yes page 300 is
10 correct.

MR RAMOSEBUDI: I am at page 300.

ADV CHASKALSON SC: And there you will see an email from Mr Wood addressed on the 22 April and I just want to remind you again of the dates of the email correspondence that we have previously been going through that was 15 to 18 April. But now we have gone forward to 22 April and Mr Wood write to Anoj Singh, yourself and he copies Mr Gebresellassi at Regiments and he says:

20 “Hi Anoj and Phetolo I have attached the JP doc with discussed updates. Regards Eric.”

Do you recall getting this email from Mr Wood?

MR RAMOSEBUDI: I cannot recall but I – I see it came to me so it means I did receive it.

ADV CHASKALSON SC: If you go a page down you will see what the memo is that he attached. It is dated 21 April 2015

and what it is is essentially a fairly detailed if possibly spurious motivation for paying Regiments a success fee in relation to the China Development Bank of 15 basis points which will correspond to 166.3 million. You will see that at page 303.

MR RAMOSEBUDI: Yes

ADV CHASKALSON SC: Do you...

MR RAMOSEBUDI: Yes I see it here.

ADV CHASKALSON SC: Yes do you. Do you remember
10 that? I mean do you remember receiving a motivation for Regiments to pay – to be paid 166.3 million in relation to the China Development Bank?

MR RAMOSEBUDI: I guess it came to me I might have received it but I do not remember of – this one.

ADV CHASKALSON SC: I see.

CHAIRPERSON: Just one second Mr Chaskalson. Yes we may proceed.

ADV CHASKALSON SC: Thank you Chair. If we then – well
- go to page 339 there is a document which bears your
20 signature and maybe if I can take you to the signature it is at page 347 it is not just your signature. It has your signature, Gary Peter's signature, Anoj Singh's signature and Siyabonga Gama's signature and what it is is a motivation to do two things.

The one is to pay Regiments this 166 million and the

other is to appoint JP Morgan on confinement to do various transactions in relation to the China Development Bank loan.

Let us start at 1.1. Approve the confined appointment of JP Morgan to hedge the financial risks, interest rate credit and currency risk emanating from the US Dollar 1.5 billion China Development Bank loan back into ZAR.

So Transnet now wants a rand exposure not a dollar exposure although originally it had only a rand exposure and
10 it is going to pay JP Morgan to orchestrate that.

1.2 Approve the confined appointment of JP Morgan to lead and underwrite the equivalent syndicated ZAR loan of \$1.5 billion. That would become the club loan is that not correct? Mr Ramosebudi. That was what eventually became the club loan.

MR RAMOSEBUDI: Yes.

ADV CHASKALSON SC: Approve the contract extension from 99.5 million to 265.5 million for the appointment of Regiments Capital for transaction advisory services and
20 support to Transnet on the 1064 locomotive transaction.

So that difference from 99.5 for the advice that had been giving Transnet in relation to the locomotives procurement to 265 was going to be the 166 million that would be paid to Regiments and laundered out via Albertime to Sahara Computers in respect of the China Development

Bank loan. Is that where – is that the difference the 166 million there? Is that – that explains the difference between 99.5 and ...

MR RAMOSEBUDI: Yes it increases 166 million yes.

ADV CHASKALSON SC: Yes. Can I ask you – let us go to 1.1 and 1.2. Did JP Morgan ultimately complete the task in relation to hedging the financial risk interest rate credit and currency risk in relation to the China Development Bank loan?

10 **MR RAMOSEBUDI**: Yes they did Chair.

ADV CHASKALSON SC: So they did these cross-currencies swaps?

MR RAMOSEBUDI: They did Chairperson.

ADV CHASKALSON SC: Did they lead and underwrite the equivalent syndicated ZAR loan of 1.5 billion?

MR RAMOSEBUDI: No they did not.

ADV CHASKALSON SC: I see. Let us maybe see why that happened. Why they did not. Can I take you to page 384.

MR RAMOSEBUDI: Page?

20 **ADV CHASKALSON SC**: 384.

MR RAMOSEBUDI: I am on page 384.

ADV CHASKALSON SC: 384. There you will see an email from yourself at Transnet to yourself and copied to Eric Wood and it says:

“Letter to JP Morgan”

And it is a draft letter because obviously it is not being sent to JP Morgan it is being sent to yourself and Eric Wood and it says:

10 “Dear Mark, re coordination of ZAR syndication loan and the bridging facility. Further to your previous engagements and the request to coordinate the ZAR syndication loan with Regiments Capital Transnet has realised that it made a wrong assumption that the lead coordinator will provide the underwriting facility on the balance of the US 1 dollar – 1 billion. Now the expectation is not in line with JP Morgan position Transnet has decided it will pursue the current offer received from the bank of China and any other availability facility and balance will be drawn from the US 1 dollar billion standby facility therefore the coordination of the ZAR loan will not be
20 required. Transnet therefore regret to terminate the coordination arrangement of the ZAR syndication loan with JP Morgan.”

Do you recall writing this email or writing this draft email because it was not yet sent to JP Morgan?

MR RAMOSEBUDI: Yes I was writing on behalf of the Group

CFO yes.

ADV CHASKALSON SC: And the Group CFO was Anoj Singh?

MR RAMOSEBUDI: Yes.

ADV CHASKALSON SC: Can you explain to the Chair what was being said here?

MR RAMOSEBUDI: In the simplest terms Chairperson the previous memo was saying we approve the – on 1.2 on page 339 it says:

10 “We approve the confinement of JP Morgan
for the lead and underwriting of the
equivalent syndicated ZAR loan of 1.5 billion
dollar.”

But this letter was terminating that confinement.

ADV CHASKALSON SC: But why was it terminating the confinement?

MR RAMOSEBUDI: It is because there was a
misunderstanding with JP Morgan when we were to advance
the discussion with the underwriting of the- of the 1 billion
20 dollars you know syndicated loan. In rand terms JP Morgan
was not in capacity to do that.

ADV CHASKALSON SC: Sorry I did not hear that. JP Morgan?

MR RAMOSEBUDI: Was not in – did not have the capacity to do – underwrite that 1.5 billion dollar.

ADV CHASKALSON SC: So JP Morgan could not underwrite a 1.5 billion facility.

MR RAMOSEBUDI: 1 billion dollar actually yes.

ADV CHASKALSON SC: 1.5 billion dollar facility in rands. What is interesting there is what you say in this draft.

10 “Transnet has decided it will pursue the current offer received from the Bank of China and any other availability facility and balance will be drawn from the US 1 billion dollar standby facility. Therefore the coordination of the ZAR loan will not be required.”

So you are saying there we are not going to do – use any rands as an equivalent for that 1 billion standby facility and we do not need anyone to coordinate it we will go with our 1 billion dollar facility. Is that not what you are saying?

MR RAMOSEBUDI: No that is not what it says here. What it says here is that we will pursue the current offer that we have received from China Development Bank – sorry China Bank – Bank of China not China Development Bank.

20 **ADV CHASKALSON SC:** Bank of China.

MR RAMOSEBUDI: So China Development Bank are two institutions. So we will pursue that and any other that is available you know. So what we then did was that the persons or the companies that was appointed with JP Morgan at the time we will pursue other alternative

opportunities since JP Morgan was not willing to underwrite that.

ADV CHASKALSON SC: Yes but it is – but in that second paragraph – or second paragraph you are not talking about underwriting you talking about coordinating. You say:

“Therefore the coordination of the ZAR loan will not be required.”

MR RAMOSEBUDI: From JP Morgan yes.

ADV CHASKALSON SC: From JP Morgan. Was somebody
10 else going to do that coordination?

MR RAMOSEBUDI: Yes true.

ADV CHASKALSON SC: Yes who was that?

MR RAMOSEBUDI: In this case it was Regiments.

ADV CHASKALSON SC: Yes.

ADV CHASKALSON SC: And if this draft is being written by you to Regiments to settle or was it written on the instruction of Anoj Singh?

MR RAMOSEBUDI: The termination of the coordination, yes.

20 **ADV CHASKALSON SC:** The termination of the coordination agreement or arrangement with JP Morgan was Anoj Singh’s decision, you say?

MR RAMOSEBUDI: [No audible reply]

ADV CHASKALSON SC: Is that correct?

MR RAMOSEBUDI: It was Transnet’s decision because

Dicken(?) Owen(?) was no longer offering the...

ADV CHASKALSON SC: Who at Transnet took that decision?

MR RAMOSEBUDI: It is Transnet at the time.

ADV CHASKALSON SC: No, I am asking which individuals at Transnet was the one who took that decision?

MR RAMOSEBUDI: Anoj Sing.

ADV CHASKALSON SC: Anoj Sing, yes. And this letter, this draft. Did you just frame it was it framed in consultation
10 with Anoj Sing?

MR RAMOSEBUDI: I wrote it and checked with him.

ADV CHASKALSON SC: Then, if we go down to 386, we see another email which you write from Transnet from your Transnet address formally to Eric, saying:

“Hi Eric. Do you mind reviewing this as per Anoj’s requisition.”

And underneath, on page 387, there is letter that is going to be send to JP Morgan, terminating their appointment.

20 And it is essentially the same. In fact, I am not sure if there are material or there is no material differences but it corresponds to your draft that you sent to Eric Wood a little while earlier. Is that correct?

MR RAMOSEBUDI: That is correct, Chair.

ADV CHASKALSON SC: The previous day. I am sorry. It

is 8 June and 9 June. And was the appointment of JP Morgan then terminated?

MR RAMOSEBUDI: Yes, it was terminated.

ADV CHASKALSON SC: Do you recall when it was terminated?

MR RAMOSEBUDI: I cannot recall but it should be immediately after, you know, after they received the letter.

ADV CHASKALSON SC: Shortly thereafter. It was shortly after 8 June. 8 June or thereabouts. Would that be a fair
10 assumption?

MR RAMOSEBUDI: [No audible reply]

ADV CHASKALSON SC: Sorry, Mr Ramosebudi. I just want to get the date. So it would be shortly after 8 June?

MR RAMOSEBUDI: Chairperson, I said shortly after they received the letter being terminated.

ADV CHASKALSON SC: Can we go to ...[intervenes]

CHAIRPERSON: Sorry. Just to confirm. So the letter carrying that page 385, is it drafted by you Mr Ramosebudi or Mr Singh...[intervenes]

20 **MR RAMOSEBUDI**: Yes.

CHAIRPERSON: ...who then does the letter at 387?

MR RAMOSEBUDI: Yes.

CHAIRPERSON: Okay alright.

ADV CHASKALSON SC: Can we go to three... Sorry, to 444?

MR RAMOSEBUDI: [No audible reply]

ADV CHASKALSON SC: And that is an email from Eric Wood to yourself, copied to what was Gabro(?) Selasi(?) and Nswana(?) Mwango(?). Who is Nswana Mwango?

MR RAMOSEBUDI: It is one of the employees of Regiments.

ADV CHASKALSON SC: Employee of Regiments. Thursday, 27 August 2015 A memo in respect of Regiments' role on 1064 Locomotive Club Loan Funding. And the body
10 of the email says:

“Hi Phetolo. As discussed, I have attached the requested 1064 Club Loan memo. Please let me know your thoughts. Regard Eric.”

And then what follows is a memorandum that is being drafted in the name, in your name, to go to Gary Peter. And the subject is... Sorry, that is at 445. Advisory support...

Sorry, let me take a step back. Do you recall receiving this email with a draft memorandum from Erich Wood on or around 27 August 2015?

20 **MR RAMOSEBUDI:** I guess so. I cannot just remember. It has been some time. But I might have received it.

ADV CHASKALSON SC: You have got no reason to believe you did not receive it?

MR RAMOSEBUDI: No, I said I might have received it. I cannot remember. It is a long time ago.

ADV CHASKALSON SC: Yes, but I mean, is there anything in here that makes you think that you did not receive it?

MR RAMOSEBUDI: No, I am not saying I did not receive it.

ADV CHASKALSON SC: Yes. So there is this draft in your name to Gary Peter. And was it the practise of Regiments to write drafts in your name to go to other Transnet executives?

MR RAMOSEBUDI: Ja, it is a tradition in Transnet that you, you know, as a head of a function, all memos will come from my name as a compiler. And then, where you have worked
10 with other teams, they also have to come in and they will be there, supporting or recommending and then we will recommending upwards. That is how – it is a tradition, yes.

ADV CHASKALSON SC: And is this a memorandum, essentially, a motivation for Regiments to be paid a fee of R 75 3 million for raising the Club loan? Is that what it is? You will see that at the bottom line at page 448.

MR RAMOSEBUDI: Ja, it looks like it is some motivation, yes.

ADV CHASKALSON SC: Yes. And you will see, if you go
20 back up to page 447, there is a table suggesting that Regiments has saved Transnet R 763 million in this exercise. You will recall or just remember that number 763 million.

MR RAMOSEBUDI: [No audible reply]

ADV CHASKALSON SC: Can I then down a page... Sorry, down to page 453.

MR RAMOSEBUDI: Yes?

ADV CHASKALSON SC: And there you will see an email from yourself to Eric Wood on the same date, 27 August. And it says:

“Hi Eric. If a question arises, what is your comparable pricing on the current debt that Transnet raised? Would it not be better to compare this with the current China development loan than what would JP Morgan achieve?”

10 What are you saying there?

MR RAMOSEBUDI: Ja, here I am saying, I think it is better to compare apples with apples than comparing apples with oranges. So if you look at the initial proposal that was submitted by JP Morgan, it was a ten year bond which is bullet and the pricing was about – minus or plus 316 above basis points.

So if you look at the ten year bullet bond price at that level and a 15-year with a five year grace period in amortizing, these two are not the same

20 This other one is amortizing. So it means it is paying down to the maturity. The other one is not paying down to the maturity. You only pay at the end of the period.

So the prices are not – they are not comparing apple with apple. So what I said is. Take the current existing bond loan with China Development Bank which is 15-year, five

year grace period and compare with that, so that at least we compare apples with apples.

ADV CHASKALSON SC: So can I then take you down to page 465 because it seems that Regiments took heed of your suggestion. There you will see an email from Nswana(?) Mwango(?) dated 2 September 2015 addressed to yourself and it has got a revised fee.

And you will see much of the narrative is still the same but if you got to page 469, there is a new table. The table
10 that you wanted.

MR RAMOSEBUDI: [No audible reply]

ADV CHASKALSON SC: Oka you can go 469.

MR RAMOSEBUDI: 469?

ADV CHASKALSON SC: [No audible reply]

MR RAMOSEBUDI: Yes, I see this.

ADV CHASKALSON SC: And there you will see that the saving that you said was the better measure, is not R 763 million which is in the table below, it is R 502 million. I want to say the alleged...

20 You will see that when you – they did the comparison which you said they should do. They came up with a number of R 502 million and not R 763 million.

MR RAMOSEBUDI: [No audible reply]

ADV CHASKALSON SC: Is that correct?

MR RAMOSEBUDI: I see that. Then it must.

ADV CHASKALSON SC: But you recall receiving this memorandum?

[Speakers are not clear.]

MR RAMOSEBUDI: ...say something, yes, but - I have seen this memo.

ADV CHASKALSON SC: And the date of the memo, it comes under cover of an email of 2 September, if we go back to 465. 2 September. And all of these savings that we are talking about are savings that the good people at Regiments
10 have made for Transnet. Can we go down to 11 September and 486?

MR RAMOSEBUDI: 486?

ADV CHASKALSON SC: Yes. Oh, sorry. Before we get there. Can we go to 472?

MR RAMOSEBUDI: [No audible reply]

ADV CHASKALSON SC: If we start at the middle of the page, we see that same email from Nswana Mwango that was sent to you on 2 September 2015 with the revised fee memo that that email with the revised fee memo has been
20 forwarded by Eric Wood to Asher(?) Kenarian(?) miwallance@gmail.com(?) is Asher Kenarian.

Do you know who Asher Kenarian is?

[Speaker is not clear.]

MR RAMOSEBUDI: No, I do not know.

ADV CHASKALSON SC: He was a former advisor to the

Premier of the Free State, who later went on to do big things in the Gupta Enterprise. If we go down to page 486. This is after Asher Kenarian has received the revised memo.

We now see a document that you sent to someone called – an email that you sent to someone called Betsy van Heerden on 11 September 2015. And you say underneath it: Prepare for sign off.

And it says:

“Request to appoint Trillian (04).”

10 And what it is, it is a memorandum is in Siyabonga’s name this time at page 487. And it now says:

“Request to appoint Trillian as lead manager in R 18 billion in club loan.”

Who were Trillian?

MR RAMOSEBUDI: Come again?

ADV CHASKALSON SC: Who were Trillian?

MR RAMOSEBUDI: Trillian were the Supply Development of Regiments ...[indistinct]

[Speaker is not clear.]

20 **ADV CHASKALSON SC**: Have you met anyone from Trillian?

MR RAMOSEBUDI: Yes, I did.

ADV CHASKALSON SC: Who?

MR RAMOSEBUDI: Daniel Roy.

ADV CHASKALSON SC: Daniel Roy?

MR RAMOSEBUDI: [No audible reply]

ADV CHASKALSON SC: And did you meet anybody else from Trillian?

MR RAMOSEBUDI: [No audible reply]

ADV CHASKALSON SC: Did you meet anyone other than Mr Roy from Trillian?

MR RAMOSEBUDI: Daniel Roy.

ADV CHASKALSON SC: So Mr Roy was the only person from Trillian that you have met?

10 **MR RAMOSEBUDI:** Ja.

ADV CHASKALSON SC: When was this work on the club loan done?

MR RAMOSEBUDI: The work on the club loan was done on the – the time I joined in March of 2015 as part of that delegation to go to China later. I am not sure if it was March or April.

One of the things we went for was to negotiate with China Development Bank for the split of the 2.5 billion Dollar so that the part of the 2.5 billion is used for syndicated
20 Zalo(?) which is the ultimate club loan.

So through that period, Regiments were working on the Zalo immediately when the termination with JP Morgan. So there was this full speed-on on the work of the club loan to syndicate with the local institution.

And some of the those is per as the foreign institution at

Bank of China but we were talking to Bank of China here in the country until there was part where Trillian came in before we finalised the transaction, were part of the transaction and until we paid out the club loan to Trillian. That is when the transaction was done.

ADV CHASKALSON SC: So when was the first time you met Mr Roy?

MR RAMOSEBUDI: I cannot remember very well but around July/August. Somewhere there.

10 **ADV CHASKALSON SC:** July/August. And when was the first time you heard of Trillian?

MR RAMOSEBUDI: I think it was the similar time because he called me and he said: Let us meet and discuss what you are telling me.

ADV CHASKALSON SC: Let us meet and discuss...?

MR RAMOSEBUDI: Because he was telling me that he was part of the transaction. I said: Come in so that we discuss this and so that we are on the same page.

ADV CHASKALSON SC: Can I take you back to pages...
20 Well, let us go back to page 444. That is the email from Eric Wood, 27 August 2015 with a detailed memo suggesting that Regiments should be paid this fee of R 76.3 million.

And then on page 453 – and there is no mention of Trillian in that memo. At page 453 you respond to Eric Wood and you say:

“If a question arise what your comparable pricing on the current debt at Transnet raised, would it not be better to compare this with you current CBD line than what would JP Morgan achieve?”

You do not mention Trillian on 27 August.

MR RAMOSEBUDI: True.

ADV CHASKALSON SC: And there is no mention of Trillian in the memo. At that stage, the fee is going to Regiments.

MR RAMOSEBUDI: True.

10 **ADV CHASKALSON SC**: When did you first decide the fee should go to Trillian?

MR RAMOSEBUDI: [No audible reply]

ADV CHASKALSON SC: When did you decide that you were going to make a motivation?

MR RAMOSEBUDI: I did not decide.

ADV CHASKALSON SC: Oh, that you were going to make a motivation that the fee should go to Trillian.

MR RAMOSEBUDI: I did not make a – I did not decide to make a payment to Trillian. I think during that time, there
20 was a discussion in terms of the requirements that Regiments needs to meet in terms of the supplier development.

As part of the appointment of Regiments, they also had to meet the supply developments. I think they were discussing around that time, which they did not include me at

the time.

ADV CHASKALSON SC: But who would they have included?

MR RAMOSEBUDI: They would have included, at the time, the CFO which was Anoj Singh and Dereck Peter who was in the procurement, the procurement officer at the time and Eric.

ADV CHASKALSON SC: So Regiments had to find itself a supply development partner?

10 **MR RAMOSEBUDI:** It was a requirement for the appointment of Regiments, yes. Of the supply development. So there was some push-back from Transnet in paying Regiments for what they were required to bring in the supply development.

ADV CHASKALSON SC: Yes. And presumably, the supply development partner would have to be a B-BBEE partner.

MR RAMOSEBUDI: That is what it is.

ADV CHASKALSON SC: Yes. Did you ever get a B-BBEE certificate from Trillian?

20 **MR RAMOSEBUDI:** The documents were supplied to us, which were forwarded to Procurement. So I do not know that details of the B-BBEE certificate is.

ADV CHASKALSON SC: Right. Did you know who owned Trillian?

MR RAMOSEBUDI: [No audible reply]

ADV CHASKALSON SC: Did you know who owned Trillian?

MR RAMOSEBUDI: I do not. Trillian, yes.

ADV CHASKALSON SC: Yes. All you knew was Daniel Roy.

MR RAMOSEBUDI: Who came to me, yes.

ADV CHASKALSON SC: And how did he come to you?

MR RAMOSEBUDI: I do not know how he came to me but he came into my office, whether he drove or...

ADV CHASKALSON SC: [laughs]

10 **MR RAMOSEBUDI:** I do not know but he came to my office at the time to have a discussion with me.

ADV CHASKALSON SC: Ja, I am not talking about his mode of transport. I mean, did he get an introduction to you? Did somebody say ...[intervenes]

MR RAMOSEBUDI: No.

ADV CHASKALSON SC: ...expect a meeting from Mr Roy?

MR RAMOSEBUDI: No. I just got a call from him.

ADV CHASKALSON SC: You got a call from him. And what did he say to you?

20 **MR RAMOSEBUDI:** Chairperson, I cannot remember. I think it was 2015, somewhere there, whether – how he introduced himself. But he ultimately came in, introduced himself and then we had a chat. I brought in one of my colleagues. He met him and then he left.

ADV CHASKALSON SC: And did he suggest that he should

be the person or his company, Trillian, should be the one getting paid for the club loan?

MR RAMOSEBUDI: I think among the discussion, the position was beyond my salary scale. That could have been discussed that that is where, you know, Trillian should be paid instead of Regiments because they are supply development. They should have met. That is required requirement.

ADV CHASKALSON SC: And but when Mr Roy announced
10 for the first time or arrived at the first time and you are like...
How did he describe himself? What did he say he being doing?

MR RAMOSEBUDI: Chairperson, I will be lying if I can tell you. But he gave me his company's profile. He tells me that asset(?) management, they want this deal. But the details, I cannot tell you exactly what it was all about. Yes, he introduced his company, what they do and their role in the transaction but further than that, I would be lying Chairperson. I really want to assist this Commission.

20 **ADV CHASKALSON SC:** And do you recall what he said about the role that his company played in the transaction?

MR RAMOSEBUDI: [No audible reply]

ADV CHASKALSON SC: What did he say they had done in relation to the transaction?

MR RAMOSEBUDI: It was about a syndication of the money

that needs to be raised.

ADV CHASKALSON SC: A syndication of the money that needs to be raised?

MR RAMOSEBUDI: Ja.

ADV CHASKALSON SC: And did he describe, you know, what work had been done by Regiments, what work had been done by Trillian?

MR RAMOSEBUDI: No, I did not get to that level.

ADV CHASKALSON SC: Who told you that Trillian are the
10 ones to be paid?

MR RAMOSEBUDI: Gary Peter told me.

ADV CHASKALSON SC: Did Gary Peter tell you?

MR RAMOSEBUDI: Yes.

ADV CHASKALSON SC: So let us then move on. Oh, before we move on. Let us look at that memo that you wanted signed off on 11 September 2015. So at 486.

MR RAMOSEBUDI: Yes.

ADV CHASKALSON SC: 486 was the covering email and the memo starts at 487. And I want to put to you that what
20 this memo does, he simply takes the previous memo and wherever Regiments is mentioned ...[intervenes]

CHAIRPERSON: I am sorry Mr Chaskalson. Did you say 087?

ADV CHASKALSON SC: 487.

CHAIRPERSON: 487?

ADV CHASKALSON SC: 487 Chair.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: The – for the most part, what this memo does, is it cuts and pastes Trillian for Regiments from the previous memos. So that is – let us look at it.

Under the heading Trillian, paragraph 2:

10 “Transnet had signed the mandate for US Dollars 2.5 billion, 15-year loan from China Development Bank to finance 232 and 359 Locomotives from China North Railways and China South Railways respectively.

[Speaker is not clear.]

Paragraph 3:

“The board approves the transaction during August 2014.”

Paragraph 4:

20 “Transnet decided to split the transaction into two tranches of the US Dollars 1.5 billion tranche and standby facility of US Dollars, one billion tranche. When Morgan was appointed to lead the ZAR Club as a substitute of US Dollar one billion standby facility the costs with the transaction lower. How they failed to secure the 15-year at the appropriate pricing.

Trillian approach with reversing inquiry for club loan

deal at a price and tender which was more comparable to the CDB loan.”

[Speaker is not clear.]

Did Trillian approach with that inquiry or did Regiments approach?

MR RAMOSEBUDI: [No audible reply]

ADV CHASKALSON SC: To the best of your knowledge?

MR RAMOSEBUDI: Chairman, ...[indistinct] with the club syndicated loan.

10 [Speaker is not clear.]

ADV CHASKALSON SC: Sorry? Trillian approached the club loan, not the syndicated loan. But who made the first approach on the club loan, was it Regiments or Trillian?

MR RAMOSEBUDI: The club loan was Trillian but the syndicated loan was Regiments.

ADV CHASKALSON SC: The syndicated loan was Regiments, you say?

MR RAMOSEBUDI: [No audible reply]

20 **ADV CHASKALSON SC**: And Trillian, the magic that Trillian brought was the club loan.

MR RAMOSEBUDI: [No audible reply]

ADV CHASKALSON SC: What was the difference between the club loan and the syndicated loan?

MR RAMOSEBUDI: The difference between the two is the participation, the quantum amounts. So in a syndicate, you

have – Chairperson, in a syndicate you will have equal participants with equal amounts in the syndication. But in a club loan, you know, I can come with a rand, the other one will come with a ten rand. The other one comes with a billion rand. You simply club them together.

ADV CHASKALSON SC: I see. Can I ask you to go back to the 2 September version of this memo? Go to page 466.

MR RAMOSEBUDI: [No audible reply]

ADV CHASKALSON SC: And here you are talking about
10 still paying – well, let us go to the end. This is still a motivation for Regiments to be paid for organising the club loan. And right through this it is all about club loan. And Regiments are going to be paid.

There is no mention of Trillian whatsoever. Why would that be the case if the club loan was Trillian's idea?

MR RAMOSEBUDI: Chairperson, at this stage, I cannot explain the arrangements between the Trillian and Regiments, you know, after Transnet told them about the supply development. How they, from there, they moved, I do
20 not know.

ADV CHASKALSON SC: I see. So – but a short while ago, you mentioned to me that Trillian was the one who came up with the idea of the club loan and ...[intervenes]

MR RAMOSEBUDI: No. Yes, you are right. But you are simply referring Chairperson here on that it is for Regiments.

But I am saying the original arrangement that I had
...[indistinct]

[Speaker is not clear.]

ADV CHASKALSON SC: The commercial ...[intervenes]

MR RAMOSEBUDI: Between(?) Regiments.

[Speaker is not clear.]

ADV CHASKALSON SC: Yes, but whose idea was the club
loan? Was it Regiments or Trillian?

MR RAMOSEBUDI: Chairperson, as I said, the club loan, it
10 was Trillian's idea.

ADV CHASKALSON SC: Then why would you pay
Regiments for something that was Trillian's idea?

MR RAMOSEBUDI: I think there was a time where, as I – if
– you might recall Chairperson, that there was a discussion
between Gary and Anoj Singh and Regiments guy(?), in
particular Eric about payments. And then Transnet the
requirement of supply development which Regiments, at the
time, were not bringing them forth.

So probably from that point of view, things started
20 changing. As I said, it was beyond my... I was not part of
that.

[Speaker is not clear.]

ADV CHASKALSON SC: Were you aware at the time that
Eric Wood had fallen out with his partners at Regiments and
was in the process of leaving Regiments to start Trillian?

MR RAMOSEBUDI: I was not aware.

ADV CHASKALSON SC: I see. Can we then continue on this Trillian memo that is large cut and paste of Regiments in a previous memo. Let us look at the cut and paste. Can you go to page 491?

MR RAMOSEBUDI: [No audible reply]

ADV CHASKALSON SC: And do you see at 491, the first paragraph on the page 36: Whoever was preparing this document, forgot to change one of the Regiments to Trillian.

10 So 36 says:

“Regiments value-add to Transnet in relation to the 1060 four locomotives, ZAR club loan funding can be summarised in the following table.”

Do you see that?

MR RAMOSEBUDI: Ja. Chairperson, but when I look at this, it is still a draft document. As the Chairperson says, it is a document that comes from Regiments. And when you look at it, it is still a draft document. It does not have even – there is a lot of spelling errors and a whole lot of things
20 here.

ADV CHASKALSON SC: Yes, it is a draft. But the point that I wanted to make is that it was really a cut and paste draft. So where the previous document said Regiments, this one now says Trillian.

MR RAMOSEBUDI: That is precisely what I said. I mean, I

do not – I cannot even vouch for this. It is a draft document.

ADV CHASKALSON SC: I want to look at the table under paragraph 39. And here we are talking about what success fees are going to be paid to Trillian in valuable contribution that they have made and it says:

“Success fee in percent ZAR 12 billion 10%,
success fee in rands, net present value 50.2
million.”

And where 50.2 million comes from is if you go up to
10 paragraph 36 it is the comparison that you said was the
appropriate comparison. The comparison not comparing
apples and oranges but comparing apples and apples of
comparing the alleged saving on the club loan with the
comparable pricing of the China development bank loan
which is allegedly R512 million and 10% of that is 50.2
million, is that correct?

MR RAMOSEBODI: That is correct.

ADV CHASKALSON SC: So even assuming that these
figures about savings are correct on the logic, on your
20 logic of what an appropriate comparator would be and an
appropriate success fee, the fee would have been 50.2
million.

MR RAMOSEBODI: That is what has been calculated to
50.2 million, yes.

ADV CHASKALSON SC: Yes. And the date of that

document is 11 September. Can we then go to page 499? And there you will see an email that you sent to Eric Wood on 14 September 2015. That is three days later and it has got an attachment, Smhpinnicaldms.co.za ASP vehicles, customer orders print and if we go down to page 500 we see a vehicle order for a Land Rover. Do you recall sending this email?

MR RAMOSEBODI: I cannot recall on this particular one but I recall having a discussion with the guys at Regiments
10 for purchasing of a car.

ADV CHASKALSON SC: Sorry, having a discussion?

MR RAMOSEBODI: With Regiments about purchasing a car.

ADV CHASKALSON SC: About purchasing a car. If one looks at this order on page 500, it is a vehicle order for you, Mr Phetolo Ramosebodi.

MR RAMOSEBODI: Yes, that is precisely true.

ADV CHASKALSON SC: And I understand in the end you did not purchase this vehicle, is that correct?

20 **MR RAMOSEBODI:** Because it was expensive, yes.

ADV CHASKALSON SC: Yes.

MR RAMOSEBODI: I could not afford it here.

ADV CHASKALSON SC: Why were you sending it to Eric Wood?

MR RAMOSEBODI: Because one of his partners, Mr Litha

Nyhonyha is a part-owner of Waterford Range Rover in Fourways so I thought maybe, you know, there is something that he can do for me.

ADV CHASKALSON SC: Hang on a minute, Mr Ramosebodi, you were in the process of making recommendations to pay at this stage a fee of 50.2 million to an entity linked to Mr Wood and you are hoping that he or his partner can get you a good deal on a Land Rover. Do you think that is appropriate?

10 **MR RAMOSEBODI:** Because there was no untoward(?) to anything.

ADV CHASKALSON SC: Sorry, there was no?

MR RAMOSEBODI: The transaction that we were doing with them, according to me was fair and above the board.

ADV CHASKALSON SC: Sorry, which transaction.

MR RAMOSEBODI: The cap loan – no, the CDB loan CDB loan.

ADV CHASKALSON SC: Fair and above board?

20 **MR RAMOSEBODI:** I am saying it was fair and above board.

ADV CHASKALSON SC: Yes, but do you not think that there is some impropriety about ...[intervenes]

MR RAMOSEBODI: No.

ADV CHASKALSON SC: You do not?

MR RAMOSEBODI: No, I was going to pay the car

through ...[intervenes]

CHAIRPERSON: Hang on one sec, let him finish the proposition he wants to put to you, Mr Ramosebodi.

MR RAMOSEBODI: Okay.

ADV CHASKALSON SC: Do you not think there is some impropriety about being in a position where a decision is about to be made to pay somewhere between R50 and R90 million to certain people or their company and at the same time asking people associated with that company to
10 organise you a deal on a Land Rover?

MR RAMOSEBODI: Sorry, Chairperson, to speak over...

ADV CHASKALSON SC: No, no.

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

MR RAMOSEBODI: Ja. No, I do not – no, because one, I think if - on this particular day I remember very well, somewhere around this particular day, could be the 7th of the 10 September, I had an accident, so I had no car to travel to work and so I was looking for a car to replace the car that had an accident.

20 And the second thing is I did not see it that way because firstly, I am not an authority, you know, to – I had no authority to approve funding, I mean to approve funding, first of all, and to approve any payment of that size of the transaction.

The third thing is that according to me, their

appointment is aboveboard, so there is nothing to hide. You know, I have the right to source funding for my car anyway I want to.

ADV CHASKALSON SC: Mr Ramosebodi, I have to put it to you that it is improper but you can comment on that, I do not propose taking it further.

MR RAMOSEBODI: Chairperson, it could have been improper should they have paid it.

ADV CHASKALSON SC: What the ...[intervenes]

10 **MR RAMOSEBODI:** I would understand.

ADV CHASKALSON SC: Were you not wanting them to organise you a good deal on the car?

MR RAMOSEBODI: No, I could have got it somewhere else but I thought it would be easier for them to give me a discount on a car as compared to other dealers because they might have other opportunities that they are getting from [indistinct] 06.30.

ADV CHASKALSON SC: Yes but the discount would have been a benefit to you would it not?

20 **MR RAMOSEBODI:** Which I would disclose.

ADV CHASKALSON SC: So I know you would have disclosed it but I am putting it to you that the mere that it would not have been hidden if it was not going to be hidden does not remove the impropriety.

MR RAMOSEBODI: Chairperson, we are talking

something that did not happen.

ADV CHASKALSON SC: Yes but it did not happen not because of your decision because of their decision.

MR RAMOSEBODI: No, it is because of my decision, I could not afford, the price was too much.

ADV CHASKALSON SC: Yes, they did not give you the discount you wanted, is that not right? They did not give you a good enough discount.

MR RAMOSEBODI: Chairperson ...[intervenes]

10 **CHAIRPERSON:** So what Mr Chaskalson is saying is this was a case where you were in a position to be part of those who would make a recommendation on a transaction involving them and if now you wanted them to give you a discount on a personal thing, they could have been influenced by the fact that they also wanted to get the recommendation and you were going to be part of those who would recommend, so it could have been seen as well, you know, if you give me a good discount may I will also make a recommendation. If you do not give me the
20 discount, well, I do not know what I will do. Mr Chaskalson, did I put it the way or...?

ADV CHASKALSON SC: You did, Chair.

CHAIRPERSON: Yes.

MR RAMOSEBODI: Chairperson, I was part of the deal chain in the recommendation of the transaction but despite

that, they did not give me, so it means there is no association with that. The transactions were two unrelated transactions.

CHAIRPERSON: But Mr Chaskalson says you tried to get a discount and they resisted, they did not give you the discount. If they had given you the discount then you would have taken the deal. So the effect of this proposition is you tried. The fact that it did not happen does not mean that the attempt was not improper. That is
10 not how you saw it?

MR RAMOSEBODI: No, that is not how I am seeing it, Chairperson.

CHAIRPERSON: Okay. Mr Chaskalson?

ADV CHASKALSON SC: Mr Ramosebodi, can we then go down to 503? It is an email to you on 16 September from Edward Thomas at Transnet copied to Gary Peter. It is in response to that draft memo that you circulated. Do you recall receiving this email from Edward Thomas?

CHAIRPERSON: Maybe before that, Mr Chaskalson,
20 please do not forget your question. You have said that – I am going back to the question that Mr Chaskalson was dealing with the issue of the car, the deal, the discount. You may have seen it in a certain way. At the moment how do you see it? Do you see it the same way as you saw it then or do you get a different perspective now?

MR RAMOSEBODI: Now I am – Chairperson, I am seeing it with the eye of the Commission, I am not seeing it...

CHAIRPERSON: Yes.

MR RAMOSEBODI: At the time I did not see because according to me everything was aboveboard.

CHAIRPERSON: Yes, yes.

CHAIRPERSON: Yes, yes.

MR RAMOSEBODI: You know, it is a free market society and you are willing to do business with who as long as it is
10 aboveboard. That is how I saw it at the time.

CHAIRPERSON: No, no, that is fine, I was just interested in seeing that because – and you – obviously, you must not say you see it if you do not see it, but I just was just interested in seeing whether maybe now that the issues are being raised you might begin to see differently than you saw it at that time.

MR RAMOSEBODI: Ja.

CHAIRPERSON: Yes, you gave an answer but...

MR RAMOSEBODI: If I think ...[intervenes]

20 **CHAIRPERSON:** If you still see it the same way feel free to say so.

MR RAMOSEBODI: No ...[intervenes]

CHAIRPERSON: But if you say look...

MR RAMOSEBODI: No, no, no, no.

CHAIRPERSON: ...maybe there is a different perspective

then it is up to you to indicate.

MR RAMOSEBODI: If at the time I am in the current situation I would not have done it.

CHAIRPERSON: You would not have done it.

MR RAMOSEBODI: I would not have done it.

CHAIRPERSON: Okay, alright. Okay, thank you. Mr Chaskalson?

ADV CHASKALSON SC: Thank you, Chair. Mr Ramosebodi, can you go to page 503?

10 **MR RAMOSEBODI:** I am at that page.

ADV CHASKALSON SC: And it is an email from Edward Thomas to you, 16 September 2015 copied to Gary Peter. Do you recall receiving this email? Mr Thomas sort of cuts and paste with some very big print so it may have stuck out in your memory.

MR RAMOSEBODI: I cannot recall the emails but I see the message. It might have arrived - you know, through yourself, Chairperson, why I am saying I cannot recall some of these things, you may find that it was opened by
20 my secretary then she gave me a paper and says please attend to this. So at the time I am not, I did not receive an email, so I received a copy of an email, so I am attending the message at that point in time. So I am aware of what Eddie Thomas wrote, yes, I am aware of it.

ADV CHASKALSON SC: And – well, let us see what – let

us take the Chair through what he wrote and he is responding to that draft memorandum:

“Hi, here are couple of questions that need to be answered based on the previous submission and the new submission.”

Previous submission was that JP Morgan Regiments submission that we discussed a while back.

“The financial were as follows...”

And he is quoting from the previous.

10 “Given the invaluable contribution Regiments...”

And unfortunately, the cut and paste has gone off the page but I think the point is that he is making the point that the invaluable contribution is from Regiments and JP Morgan. He says:

“The ADC approved the following:

It is recommended that the ADC approve the confined appointment of JP Morgan to hedge that interest rate credit and currency risk, approve the confined appointment of JP Morgan.”

20 Etcetera.

“Approve the contract extension appointment of Regiments...”

That was from 99.5 to 166 million more. And then:

“Delegate authority to the Acting...”

I suspect it would have been the CFO.

“...to give effect to the confinement.”

You recall that recommendation to the BADC which was adopted and which we have seen previously, remember the one that related to Regiments and JP Morgan.

“From our discussion the first point is still in place and JP Morgan is still providing the service and the fees as described above will still be valid.”

So that would be the cross-currency swaps.

MR RAMOSEBODI: Yes.

10 **ADV CHASKALSON SC:** The second point:

“Where JP Morgan had to lead and underwrite the syndicated loan is where JP Morgan failed to deliver. The document is silent on the fees for this and it assumed that it would be included in the market-related costs of the funding. If the fees for the lead and underwriting is not included in the market-related costs of the funding and there is a specific fee, is the one we want to pay Trillian, and that will also have to be disclosed to the ADC as an
20 omission from the first submission.”

Because when JP Morgan was going to do the job they would just put an extra 10 basis points or whatever onto the spread and there would not be a specific fee for this exercise, that is what he says.

“Does Trillian have the capacity and capability to

underwrite the loan?”

Can I stop you there? Did Trillian have the capacity and capability to underwrite the loan?

MR RAMOSEBODI: No, not underwrite the loan.

ADV CHASKALSON SC: No, it could not underwrite.

MR RAMOSEBODI: Not underwrite, no.

ADV CHASKALSON SC: And JP Morgan was going to be paid for underwriting, not just arranging.

10 “Is Trillian going to provide the exact same services that JP Morgan was going to provide and why is there is this potentially different than that of JP Morgan?”

Or was Trillian going to provide the same services as JP Morgan or not?

MR RAMOSEBODI: Too different.

ADV CHASKALSON SC: Obvious because it was going to do no underwriting.

MR RAMOSEBODI: Ja.

20 **ADV CHASKALSON SC:** So Transnet would have – well, no security of an underwriter in this arrangement.

“The Regiments fee was for the successful conclusion of the funding transaction. I would interpret that being the hedging an loan based on how I am seeing Trillian being paid. Is that not duplicate as to what was paid Regiments?”

He is saying when you motivate at Regiments, he said part of what they are doing is hedging as well as raising and is not what you are paying Trillian now already included in what you had paid Regiments. Is that not what he was saying?

MR RAMOSEBODI: Yes.

ADV CHASKALSON SC: I may be wrong, but is that not what he was saying?

MR RAMOSEBODI: It is not what I am saying. No, it was
10 – it is not a duplication.

ADV CHASKALSON SC: Okay, so – now I know you are saying it is not a duplication.

MR RAMOSEBODI: Yes.

ADV CHASKALSON SC: But he was saying it was a duplication.

MR RAMOSEBODI: No, he was asking me questions whether [inaudible – speaking simultaneously]

ADV CHASKALSON SC: Okay.

20 “The footer in the document must reference the correct value of the loan. If different, I will track changes in the memos, the areas where you will have to provide further information.”

And then at the end he says:

“Seeing that we are only changing the existing supply for the loan on a previously approved

confinement, I do not think that we have to restate the grounds for confinement and can thus delete the whole section on the grounds for confinement and confidentiality in the PPM. Gary, please comment.”

What is he saying in that last paragraph?

MR RAMOSEBODI: He is talking procurement language here which I do not understand.

ADV CHASKALSON SC: Is he not – well, let me see how I understand – let me put to you how I understand it and
10 maybe that will elucidate things. He is saying when we motivated for Regiments to get their fee previously, we said we wanted a – sorry, where in that Regiments and JP Morgan on that original memorandum we said this needed to be a confinement appointment. Although we are now getting rid of both Regiments and JP Morgan, we do not need to ask for the confinement of Trillian this time because we have already asked for confinement last time so we can choose who the confinement beneficiary is. I think that is what he is saying. Does that make sense to
20 you?

MR RAMOSEBODI: Yes, I think so, it makes sense.

ADV CHASKALSON SC: Can you go down to page 514?

CHAIRPERSON: Sorry, Mr Chaskalson, we are at five past five, we can still continue from my side but I want us to have the same idea in terms of how long we will be.

Yesterday we had been told that we should – the witness, the evening witness should be about two hours, we ended up, I think, with much more than that, we finished at 10 p.m. What is your estimate of how much more? I think we might need to take a break now but I think at six or quarter past we might have to adjourn, from my side.

ADV CHASKALSON SC: Chair, I will certainly attempt to finish by six.

CHAIRPERSON: By six, yes.

10 **ADV CHASKALSON SC:** Or within an hour after our resumption.

CHAIRPERSON: Yes. Oh, okay, alright. So maybe let us take a short break now, maybe ten minutes, and then we can resume and then continue.

ADV CHASKALSON SC: Thank you, Chair.

CHAIRPERSON: Is that alright? Okay, we adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

ADV CHASKALSON SC: Thank you Chair.

20 **CHAIRPERSON:** Thank you, let's proceed.

ADV CHASKALSON SC: Page 514, your response to Eddie Thomas's email and we may need to go back to that email on page 503 to understand your answers, so the first point was – that Eddie Thomas made, sorry – is these CPI swaps are still in place and J P Morgan still providing the

service and fees are prescribed above will still be valid, and your answer was yes that is correct. Do you see that?

CHAIRPERSON: Just switch on your mic.

MR RAMOSEBUDI: Sorry Chairperson, yes, I see it, yes indeed the first point is correct.

ADV CHASKALSON SC: Then the second point was that the J P Morgan fees would not be disclosed but would be included within the cost of funding and Eddie Thomas had said the document is signed for the fees for this and it is
10 assumed that it would be included in the market – oh sorry – second point where J P Morgan had to lead and underwrite the syndicated loans where J P Morgan failed to deliver the document is signed on the fees for this and it is assumed it would be included in the market related cost of funding, and your response to that was the fees were not disclosed, this is why we are now disclosing the fees for Trillian, is that correct?

MR RAMOSEBUDI: True.

ADV CHASKALSON SC: And ...[intervenes]

20 **CHAIRPERSON:** I am sorry, that closed is supposed to be disclosed.

MR RAMOSEBUDI: I think it was supposed to be disclosed.

CHAIRPERSON: Oh ja, on the second bullet point.

ADV CHASKALSON SC: Yes Chair, that is what Mr

Ramosebudi concluded.

MR RAMOSEBUDI: It was supposed to say disclosed.

CHAIRPERSON: Ja, okay. Yes continue.

ADV CHASKALSON SC: And then on the third bullet point you said if he fees for the lead and underwriting is not included in the market related costs of the funding there's a specific fee, is the one we want to pay to Trillian then that will also have to be disclosed to the ADC as an admission from the first submission and I think your second
10 bullet point covers the answer to that, would that be correct?

MR RAMOSEBUDI: Correct sir.

ADV CHASKALSON SC: And your third bullet point – sorry his third question was, does Trillian have the capacity and capability to underwrite the loan, and your answer was, Trillian has the capacity and capability, was that correct?

MR RAMOSEBUDI: It was not entirely correct because ...[indistinct – dropping voice] to underwrite ...[intervenes].

20 **CHAIRPERSON:** Well, first do you confirm that, that's the answer you gave and that...[intervenes].

MR RAMOSEBUDI: That's the answer I gave ja.

CHAIRPERSON: You can talk about whether what you said is correct.

MR RAMOSEBUDI: Ja that's the answer I gave but I don't

think I captured the essence of the questions from him for ...[indistinct – dropping voice].

ADV CHASKALSON SC: Well can we agree that Trillian certainly didn't have the capacity or capability to underwrite the loan?

MR RAMOSEBUDI: Underwrite the load, they didn't have the capacity.

ADV CHASKALSON SC: Yes, and we know at that stage Trillian was little more than an idea in the head of Eric
10 Wood. Can we – so what did you think Trillian did have the capacity and capability to do?

MR RAMOSEBUDI: They had the capacity to arrange for funding of that nature with us at management yes, not underwriting.

ADV CHASKALSON SC: Sorry, who had that capacity?

MR RAMOSEBUDI: Big banks they can have the capacity, but they were not willing to offer the capacity at the time.

ADV CHASKALSON SC: Yes, big banks, certainly can do that but Trillian, who at Trillian had – who would have the
20 capacity to engage...[intervenes].

MR RAMOSEBUDI: You need a bank with a balance sheet to underwrite.

ADV CHASKALSON SC: Yes, and Trillian certainly didn't have a balance sheet of a bank to underwrite.

MR RAMOSEBUDI: No.

ADV CHASKALSON SC: But what capacity and capability did Trillian have?

MR RAMOSEBUDI: They had a Trillian to arrange for the Club loan type of transaction with various asset managers.

ADV CHASKALSON SC: And as far as you were concerned the only person, you'd met at Trillian was Daniel Roy.

MR RAMOSEBUDI: I met Daniel Roy.

ADV CHASKALSON SC: And did he have the capacity,
10 single headedly to arrange...[intervenes].

MR RAMOSEBUDI: When I look at the profile, they gave me, yes.

ADV CHASKALSON SC: Yes, but who'd done the arrangement on this loan, who had actually done the arrangement on this loan as far as you were concerned?

MR RAMOSEBUDI: The people that I worked with in the legislature was Eric Wood with Moselo and Ntswana.

ADV CHASKALSON SC: Yes, and they were all, at that stage part of Regiments, is that so?

20 **MR RAMOSEBUDI:** Yes.

ADV CHASKALSON SC: Had you seen anybody from Trillian actually arranging this loan?

MR RAMOSEBUDI: At the beginning when we dealing with this they were not there.

ADV CHASKALSON SC: Yes, they weren't there, and the

arrangements were made by people, then at Regiments.

MR RAMOSEBUDI: That's precisely true.

ADV CHASKALSON SC: Yes, so when you said Trillian has capacity and capability, why did you say that?

MR RAMOSEBUDI: That's when I – after I've met Daniel Roy and he provided me with his file.

ADV CHASKALSON SC: And you thought, one man, Mr Roy, could arrange a R12billion loan for Transnet?

MR RAMOSEBUDI: I did not ask him, what the number of
10 people that he worked with...[indistinct - dropping voice]

ADV CHASKALSON SC: But you do accept now, that your answer to the question, does Trillian have the capacity and capability to underwrite the loan was incorrect, they didn't have the capacity?

MR RAMOSEBUDI: That was not the information he gave me.

ADV CHASKALSON SC: Sorry?

MR RAMOSEBUDI: That was not the information he gave me.

20 **ADV CHASKALSON SC:** No, no the capacity and capability to underwrite the loan, you never believed that they could underwrite the loan?

MR RAMOSEBUDI: I said to myself, Chairperson, I said this was not the intention of how to respond to this one.

CHAIRPERSON: Hang on one sec, I thought earlier on,

you did say, that Trillian didn't have the capacity and capability.

MR RAMOSEBUDI: To underwrite.

CHAIRPERSON: To underwrite.

MR RAMOSEBUDI: Yes.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: Did not have the capacity to underwrite.

MR RAMOSEBUDI: Yes.

10 **CHAIRPERSON:** Yes.

MR RAMOSEBUDI: Yes.

ADV CHASKALSON SC: Mr Thomas' next question is, is Trillian going to provide the exact same service that JP Morgan was going to provide and why is theirs potentially different from JP Morgan, and your answer to that was, Trillian will provide the same services, you see that on page 514, was Trillian going to provide the same services?

20 **MR RAMOSEBUDI:** No, I've already stated in the above that, actually they don't have the capacity, so they were not going to provide the same service.

ADV CHASKALSON SC: So, it's two answers in a row that are both incorrect and both create the same incorrect impression, is that not correct – would you accept that, that both of those answers, Trillian has capacity and capability and Trillian will provide the same services were

both wrong?

MR RAMOSEBUDI: At the time when I looked at this, I was not aware that it is like this but now I can see that I shouldn't have written it that way.

ADV CHASKALSON SC: So, you should have said, no Trillian does not have the capacity and capability and no, Trillian will not be providing the same service?

MR RAMOSEBUDI: No, I should have indicated that Trillian is going to give a different service than what JP
10 Morgan was going to give.

ADV CHASKALSON SC: Yes, and it didn't have the capacity and capability to provide the services that JP Morgan was going to provide?

MR RAMOSEBUDI: The underwriting capacity.

ADV CHASKALSON SC: Yes, now on a loan of R12billion underwriting, I'd imagine, is quite important?

MR RAMOSEBUDI: It is – it was quite important but at the time they were not willing to offer that balance sheet.

ADV CHASKALSON SC: Sorry, they were not willing?

20 **MR RAMOSEBUDI:** To offer the balance sheet.

ADV CHASKALSON SC: JP Morgan was not willing to offer the balance sheet?

MR RAMOSEBUDI: Yes.

ADV CHASKALSON SC: So, JP Morgan were not prepared to do the underwriting?

MR RAMOSEBUDI: Precisely.

ADV CHASKALSON SC: Was that because they considered it too risky?

MR RAMOSEBUDI: I think it was because of the concentration because they were doing the cross-currency swap on the CD below.

ADV CHASKALSON SC: I see, but Trillian, who were not going to underwrite at all were willing to come in and arrange, apparently?

10 **MR RAMOSEBUDI:** They didn't have the requested balance sheet to underwrite that much.

ADV CHASKALSON SC: Yes, they didn't have – they didn't have balance sheet to underwrite that much, yes, that is correct.

MR RAMOSEBUDI: Because the precursor to the transaction to the Trillian transaction was Regiments which has already done a lot of work, so there was no requirement for the underwriting.

20 **ADV CHASKALSON SC:** Yes, was there any underwriting provided on this club loan?

MR RAMOSEBUDI: No there was no underwriting provided.

ADV CHASKALSON SC: Let's look at the next question from Mr Thomas and he said,

“The Regiments fee was for the successful

conclusion of the funding transaction, as I interpret that being the hedging and loan based on how I am seeing Trillian being paid, is that not duplicate to what was paid to Regiments”?

So, he’s saying, are you not paying Trillian for something that you have already paid Regiments? Your answer is, no duplication with Regiments and why is that?

MR RAMOSEBUDI: Because Regiments did the CDB loan and the advisory on the cost currency transaction, so this
10 was a club loan for the R12billion.

ADV CHASKALSON SC: I see, and the last question we needn’t concern ourselves with because it just deals with amounts. Can I take you to 517...[intervenes]?

CHAIRPERSON: I’m sorry Mr Chaskalson, before you move away from page 514, Mr Ramosebudi, those two answers that you gave, that are not correct, as I understand the position this is not a case where, at that time, when you gave those answers you thought that Trillian did have capacity and capability and that Trillian
20 would provide the same services but since then you have discovered that they didn’t have, am I correct?

MR RAMOSEBUDI: Yes, you’re quite correct.

CHAIRPERSON: Yes, so how did it come about that you gave answers that were not in line with your knowledge of Trillian’s capability and the services that they would

provide?

MR RAMOSEBUDI: No, Chairperson, it was not a question of trying to give a different answer because the issue was that Trillian was going to do this syndication of the club loan it was not about the underwriting because in the appointment of JP Morgan it was not exclusively saying, it's an underwriting it was raising a billion dollar equivalent in rand and underwriting and syndication.

CHAIRPERSON: Maybe let's take those answers, one at
10 the time. The third bullet point, page 514 to the question whether Trillian had the capacity and capability you said, Trillian has capacity and capability, based on what – on your previous answer to me, it seems to me that you should not have said that because that's not what you believed to be the position, is that correct?

MR RAMOSEBUDI: the capacity I was mentioning here was not necessarily from a balance sheet point of view because I knew from day one, at the time that Trillian doesn't have the sufficient balance sheet, the capacity was
20 that they have the competencies and skill required for the type of transaction that we want to do.

CHAIRPERSON: Yes.

MR RAMOSEBUDI: Yes, that I know it was correct because a whole lot of work was already done, you know, as I said, prior to the changeover of Regiments and Trillian

through the SD requirements, that work, already was done, so that capacity from a competency point of view, that was already achieved. So, that's why I was casually saying it's okay it's the same service it's the same capacity.

CHAIRPERSON: Well, now, let's take it – was it true, was it correct to respond to the question by saying, Trillian had capacity and capability, was its correct bearing in mind what the question was?

MR RAMOSEBUDI: To leave it at that level it's not
10 correct...[intervenes].

CHAIRPERSON: It's not correct?

MR RAMOSEBUDI: I should have expanded.

CHAIRPERSON: Yes, okay, alright and as you said, you are not just saying, it's not correct because you, subsequently discovered that they did not have capacity but at that time you thought they had. You knew at that time that they did not have capacity?

MR RAMOSEBUDI: From a balance sheet point of view, yes.

20 **CHAIRPERSON:** Yes, which is what was required, isn't it?

MR RAMOSEBUDI: Yes.

CHAIRPERSON: Yes, so my question is, how did it come about that you gave an answer that was not in accordance with your knowledge of their capacity and capability?

MR RAMOSEBUDI: I'm saying, through myself

Chairperson, that I should have expanded to say, they don't have the sufficient – they don't have the balance sheet for underwriting but they have capacity and the competencies to do the work, that is what I should have done.

CHAIRPERSON: How did it come about that you didn't add that qualification to make sure that it accorded with your knowledge, how did that come about that you did not add that qualification?

10 **MR RAMOSEBUDI:** I think it was just a casual mishap that I left it and not that it was intentional.

CHAIRPERSON: And then on the next one, Trillian will provide the same services, how did that come about that you said Trillian would provide the same services in circumstances where, as I understand your evidence, you knew at the time that Trillian would not provide the same services?

MR RAMOSEBUDI: I just – I applied the same – I can say I applied the same argument, you know, from the above.

20 **CHAIRPERSON:** Hmm, okay, Mr Chaskalson?

ADV CHASKALSON SC: Thank you Chair. Can we go to page 517 and that's an extract from the minutes of the Board acquisitions and disposals Committee on 1 October which resolved the following:

“The appointment of Trillian to replace JP Morgan

as lead manager of the US Dollar 1 billion ZAR equivalent club loan which was previously confined to JP Morgan. The termination of JP Morgan on the ZAR syndication loan and delegation to the Group Chief Executive to approve and sign all the documentation relating to this confinement”.

So, the Board acquisition and disposals Committee, on 1 October, gave the appointment to Trillian. Let’s look at the minutes, the narrative of those minutes it starts at
10 page 518. First, we see who was present there, Mr Stan Shane was the Chairperson, Ms Elsie Mabaso was a member, Mr ZA Nagdi [?] another member and Mr Seleke who was a member. Mr Seleke, I understand at one stage, became DG of Public Enterprises, are you aware of that?

MR RAMOSEBUDI: I’m aware.

ADV CHASKALSON SC: Mr Nagdi, do you know of him?

MR RAMOSEBUDI: I can’t recall.

ADV CHASKALSON SC: Yes, I think some interesting evidence about Mr Nagdi in the forthcoming weeks, Mr
20 Mabaso or Ms Mabaso?

MR RAMOSEBUDI: I remember her.

ADV CHASKALSON SC: And what about Mr SD Shane?

MR RAMOSEBUDI: I remember him.

ADV CHASKALSON SC: Who was he?

MR RAMOSEBUDI: I remember him.

ADV CHASKALSON SC: Did he disclose any relationship with Trillian that you recall were you aware that he had any relationship with Trillian?

MR RAMOSEBUDI: I don't know that, when I came to the meeting it was already ...[intervenes].

ADV CHASKALSON SC: I see...[intervenes].

MR RAMOSEBUDI: [Indistinct – dropping voice].

ADV CHASKALSON SC: Was that in your encounters with Mr Shane, did he ever disclose that he had a relationship
10 with Trillian?

MR RAMOSEBUDI: Unfortunately, I never interacted with Board members.

ADV CHASKALSON SC: I see, he never mentioned, for instance, that he had a Trillian email address?

MR RAMOSEBUDI: I never interacted with Board members Chair.

ADV CHASKALSON SC: I see and if we see partial attendance under paragraph 1.3 down at the bottom, three from the bottom, Mr Piri Ramosebudi, Group Treasurer.
20 So, you were at the meeting, at least in part?

MR RAMOSEBUDI: I came in to present that submission.

ADV CHASKALSON SC: Well let's look at that submission, let's go to 526 and page 526, paragraph 5.8,

“Change in lead manager for ZAR club loan, Mr

Ramosebudi joined the meeting at 17h15. Management took the Committee through the submission as contained in the meeting pack”,
When they say management, would that be you?

MR RAMOSEBUDI: Yes.

ADV CHASKALSON SC: “The submission was taken as read, the purpose of this submission was to request the Committee to approve the following. The appointment of Trillian in place of JP Morgan as lead manager of the USD 1billion rand equivalent club loan which was previously confined to JP Morgan. The termination of JP Morgan on the ZAR syndication loan, delegation of authority to the GCE to approve all documentation relating to this confinement. Management indicated that the company had signed the mandate letter and term sheet for the USD 2.5billion 15-year amortising loan from China Development Bank to finance 232 and 359 locomotives from China North Railways and China South Railways, respectively. The Committee noted that the company decided to split the transaction into two tranches, namely the USD 1.5billion tranche and the standby facility of USD 1billion tranche. JP Morgan was appointed through a confinement approved by the Committee to lead

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20

the ZAR club loan as a substitute for the USD 1 billion standby facility to lower the overall cost of the transaction and to avoid forex exposure and the need for cross-currency swaps. The Committee notes that Trillian is a black owned company”,

Can I just stop there, you presented this, have you seen any evidence that Trillian was a black owned company?

MR RAMOSEBUDI: Chairperson I can't recall me
10 presenting in that fashion.

ADV CHASKALSON SC: Sorry, you can't recall you presenting that?

MR RAMOSEBUDI: Ja because there's a submission that was submitted so that's what I was taking them through, so I can't recall this is what was written there.

ADV CHASKALSON SC: You're not sure that, that was written on the submission?

MR RAMOSEBUDI: I cannot recall that.

ADV CHASKALSON SC: You can't recall?

20 **CHAIRPERSON:** Can you recall whether you would have said it even if it wasn't in the submission or not, or that you may have said it even though it might not have been in the written submission?

MR RAMOSEBUDI: No, Chairperson, I present things that I've written down or things that I've gone through in the

submission, so I can't – unless we have that submission here that will tell you this is what is...[intervenes].

CHAIRPERSON: Of course you may have had no reference in the written submission to Trillian being a black owned company but if somebody in the meeting asked the question, you may have – you might have given information that was not in the written submission, I would imagine, if you had knowledge of what they were asking, I take it?

MR RAMOSEBUDI: I know I present things that I have
10 knowledge of and I – because I might have read it through the document, that's what I would have done but where I'm sitting now, I can't recollect that this is what I said.

CHAIRPERSON: Yes, and you don't know whether you knew at that time, you knew Trillian to be a black owned company, you don't remember how your knowledge was as to whether it was a black owned company?

MR RAMOSEBUDI: The fact that Eddie Thomas, who I interacted with in the previous email was responsible for procurement, he could have verified that information if it
20 was in the submission itself.

CHAIRPERSON: But you don't know whether – what you knew and what you didn't know at the time?

MR RAMOSEBUDI: You know, when we draft submissions, Chairperson, there's a whole lot of other people that help, you know, contribute and if you look at it from this draft, I

can see it's myself, himself, Eddie Thomas and Gary Peter and ...[indistinct – dropping voice] who signed off. So, Eddie Thomas would have contributed from a procurement perspective in – for the information that he presented there.

CHAIRPERSON: Mr Chaskalson?

ADV CHASKALSON SC: So, we should speak to Mr Thomas about the BEE credentials of Trillian?

MR RAMOSEBUDI: Ja, that's it, he can comfortably speak
10 on the procurement issues and BEE issues.

ADV CHASKALSON SC: Thank you. There are some things that you can speak on though, let's get to those.

“Trillian is the black owned company and supply and development partner of Regiments Capital, the funding advisor on the 1064 locomotives transaction. Trillian was found capable of delivering on the required club loan deal at more comparable price than the JP Morgan proposal resulting in a saving of approximately 820million
20 with 10% fees being payable to Trillian for the transaction 82million”.

So, let me ask you two questions, you'll recall that Trillian's appointment – sorry Regiments appointment on the 1064 locomotives transaction was something that the BADC had already considered and had put a budget on. It

used to be 90 – remember we looked at it earlier I think it was 95 then it jumped up by another 166 on the China Development Bank loan which facilitated after – with that about 147million going to Albertine and then on to Sahara but that mandate had a number on it, it was – they'd been increased to 265million that is what Transnet had allocated for that advisory function. On what basis, was it now possible to find another 82million for that mandate?

MR RAMOSEBUDI: Chairperson, and I think I've already
10 indicated in the previous question that, I cannot competently discuss or respond on procurement members or procurement processes at this point in time because I'm not fully conversant with them. Should there be – or had an opportunity to procure something it was always referred to the procurement and then they will deal with the procurement issues.

CHAIRPERSON: But I understand Mr Chaskalson's question not to be a procurement question, if I can put it that way, I understand it to be a financial one in the sense
20 that he is saying, how – what would have been the basis to find another R82million, Mr Chaskalson you must tell me if I misunderstood you?

MR RAMOSEBUDI: That's correct Chair.

ADV CHASKALSON SC: It's not a procurement issue to say, can you do this, can you not do this, just say what

would have been the basis for finding the R82million in addition – another R82million at that time?

MR RAMOSEBUDI: Chairperson, Mr Chaskalson is talking about an extension of contract with Regiments to 200 numbers, a 35 number and this is a payment to Trillian which is not linked to that extension contract. So, I just don't understand why he is leaning to the two transactions.

MR CHASKALSON SC: As I understand, the way Transnet budgets in relation to its procurement, is in relation to any
10 given procurement there is a budget given to the procurement as a whole which will include the primary contractor and the supplier development partner and that budget, I was told, or we saw previously, had initially been 99 then it jumped to 265, I think it was, have I misunderstood how Transnet budgets?

MR RAMOSEBUDI: I don't know because I was not part of the budgeting process around contractors, main contractors, and sub-contractors, that I have no clue. That's why, in this transaction Eddie Thomas was brought
20 in to deal with those specific issues.

MR CHASKALSON SC: Maybe we'll have some conversations with Mr Thomas but there is something about which you very much did know about. Look at that last phrase,

“Trillian was found capable of delivering on the

required loan deal at a more comparable price than the JP Morgan proposal resulting in a saving of approximately 820million with 10% fees being payable to Trillian for the transaction 82million”,

Now where on earth does that figure, 120million come from, you presented this?

MR RAMOSEBUDI: Yes, I presented this Chairperson.

ADV CHASKALSON SC: Do you remember what your last memo in relation to savings and apples and oranges was?

10 **MR RAMOSEBUDI:** I remember the draft, Chairperson.

ADV CHASKALSON SC: So let me take you back there 11 September. It is at page 491.

MR RAMOSEBUDI: I am at 491.

ADV CHASKALSON SC: Do you see that table – do you remember that table?

MR RAMOSEBUDI: Yes I remember the table.

ADV CHASKALSON SC: And there are two tables on the top half of the page. The one says Savings achieved by securing club loan at 68 basis points cheaper than the
20 equivalent dollar funding from CDB. It says Savings in ZAR 478 million which then becomes 502 million I am – how does 478 becomes 502?

MR RAMOSEBUDI: Chairperson you know it is difficult to discuss a draft because if you look at this this was my first draft that I sent to Gary’s office and from Gary’s office there

is a lot of people who have contributed into this draft. So as is in front of me I see a draft so I cannot comparably say this draft is what has gone to the ADC for approval.

ADV CHASKALSON SC: I am sure it did not go to the ADC for approval. But if you remember the genesis of this draft Regiments gave you a draft that compared this new club loan with the JP Morgan deal and found a saving of about 763 million and you said that is apples and oranges. Rather compare this new deal with the China Development Bank deal. Do you remember that?

10

MR RAMOSEBUDI: Yes I remember that yes.

ADV CHASKALSON SC: So you wanted apples compared with apples?

MR RAMOSEBUDI: Yes I remember that.

ADV CHASKALSON SC: And when the apples came back compared with apples from Regiments the saving was 502 million?

MR RAMOSEBUDI: Yes I remember that.

ADV CHASKALSON SC: And then when we go to apples against oranges we see 763 million. But nowhere do we see 820 million.

20

MR RAMOSEBUDI: It was – that as a draft. That was a draft which was still to be worked and the final draft is not what I see here.

ADV CHASKALSON SC: Yes I know the final draft is not

what you see here but we know that you motivated a saving of 820 million. Do you have any recollection of how you motivated that 820 million?

MR RAMOSEBUDI: There was a final draft which was worked out and that final draft I think the people who contributed to it you know they worked out you know the numbers properly.

ADV CHASKALSON SC: And who were those people then?

MR RAMOSEBUDI: I know I worked with my team in the
10 Treasury and then another person that I worked with here for the Development of this document is – is Eddie and then there was Helen Walsh who worked on this document actually. Helen Walsh worked on the final document and then there was a lady also in finance who worked on these documents called – I forget but her surname is Chukudu.

ADV CHASKALSON SC: Sorry Chukudu?

MR RAMOSEBUDI: Ja.

ADV CHASKALSON SC: And as you stand now you just do not know how this figure of 820 million arose?

20 **MR RAMOSEBUDI:** And the final document which is – but if you look at it it is very different from this one. This is the final document Chair that I had. It is the one that went to the ADC.

CHAIRPERSON: Oh is it a document that we do not have in the bundle?

MR RAMOSEBUDI: I think it is a document you do not have.

CHAIRPERSON: Oh okay. So I am sure Mr Chaskalson would love to get a copy.

ADV CHASKALSON SC: Could I have a look at it?

MR RAMOSEBUDI: I will share with you.

ADV CHASKALSON SC: Thank you very much. Can I just glance at it and then I – you keep it and I will make – I will...
Chair I wonder if we could have copies made of this document for yourself.

10 **CHAIRPERSON:** Yes.

ADV CHASKALSON SC: So that when I ask the questions you can at least see it.

CHAIRPERSON: Yes no.

ADV CHASKALSON SC: In the meantime I will move on so that we do not waste time.

MR RAMOSEBUDI: Yes that is fine.

ADV CHASKALSON SC: But we will come back to it.

CHAIRPERSON: Ja okay.

20 **ADV CHASKALSON SC:** So we will come back to how 50.2 became 82 but let us then see what happened after this meeting. On – this meeting was on 1 October – can we go to 545?

CHAIRPERSON: Did you say 545?

ADV CHASKALSON SC: 545 Chair yes.

CHAIRPERSON: Okay.

MR RAMOSEBUDI: 545?

ADV CHASKALSON SC: 545. And there on 16 November you will see an email from yourself to yourself attaching a document called Trillian Mandate. And if you go to the next page 546 you will see a draft of a mandate to Trillian and it runs for I think seven pages. And if you go to 560 you will see the signed version of it on 18 November 2015 – well sorry I am just- it is late in the day. Can I go back to 16 November do you recall sending this draft mandate to
10 yourself on 16 November? Do you re – yes well that is the first question. Do you accept that you – that this email where you attach the draft mandate send it to yourself was something that you did on 16 November?

MR RAMOSEBUDI: I cannot recall.

ADV CHASKALSON SC: Cannot recall?

MR RAMOSEBUDI: No.

ADV CHASKALSON SC: Did you draft the draft mandate?

MR RAMOSEBUDI: No.

ADV CHASKALSON SC: So who drafted the draft mandate?

20 **MR RAMOSEBUDI:** I think it was picked for me.

ADV CHASKALSON SC: Sorry you think it was?

MR RAMOSEBUDI: This was picked – this was – this they drafted themselves. I shared the – I shared the generic mandate.

ADV CHASKALSON SC: Sorry you shared?

MR RAMOSEBUDI: A generic mandate.

ADV CHASKALSON SC: A generic mandate. So this would have come from Transnet Legal?

MR RAMOSEBUDI: Yes.

ADV CHASKALSON SC: It would have come...

MR RAMOSEBUDI: No, no this one was discussed between Transnet and Trillian.

ADV CHASKALSON SC: It is a document that you have in draft form. Let us go to page 546 it says Print on Trillian
10 headed note paper. And you have the draft. How did – how would a draft that says Print on Trillian headed note paper get to you?

CHAIRPERSON: I am sorry Mr Chaskalson did you say we should go to 506?

ADV CHASKALSON SC: Oh sorry 546 Chair.

CHAIRPERSON: 546.

ADV CHASKALSON SC: 546. How would a draft which says Print on Trillian headed note paper get to you?

MR RAMOSEBUDI: Because we deal with various
20 institutions. They do not want to deviate from the standard clauses that a client has so you share them with them – a draft term sheet or a draft legal document or a draft facility agreement to put on their letterhead if they feel confident that it capture – it captures their interest.

ADV CHASKALSON SC: And who would the relevant

institution be here who would be concerned about?

MR RAMOSEBUDI: We deal with – we have dealt with [00:09:26] self Chairperson. We are a number of counter parties in our – in either syndicated loans or club loans or bi-lateral loan or facility agreements you know that I have dealt with most institutions. And we exchange and share facility agreements or draft facility agreements or draft bi-lateral loan agreements to the extent that satisfies me and them then it gets concluded by the legals.

10 **CHAIRPERSON:** Just so that I understand. The mandate would have been Transnet's mandate to Trillian is it not? The mandate that we talk about.

MR RAMOSEBUDI: It could be Transnet's mandate, it could be a draft mandate that we have used for the different clients.

MR RAMOSEBUDI: Yes but what I am talking about ultimately.

MR RAMOSEBUDI: Ultimately.

CHAIRPERSON: The mandate would – that we talking about
20 would have been Transnet's mandate to Trillian.

MR RAMOSEBUDI: It will be a mandate between Trillian and Transnet ultimately.

CHAIRPERSON: Yes. Yes but somebody must give a mandate.

MR RAMOSEBUDI: Yes you are right.

CHAIRPERSON: Yes and that would be Transnet.

MR RAMOSEBUDI: No you could give any.

CHAIRPERSON: Huh.

MR RAMOSEBUDI: We could give any.

CHAIRPERSON: Well who was going to be – I mean was Trillian not going to be rendering a service or doing work for Transnet and Transnet therefore had to say this is the scope of your mandate.

MR RAMOSEBUDI: Ja they...

10 **CHAIRPERSON:** If I employ you as my financial advisor I decide the scope of your mandate. If I employ Mr Chaskalson as my advocate and I say deal with this criminal matter his mandate falls within the criminal matter he cannot start dealing with my commercial matters. I decide the scope of the mandate. And he can say if he – if he is happy with it that is fine if he is not happy with it I will go and look for somebody who will be happy with it.

MR RAMOSEBUDI: No the scope of the mandate is what would have been agreed which should be reflected in the
20 mandate itself.

CHAIRPERSON: Yes but the principle as it were is it not the principle who says this is what I want you to do? Then you can say I am happy with that or you might say Well I would like you to give me more – bigger scope of the mandate for reason ABCD and then the principle says okay I will give you

more or no I am not giving you more.

MR RAMOSEBUDI: No the scope is...

CHAIRPERSON: Or is there some...

MR RAMOSEBUDI: Sorry Chairperson that I talk over you.

CHAIRPERSON: Ja. No, no, no I am saying is there something I am missing?

MR RAMOSEBUDI: No the scope would have been agreed up front.

CHAIRPERSON: Huh-uh.

10 **MR RAMOSEBUDI**: But the nature of the mandate could be anywhere – coming from anywhere. You can from a – from the supplier or the service or it could be from the client who is will be receiving the service. But ultimately we need to negotiate the terms and – of that mandate to be agreed upon and sign off.

CHAIRPERSON: Mr Chaskalson continue.

ADV CHASKALSON SC: Thank you Chair. Well I am not going to push this further but can I ask you then to go down to page 562? And there we see the signed version of the
20 mandate signed by Siyabonga Gama, Gary Peter and Daniel Roy for Trillian on 18 November 2015. Is this what was then the contract between Transnet and Trillian?

MR RAMOSEBUDI: That is the signed contract between Transnet and Trillian.

ADV CHASKALSON SC: Can I take you to page 568. That

signed contract is dated 18 November 2015. Trillian wasted very little time on the same day they issued an invoice to Transnet for R82 million plus VAT coming to R93 480 000.00. The signatures on that invoice that I see do you identify them as Gary Peter and Siyabonga Gama?

CHAIRPERSON: And what page is that Mr?

ADV CHASKALSON SC: At 568.

CHAIRPERSON: Oh okay.

ADV CHASKALSON SC: Can you identify those two
10 signatures as Gary Peter and Siyabonga Gama?

MR RAMOSEBUDI: Yes true.

ADV CHASKALSON SC: So those – those would have been the people inside Transnet who authorised payment of this invoice?

MR RAMOSEBUDI: Yes true.

ADV CHASKALSON SC: And if we go to 569 we see a payment advice issued the following day 19 November 2015 to pay Trillian Asset Management R93 480 000.00 is it again Gary Peter and Siyabonga Gama whose signatures we see
20 authorising that? Mr Ramosebudi.

MR RAMOSEBUDI: That is their signatures yes.

ADV CHASKALSON SC: That is their signatures. Is it the practice of Transnet usually to pay on 1 day – 1 day after invoice?

MR RAMOSEBUDI: I would not know Chairperson the

arrangement between the client or the supplier and the client. I – these things they had – they have happened you know outside my area of payment.

ADV CHASKALSON SC: I see. Well the evidence will show that the amount of R93 480 was paid into Trillions bank account on 4 December 2015. Are you aware that four days later 80% of that amount being R74 784 was transferred to Albertime?

MR RAMOSEBUDI: I am not aware Chairperson.

10 **ADV CHASKALSON SC:** And you were not aware – you are not aware now and you were not aware then?

MR RAMOSEBUDI: I was not aware then and I am just coming to be aware now from this from the evidence leader Chairperson.

ADV CHASKALSON SC: Yes. Now can you think of any reason why – did Albertime play any role whatsoever in the club loan?

MR RAMOSEBUDI: Chairperson that is beyond the – my comprehension in terms of who was paid out of the payment
20 that went to Trillian. I did not know that.

CHAIRPERSON: Well what Mr Chaskalson seeks to establish is whether to your knowledge Albertime had any role to play in regard to this transaction.

MR RAMOSEBUDI: No they did not have a role to play in – with me directly.

CHAIRPERSON: Yes okay.

ADV CHASKALSON SC: Had you encountered Albertime at all in?

MR RAMOSEBUDI: No I have never encountered Albertime.

ADV CHASKALSON SC: Nobody mentioned Albertime to you at the time?

MR RAMOSEBUDI: You mentioned the name yesterday and I started seeing him from your 10.64 Directive.

ADV CHASKALSON SC: And Mr Kuban Moodley did anyone
10 mention his name because?

MR RAMOSEBUDI: I started seeing the name from the media and then you mentioned the details here as from yesterday.

ADV CHASKALSON SC: But at the time nobody mentioned his name.

MR RAMOSEBUDI: No I never heard of him at the time.

ADV CHASKALSON SC: We have to move I am afraid to one more of these spinning transactions and for that can I take you to page 570? And let us just recap a little bit before
20 we get to 570.

We start off with Transnet having a rand base liability in relation to the purchase of locomotives. Transnet then changes 2.5 billion of that rand based liability into a dollar based liability with the China Development Bank and in the process 189 million goes to Regiments Capital, 78% of which

immediately passed on to Albertime who in turn transfer that in almost the entire amount to Sahara Computers.

Then we have Transnet deciding that after all they want to turn some of their dollar liability back into a rand liability and a club loan gets arranged. Initially that was going to JP Morgan then it became Regiments and eventually it becomes Trillian who at that stage seems to be Daniel Roy in terms of interaction with Transnet and for that Trillian get paid inclusive of VAT R93 480.000 to turn 1 billion dollars
10 worth of loan exposure into the equivalent rand exposure and within a couple of days 80% of the 93 million goes to Albertime.

We now have a situation where there is a R12 billion exposure on the club loan. Mr Ramosebudi was that a fixed or a floating exposure?

MR RAMOSEBUDI: This was a floating exposure.

ADV CHASKALSON SC: Right. And early in December bearing in mind that the ink was barely dry on the Trillian invoice for R93 million from 18 November for the club loan
20 someone got the idea of actually swapping the interest rate exposure on the club loan from floating to fixed. And whoever that someone was told Danie Smit at Transnet and do you know who – can you tell the Chair who Danie Smit is?

MR RAMOSEBUDI: Chairperson Danie Smit was one of the persons working in Treasury he was responsible for an area

in Treasury called Risk Management and Compliance.

ADV CHASKALSON SC: Can I ask you to go to page 570?

MR RAMOSEBUDI: I am at 570 Chairperson.

ADV CHASKALSON SC: And there you will see that on 2 December Danie Smit sent an email to you and to Gary Peter in relation to the interest rate risk on the R12 billion club loan. Do you recall – oh sorry the narrative is:

“Hi Gary and Phetolo my humble opinion on the interest rate risk exposure of the club loan. Kind regards Danie”

10 Do you recall receiving that email?

MR RAMOSEBUDI: I cannot recall.

ADV CHASKALSON SC: Well maybe if you read the memorandum it will refresh your mind. It is drafted in your name to go to Gary Peter and it explains why Danie Smit thinks it would be a very bad idea to swap interest – floating interest on the club loan to fixed interest with an interest rate swap. Let us look at the conclusion at 572?

20 “Conclusion it is recommended that the club loan not be switched to a fixed rate exposure by means of an interest swap due to the following:

If there was a definite need to fix the rate during finalisation of the club loan the loan should have been dealt as fixed as any swap will create an amount of volatility in the

income statement due to fair value movements which could be minimised by the application of hedge accounting.”

So can I – can I just put to you my understanding of what Danie Smit is saying there.

If we thought we needed fixed when we were raising the club loan we should have raised fixed on the club loan not floating. Is that not what he is saying?

MR RAMOSEBUDI: I am not too sure of that Chairperson I
10 think Danie is just simply saying he is not – he is not recommending that ...

ADV CHASKALSON SC: No I do not want you to express a view on whether Danie was right or wrong but I just want us to understand what Danie is saying. So is he saying in the first instance if we want it fixed for the club loan we should have raised fixed on the club loan and not floating. Is that not what he is saying?

MR RAMOSEBUDI: No that is true.

ADV CHASKALSON SC: Yes. Second point he says:
20 “Interest rate swaps will use massive credit lines from banks which is not that freely available over a fifteen year tenure and these lines are required to hedge forex related exposures due to MDS requirements.”

He is saying:

“If we do this interest rate swap we are going to tie up a whole lot – a big proportion of the credit lines that we need.”

That is what he is saying is it not? I am not asking you to express an opinion on whether it is right or wrong.

MR RAMOSEBUDI: This one he says yes.

ADV CHASKALSON SC: Then he says:

“Swaps will come at a cost which need to be determined in the market.”

10 It is going to cost us to do these swaps. Do you remember what it ultimately did cost us to do these swaps? Do you remember?

MR RAMOSEBUDI: Come again.

ADV CHASKALSON SC: Do you remember he says swaps will come at a cost which need to be determined in the market.

MR RAMOSEBUDI: That is what he says here.

ADV CHASKALSON SC: Yes and do you remember what the cost ultimately turned out to be?

20 **MR RAMOSEBUDI:** No I do not – I cannot remember.

ADV CHASKALSON SC: If I were to say to you R229 million would you be able to contradict me?

MR RAMOSEBUDI: That is the number you saw Chairperson. I did not have that exposure.

ADV CHASKALSON SC: I see.

“Liquidity for the 12 billion will have to be tested in the market. There is currently a gap of around 200 basis points between the cost of a floating rate loan and the indicative cost to fix and based on the forecast of VER and the additional pressure the cost of swapping to fix will create on the cash interest cover ratio. It is not recommended to swap the club loan from floating to fixed.”

10 What is he saying there?

MR RAMOSEBUDI: He says the differential between the fixed and the floating rate is 200 basis points. It is 2%.

ADV CHASKALSON SC: Yes.

MR RAMOSEBUDI: That is what he says.

ADV CHASKALSON SC: And that is going to put – the extra 2% is going to put pressure on the cash interest cover ratios.

MR RAMOSEBUDI: [Talking over one another] cash interest cover ratio.

ADV CHASKALSON SC: Yes.

20 **MR RAMOSEBUDI**: That is what it says ja.

ADV CHASKALSON SC: So let us look at what happens. Gary Peter first responds. Go to page – can you go to page 577? 577. Gary Peters response to this memo was

“Thanks Danie it is well written and I understand the logic. Phetolo are you in

agreement that we do not enter into the swaps?”

Do you recall receiving this from Gary Peter?

MR RAMOSEBUDI: I see it here ja so it means it came to me.

ADV CHASKALSON SC: Yes. Maybe this will refresh your memory. Can you go to page 578? This is an email from you to Eric Wood. It forwards Gary Peter’s email and it says:

10 “I need to sort this one out.”

MR RAMOSEBUDI: True.

ADV CHASKALSON SC: What were you saying to Eric Wood?

MR RAMOSEBUDI: I think subsequent to that I got a call from – from Eric Wood to say that Danie is not cooperating on what he was requested to do.

ADV CHASKALSON SC: Yes. Was Eric Wood going to be the one who was going to be paid R229 million if this transaction went through?

20 **MR RAMOSEBUDI:** Regiments was working on the transaction.

ADV CHASKALSON SC: Yes. And he said Danie is not cooperating and you said I need to sort this one out.

MR RAMOSEBUDI: Precisely true.

ADV CHASKALSON SC: Why did you say I need to sort this

one out?

MR RAMOSEBUDI: As the head of the function I cannot you know allow somebody in my function or in my area not to be happy of something that needs to be done. So I need to understand the reason why – the reason why he was not happy about it.

CHAIRPERSON: I am sorry can I ask you to repeat that answer but face this side I do not – I did not hear properly.

MR RAMOSEBUDI: Sorry Chairperson. I said that is true I
10 wanted to make sure that I resolve the issues between Eric and Danie so that I can – we can have a common ground on the expectation that needed to be done.

CHAIRPERSON: But or maybe I should let you Mr Chaskalson deal with the – what – what Eric Wood meant by saying Mr Danie Smit was not cooperating or do you want me to do that?

ADV CHASKALSON SC: Thank you Chair I am – I am – it...

CHAIRPERSON: What did he mean by saying Mr Danie Smit was not cooperating?

20 **MR RAMOSEBUDI**: I think if I can recollect well because Danie and Eric were communicating about the cash flow profile that needed to be swapped at the time. And there was a - probably whatever Eric requested from Danie at the time Danie was not happy about it.

CHAIRPERSON: Well obviously Eric would maybe wanted

the swap. Did he not want the swap?

MR RAMOSEBUDI: No he wanted a cash flow profile to do the swap. Because you cannot do a swap without having the cash flow profile. You need to have the cash flow profile to then be able to then model out what the interest rate profile is going to be. What are the cash flow profile going to be, what are the interest rate is going to be derived from the [00:29:22] that we are using. So that is what I think they had an issue between the two of them.

10 **CHAIRPERSON:** But did you get to understand exactly what the nature of Mr Smit's non-cooperation was as far as Eric Wood was concerned?

MR RAMOSEBUDI: Yes Chairperson which is [00:29:44] it into this memo.

CHAIRPERSON: What was it – what was the nature of his non-cooperation?

MR RAMOSEBUDI: He did not want to give Eric the profiles.

CHAIRPERSON: Oh.

20 **MR RAMOSEBUDI:** And then when he did not want to give him the profiles or the cash flow profile in this memo.

CHAIRPERSON: Oh, okay.

MR RAMOSEBUDI: Yes.

CHAIRPERSON: Mr Chaskalson.

ADV CHASKALSON SC: But what he was saying in this

memo has got nothing to do with cash flow profiles. It says the swap is a very bad idea. We do not need to do this. It is going to cost us. It is going to put stress on our interest ratio. It is bad for a range of different reasons.

And when Gary Peter read it, he agreed. So it has nothing to do with whether or not he is giving cash flow profiles to Mr Wood.

MR RAMOSEBUDI: Chairperson, I am giving you the genesis of the issues, why I said I will sort it out because I
10 wanted to go and talk to Daniel about it.

Let me give you the Genesis of the – we saw it March time. In one occasion - I cannot remember exactly well - in one occasion, I was asked about...

Every quarter we present a risk management report to board, the sub-committee which was Risk Committee. I forgot the exact name.

And in that presentation, we did proffer our exposures in interest rate, extend rate, commodities because Transnet is exposed to commodities.

20 And the question arose at one of the meetings, which I cannot recall ...[intervenes]

CHAIRPERSON: It is the Audit and Risk Committee, I suppose?

MR RAMOSEBUDI: Yes. The question arise: What is your interest rate strategy? You know. They were having a risk

management strategy in detail. And through that, the CFO, at the time was Gary Peter, who requested the Phetolo: Can you do me a risk management strategy? You know.

Seeing that we have raised a whole lot of funding in 14 rates and fixed rates. And when I looked at one of the submissions, when there was a recommendation for the funding of the locomotive.

There was a submission which details that we need to move our rand from wherever it was to something 40 to 60 fees 40. And we were not there. We were sitting around a very low level of around 20% of 14. I mean fixed.

A whole lot of funding was in 14. So we developed a document to deal with the management strategy.

Chairperson, as the head of the function. With over 30 employees, I cannot sit and write a document that deals with Treasury. I have got respective heads. I empowered them.

And one of those was Danie. And Danie had over 40 years with Transnet and he was 12 years older than me. I do not think I would be instructing him to do things that he was not willing to do.

When I got to Danie, I involved him because he is the real of expertise. While this – my - also – my head of expertise that is – because he is the head of that function.

I gave him the duty to work on the interest rate strategy. He developed it in the document. And in the document, we

presented it to Gary. I think it also went to Risk and Management Committee.

If he himself, Danie, recommended to do an interest rate swaps. I did not. He did it. So sorting out was – Danie, is there any other thing that we could do other than...?

Because we have developed it. We have missed... It means, if we do not do it, we have mislead the board and that is not what I wanted to do.

CHAIRPERSON: Okay. Mr Chaskalson.

10 **ADV CHASKALSON SC:** Mr Ramosebudi, I have to put to you that that answer is simply false. Can I take you to page 580?

MR RAMOSEBUDI: [No audible reply]

ADV CHASKALSON SC: And there is an email that you sent to Gary Peter at 12:15. And I just want to put that in perspective. Your one-liner to Eric Wood: Need to sort this one out. It was 12:32. So 18 minutes later, you sent an email to Gary Smit(sic) of the... Sorry, Gary Peter. Copying in Danie Smit.

20 “Hi Gary. I guess this is true if the club loan is the only transaction Transnet is doing for the entire MDS period and that the volatile economic environment ahead of us with higher inflationary environment, it is important to managed the interest rate expectations going forward to create that

certainty in Transnet's interest expense for the management of the CIC.

It is, therefore, prudent in a high-inflation environment and volatile exchange rate to fix most of the commitment for the same reasons.

This will help us to reduce the number of variables to manage the declining levels.

I am sorry you received the conflicting message from Danie, who did not consult with me on this.

10 As Head of Treasury, I am concerned with the exchange rate and the inflation expectations and it is prudent to manage this risk appropriately.

A proper submission is on the way for approval.”

So that is what you wrote to Gary. Do you accept that is what you wrote to Gary?

MR RAMOSEBUDI: That is what I wrote to Gary. Yes, I accept.

ADV CHASKALSON SC: And what you were saying is, as Head of Treasury: I need an interest swap. Is that not
20 right?

MR RAMOSEBUDI: Because of what we have already promised that we need to do. We need to hedge our exposures to interest rate in a prosperity swap – transparency risk.

ADV CHASKALSON SC: But if you did not want a floating

exposure. Why had you incurred a R 12 billion floating exposure the previous month, which you are now swapping to a fixed exposure at R 229 million cost that was going to be paid to Regiments?

MR RAMOSEBUDI: It is known Chairperson in the market that is very difficult to get funding in a fixed rate in the market over the similar sizes that we have raised(?) in the market.

You know, even from a personal point of view, just to go
10 and raise a loan in the market, I mean the model is bought. It do not give you a fixed rate. They give you 14 rate.

Because the banks, the fund managers, their easy funding rate is a 14 rate. It is easy for them to expand that to a client than a fixed rate because what it calls for, is that they must go and had it without in appropriate counter party on the other side.

So what they could want to do is to avoid that so that they can pass the raising costs from one entity to the other without being involved in that transaction. And that is what
20 happens in the market.

I have indicated, I have over 25 year in this market. I have worked for National Treasury. I did the same transaction.

I have worked for the Development Bank. I have worked for National Housing Finance. I worked for ABSA, SAA and

Transnet on two occasions. And those are the transactions that we have been doing. They are not peculiar.

CHAIRPERSON: But do you... What do you say to Mr Danie Smit's point in that email that he sent where he said if Transnet wanted a fixed rate, interest rate, that should have been done at the beginning? If I remember correctly.

The email that, I think, Gary Peter responded to by saying it is well-written. It is like I can understand the logic.

10 Remember, the point that Danie Smit made in that email?

MR RAMOSEBUDI: Ja, I remember some points. And some points that he raised were around - a swap comes at a cost.

CHAIRPERSON: Ja. You did not respond to him or did you?

MR RAMOSEBUDI: I did not respond to him.

CHAIRPERSON: You did?

MR RAMOSEBUDI: No, I did not respond to him.

CHAIRPERSON: Yes, he made a certain point and he was against this proposal.

20 **MR RAMOSEBUDI**: Yes.

CHAIRPERSON: And Gary Peter agreed with him. So my question is. How do you meet his point or how did you meet his point?

MR RAMOSEBUDI: No, the issues that he was raising here. He was raising this issue of swap, will come at a cost.

Whether you raise a fixed rate today, the bank will price you from a 14 rate to a fixed rate. They will add the cost.

CHAIRPERSON: Mr Chaskalson.

MR RAMOSEBUDI: So that cost will be there.

CHAIRPERSON: H'm.

MR RAMOSEBUDI: The gap of 200 basis points between the cost of a floating rate and fixed rate, that is what is in the bucket.

CHAIRPERSON: H'm.

10 **MR RAMOSEBUDI**: And you – in actual fact, what we have achieved on an average – I do not think we have achieved over 200 basis points. They have been less than 200 basis points.

CHAIRPERSON: Mr Chaskalson, I do not know whether Mr Ramosebudi answered your much earlier question, when you said, the explanation he gave was false. And then you referred him to his email.

ADV CHASKALSON SC: Yes.

20 **CHAIRPERSON**: So, I am just mentioning that and I am leaving it to you to – if you want to go back to it or you want to move on. He did not – he does not seem to remember that he...

ADV CHASKALSON SC: Well, I put it to him that the explanation about Danie not sending cash flow values to Eric Wood and problems of that nature, was simply false. I do

not propose to take it further.

CHAIRPERSON: Ja, okay, okay.

ADV CHASKALSON SC: Mr Ramosebudi, do you know what these swaps had cost Transnet as of today?

MR RAMOSEBUDI: No, I have – I am more than two years out of Transnet. I do not know.

ADV CHASKALSON SC: Well, at the point that you have left Transnet, was Transnet trying to get out of the swaps?

MR RAMOSEBUDI: No, Transnet was not trying to get out
10 of the swaps.

ADV CHASKALSON SC: It certainly is now. These swaps has cost Transnet more than one and a half billion rands. Can you contradict that?

MR RAMOSEBUDI: I do not know. I have never checked, you know, the valuations of those swaps.

ADV CHASKALSON SC: Sorry, you ...[intervenes]

MR RAMOSEBUDI: I have never seen the valuations of those swaps.

ADV CHASKALSON SC: I see. So, if I put it to you that
20 these swaps are more than R 1.5 billion underwater from the Transnet's side at this point. Can you – you cannot contradict that?

MR RAMOSEBUDI: I cannot contradict because the interest rate has gone down now, you know. There was an official cutting of interest rate which is not necessarily what was

happening in the market to, except to take care of the challenges that we were facing from a Covid point of view.

ADV CHASKALSON SC: I see. Well, let us just finish off here. If we go to page 582. If Danie Smit was less resolute than we would hope him to be. There was an email back to you on 2 December, 13:40.

10 “Hi, Phetolo, I am really sorry that I created a conflicting message. This was never the intention. My understanding from you earlier was to do the memo which I need to give to you and Gary. My sincere apologies. I do not want to a situation where the two of us are not working together. I want to cooperate with you all the time. Please let us discuss how I can change the memo to ensure that you are comfortable to take to Gary. I will also apologised to Gary. I have no problem with that. I will come and discuss when you are available.”

Well, do you recall receiving that?

20 **MR RAMOSEBUDI:** I cannot recall receiving that but I know me and Danie were there. We had a good relationship. He might have write – read it back to me.

ADV CHASKALSON SC: I see. And then if we go down to 584, we see a new memorandum that says exactly the opposite of what Danie Smit had intended to say.

And the purpose is – the purpose of this memorandum is to obtain approval from the acting Group Chief Financial Officer to hedge the interest rates exposures from a float for fixed basis for the amount of R 12 billion to instruct Regiments Capital as per the 1064 Locomotives' mandate. To execute the hedges with Transnet's approved counterparts.

And 1.3, the execution cost of hedges by Regiments Capital will be all inclusive in the rate of the interest swap.

10 So I can I put to you what was going to happen?

You were now recommending that interest swaps take place and that the cost of those swaps in terms of the fee to Regiments would be hidden in the rate of the interest rate swaps.

So there would not be a payment to Regiments that anyone at Transnet would see. All that would happen is that the spread on the swap would go up by 20 basis points at Transnet's expense. Is that what was being suggested there?

20 **MR RAMOSEBUDI**: That is how pricing of these types of transactions – of instruments happen in the market.

ADV CHASKALSON SC: Yes. But in terms of procurement, you will recall that this 1060 Locomotive's mandate that I think initially started out under twenty million and then grew and grew and became ninety.

And then had a 166 added onto it for the China Development Bank to become 265 and then had another ninety – eighty-two added onto it to accommodate Trillian’s 82 million bonanza on the club loan.

Was now going to have to accommodate the present value of a 20 basis point fee to Regiments Capital if that went to the board at the BADC.

It would have to be 229 million added to the 265 plus 82 that we had seen already. Do you think you would have got
10 that passed the BADC?

MR RAMOSEBUDI: [No audible reply]

ADV CHASKALSON SC: I am asking you a question. Would you – what do you think the BADC, even that BADC, would have approved another 229 million on the 1064 Locomotives’ mandate for Regiments Capital?

MR RAMOSEBUDI: Because this system Chairperson, they are done under that mandate. So it means that mandate is approved. The management of risk ...[indistinct] that emanate from the funding of 1064.

20 **ADV CHASKALSON SC:** Yes, but if you had to pay 229 million out, the BADC would have to look at it and would have to put their names to another 229 million to Regiments. Do you think that - was there a risk that they would not have done that?

MR RAMOSEBUDI: [No audible reply]

ADV CHASKALSON SC: It is a question.

MR RAMOSEBUDI: To the extent that the motivation talks of the cost and benefit of the transaction. I guess the decision would depend on what value or cost are derived from – what value is derived from the cost that is going to be spend from that type of a transaction.

ADV CHASKALSON SC: Did this ever go to the BADC?

MR RAMOSEBUDI: The 1064 mandate approval, I think it went to the BADC.

10 **ADV CHASKALSON SC:** I am not talking about the 1064 mandate approval. I am talking about this payment to Regiments that was going to have a present value of 229 million.

MR RAMOSEBUDI: I guess it was covered in that mandate for the funding and the risk management.

ADV CHASKALSON SC: No, Mr Ramosebudi, your answer is incorrect because we have seen what the mandate was from our previous visit to the BADC. Prior to Trillian, that mandate had been fixed at 265 and there had to be a special
20 decision of the BADC to get it up to 265.

MR RAMOSEBUDI: The scope of work was covered in the mandate.

ADV CHASKALSON SC: Yes, but the money was not. Was it?

MR RAMOSEBUDI: The scope of work was covered in the

mandate in the mandate Chairperson. So the specific transactions in terms of how they are done – because they are not paid out of the budget of Transnet's point of view.

And not, it is because they wanted to be that way but it is the way of the nature of the instrument price is in the market. It is not covered in the budget from a procurement point of view but from an interest cost line at the budget level.

ADV CHASKALSON SC: Well, I want to put to you that this
10 particular payment Regiments Capital or which was supposed to be Regiments Capital was certainly not covered by any budget in 1064.

MR RAMOSEBUDI: Chairperson, that line budget of interest expense, is the component of what funding were going to be done in the market and how it is going to change the profile of the revenue stream and it has to be captured appropriately in that.

And these instruments or this funding or this integrating(?) instruments and the funding associated with it,
20 has been part of what we call the project fact(?) in the company, led by the CFO.

Each and every individual was making sure that we – each and every one manages their budget lines in terms of what they are doing to make sure that we meet our cost – the cash in this cover ratio.

We meet our – the levels and we make sure that we do not breach the conveyance with financial institutions where we have borrowed money from.

ADV CHASKALSON SC: So the first two swaps Mr Ramosebudi were with Nedbank as Transnet's direct counterparty. Are you aware that Nedbank had back-to-back swaps in relation to these swaps?

MR RAMOSEBUDI: Regiments were doing the transactions and I just know that the counterparty between – with
10 Transnet is Nedbank.

ADV CHASKALSON SC: So you did not know that Nedbank had mirror image swaps with another party?

MR RAMOSEBUDI: And that is what happens in the market,
Chairperson.

ADV CHASKALSON SC: Well ...[intervenes]

MR RAMOSEBUDI: They have done so.

ADV CHASKALSON SC: But can I tell you the peculiarity of this mirror image swap? Not quite a mirror image but it was three basis points stayed with Nedbank. This mirror – this
20 back-to-back was with the Transnet's second defined benefit fund. Do you know who that fund is?

MR RAMOSEBUDI: I know the fund Chairperson.

ADV CHASKALSON SC: And do you know who was representing the Transnet second to fund benefit fund on this transaction?

MR RAMOSEBUDI: If I recall Chairperson, I think it was Shane(?).

ADV CHASKALSON SC: Yes, you are right. Chairperson, it was Shane(?). But who were the fund managers who did these back-to-back swaps?

MR RAMOSEBUDI: It is Regiments Fund Managers.

ADV CHASKALSON SC: Regiments Fund Managers. You are correct. Yes. So Regiments were representing the one party on the side of the back-to-back swap. And Regiments
10 were also representing Transnet.

Do you know that Regiments Fund Managers took in a course of the four swaps 229 million out of the pension fund to pay for this fee that was to go to Regiments Capital, according to Transnet.

MR RAMOSEBUDI: I do not know.

ADV CHASKALSON SC: You did not know that?

MR RAMOSEBUDI: [No audible reply]

ADV CHASKALSON SC: Well, I can tell you that they did. And that they have settled litigation last year where they
20 were forced to pay that back as well as a bigger amount which they had misappropriated in the course of bond and transactions around these swaps.

But for now, I want to raise one last... Well, no, one second last point with you. Can you go to page 589?

MR RAMOSEBUDI: Maybe before we go there Chairperson.

May I ask a question? Because I ...[intervenes]

CHAIRPERSON: Sorry?

MR RAMOSEBUDI: Before he goes to the next page?

CHAIRPERSON: Yes?

MR RAMOSEBUDI: May I ask you a question?

CHAIRPERSON: Do you want some clarification?

MR RAMOSEBUDI: Ja, just clarification.

CHAIRPERSON: Ja. What clarification would you like?

MR RAMOSEBUDI: Is – when a transaction is done...

10 **CHAIRPERSON**: H'm?

MR RAMOSEBUDI: Should there not be a fee? Because I am just wondering whether there is a certain percentage of a fee that was supposed to be add(?)? Because I am questioning myself whether this transaction that was happening, is the fee – was it not supposed to be add or was it a relatively number(?) that was supposed to be add which was not that?

CHAIRPERSON: Of course, you were involved and none of us were involved.

20 **MR RAMOSEBUDI**: Oh. No, no.

CHAIRPERSON: [laughs] I think... Continue Mr Chaskalson.

ADV CHASKALSON SC: Well, let me ask you another question. Are you aware that this fee that your memo thought was going to go to Regiments Capital, the

229 million present value, was actually paid in its entirety to Trillian in Alberton and not to Regiments Capital?

MR RAMOSEBUDI: I do not know that.

ADV CHASKALSON SC: You did not know of it?

MR RAMOSEBUDI: [No audible reply]

ADV CHASKALSON SC: Can I ask you to go to page 589?

MR RAMOSEBUDI: [No audible reply]

ADV CHASKALSON SC: Do you recognise the letter on page 589?

10 **MR RAMOSEBUDI**: Yes, I do recognise it.

ADV CHASKALSON SC: It is a letter that you wrote to Moss Brickman of Nedbank.

MR RAMOSEBUDI: Yes, I did.

ADV CHASKALSON SC: And it says:

“In terms of the interest swap transactions entered into with Nedbank and/or around 8 March 2016...”

Would that be the second tranche, is for tranches of interest swaps?

MR RAMOSEBUDI: [No audible reply]

20 **ADV CHASKALSON SC**: Let me make it easier for you...[intervenes]

MR RAMOSEBUDI: No, I remember this.

ADV CHASKALSON SC: Yes. So it is the second tranche interest swaps?

MR RAMOSEBUDI: Yes.

ADV CHASKALSON SC: Yes.

“Transnet is aware that these trades were priced at a peer mid-market rate of approximately 11.42% NASCQ.

Our team is further aware and agree that these trades were executed at a level of 12.37 NASCQ which results in a difference of 95 basis points over mid-market value.”

Can you explain to the Chair what that means?

10 **MR RAMOSEBUDI:** Yes, Chair. If you recall, on Danie’s memo, he said the interest rate swap will come at a cost of 200 basis points. And I said: No, we have achieved less than 200 basis points. So it means we did well.

So now the interest rate swap has come at a cost of 95 basis points, 0.95% instead of 2%. So in this case, it means we relatively achieved better than what at the time Danie was expecting from the market focus.

ADV CHASKALSON SC: What is mid-market value?

20 **MR RAMOSEBUDI:** Mid-market value is – you take the off on the big price, the two – you divide by two and then you find the mid-price.

ADV CHASKALSON SC: Yes. And your price is 95 basis points worse than that mid-market price, is it not?

MR RAMOSEBUDI: Which... worse is a difficult name – word to use. It came above 95 basis points to the mid-

market level.

ADV CHASKALSON SC: Why do you think Moss Brickman wanted you to write a letter like this?

MR RAMOSEBUDI: I do not know.

ADV CHASKALSON SC: Can I put it to you that he wanted a letter like this to protect him because people would ask questions about a swap that was priced at 95 basis point over mid-market value and he wanted confirmation that Transnet was aware that this was the case and agreed to it.

10 **MR RAMOSEBUDI:** He did not share that with me.

ADV CHASKALSON SC: We may have that opportunity. Mr Ramosebudi, in... Oh, we have got to get back to ...[intervenes]

CHAIRPERSON: We are at quarter to seven. [laughs]

ADV CHASKALSON SC: Chair, we have one... just this document that is coming.

CHAIRPERSON: Okay.

ADV CHASKALSON SC: I must say, it certainly has been a long day.

20 **CHAIRPERSON:** Okay. No, that is fine.

ADV CHASKALSON SC: And Mr Ramosebudi, here is your submission that you presented to the board and the explanation for the 82 million fee appears – in fact, it is going to page 4, though it is not legible on my copy. It is at paragraph 27. Can you go to paragraph 27?

MR RAMOSEBUDI: [No audible reply]

CHAIRPERSON: Maybe, so that we do not forget Mr Chaskalson. Maybe we should admit this and put it at least in the bundle.

ADV CHASKALSON SC: If it please.

CHAIRPERSON: Before we forget.

ADV CHASKALSON SC: Yes, Chair.

CHAIRPERSON: We can still make holes but let us admit it.

ADV CHASKALSON SC: And I forget where we are in terms
10 of annexures Chair. This will be BB four point something but I am not sure.

CHAIRPERSON: Oh, okay. Ja, maybe – will your junior check then? When you are finished with the questions, they can tell you.

ADV CHASKALSON SC: Yes.

CHAIRPERSON: Ja, okay.

ADV CHASKALSON SC: Can you go to paragraph 27, Mr Ramosebudi?

MR RAMOSEBUDI: I am on paragraph 27, Mr Chaskalson.

20 **ADV CHASKALSON SC:** And here is the motivation. The – it says:

“Saving achieved by securing club loan at 52.5 basis points including cost, cheaper than the equivalent Dollar funding from China Development Bank.”

And you have said that is 418 million. And if I recall

correctly, that is the apples and apples comparison, is it not?

MR RAMOSEBUDI: Yes, Chairperson.

ADV CHASKALSON SC: Yes. And then as the apples and oranges calculation underneath which is:

“Saving achieved by securing club loan at a hundred basis points including costs cheaper than the equivalent Dollar funding from JP Morgan, which is now being inflated to 796 million and it has also had some fees thrown in at 24 million.”

10 Do you know how it got to 796 million on this number?

MR RAMOSEBUDI: I cannot remember. I was not working on this submission.

ADV CHASKALSON SC: But you do remember it is an inappropriate number because it is apples and oranges?

MR RAMOSEBUDI: [No audible reply]

ADV CHASKALSON SC: Mr Ramosebudi?

MR RAMOSEBUDI: Yes, from the previous submission, yes.

ADV CHASKALSON SC: Yes. But it is that number that is used after the addition of 24 million in fees. Do you know
20 why 24 million in fees was added here? Was it not the very point by JP Morgan that their fees were going to be included in the spread of their of their rate?

MR RAMOSEBUDI: I cannot recall it.

ADV CHASKALSON SC: If you go back to those memoranda and Eddie Thomas' question, I think you will find

that JP Morgan's fees were going to be included in the spread. It was going to be a cost or a cost of financing or cost of funding.

MR RAMOSEBUDI: It could not have worked.

ADV CHASKALSON SC: The JP Morgan?

MR RAMOSEBUDI: There was no way that that fee could have been included in the rate because funding and fees were coming from different sources. Funding was going to be syndicated from somebody, some other people, the fee
10 that JP Morgan was charging was from somewhere else. So when you pay A you cannot pay simultaneously with B. So this was going to be an upfront payment of 24 million and those were going to be payment as per the schedule of payment until the loan matures. It could not have worked.

ADV CHASKALSON SC: It could not have worked. But, in any event, it was an apples and oranges comparison, was it not?

MR RAMOSEBODI: That is what the supplier, you know, brought to us. They said no, you do not forget that.

20 **ADV CHASKALSON SC:** Sorry, that is what the supplier...?

MR RAMOSEBODI: They said do not forget what we save you.

ADV CHASKALSON SC: Yes.

MR RAMOSEBODI: Ja.

ADV CHASKALSON SC: But you are there to look after Transnet, not to look after the supplier, are you not?

MR RAMOSEBODI: Precisely.

ADV CHASKALSON SC: Yes.

MR RAMOSEBODI: But the numbers talks.

ADV CHASKALSON SC: Yet but the number that.

MR RAMOSEBODI: I could not [inaudible – speaking simultaneously]

ADV CHASKALSON SC: Yes but the number that you said
10 was the correct comparison ...[intervenes]

MR RAMOSEBODI: They argued with me together with the team that I was presenting this, through yourself, Chairperson.

ADV CHASKALSON SC: Yes but when we talked earlier about apples and apples and apples and oranges, the number that would have been appropriate would have been the 418 million.

MR RAMOSEBODI: I think, Chairperson, you understood my position where I was. I came with a point of comparing
20 apples with apples but ultimately they were not happy with what I presented and those people that were working with me, we concluded this thing.

CHAIRPERSON: Well, I think Mr Chaskalson wants to – effectively what he is saying is, earlier you had said this is comparing apples with oranges, how come you now have

no problem with comparing apples with oranges? Mr Chaskalson, do I represent ...[intervenes]

ADV CHASKALSON SC: Absolutely, Chair, yes.

CHAIRPERSON: That is the question.

MR RAMOSEBODI: You are right, Chairperson, and it is precisely the position I took initially. You have seen when they provided they came up with 776 or 763 million, I said it cannot work, where I know we need to move from a point of comparing apples with apples but then they say but
10 these are the elements that we have saved you for and I was not alone on this particular matter.

CHAIRPERSON: So does that mean that because of what they said you are prepared to compare apples with oranges instead of sticking to comparing apples with apples?

MR RAMOSEBODI: No. My position was – from the beginning was to compare apples with apples and then I changed that.

CHAIRPERSON: Yes but Mr Chaskalson says what you have on this document, which I think you said was your
20 final document, reflects in this regard a comparison comparing apples with oranges. Are you saying that is not the case? I thought you conceded that.

MR RAMOSEBODI: That we achieved because I did that. I came with that position, I achieved that but this memo was not compiled by me alone and the discussion between

Regiments and Trillian and Transnet at the time was not – because it was not driven from my point alone.

CHAIRPERSON: Mr Chaskalson?

ADV CHASKALSON SC: Chair, I cannot take that point any further but I do what to make the observation that nowhere in this document is anything about the black owned status of Trillian mentioned. Can I assume then that you would not have told the BADC that Trillian was black owned?

10 **MR RAMOSEBODI:** As I said in the beginning, Chairperson, I said I presented what was written in the document. If it was not in the document it means I did not present that.

ADV CHASKALSON SC: So we will have to ask one of those BADC members where that came from. Chair, I am right at the end, I think in fairness to Mr Ramosebodi, I do have to put some of the adverse submissions that I will be making at the end.

CHAIRPERSON: Yes, yes. Ja.

20 **ADV CHASKALSON SC:** And Mr Ramosebodi, I do not enjoy doing this but I have to put to you that I will be submitting at the end of the Commission that you were guilty of corruption in your dealings with Nedbank and ACSA, in your dealings – sorry, take that back, I keep on – I must apologise to Nedbank for that – in your dealings

with Regiments at ACSA, in your dealing with Regiments at SAA in relation to the tender for working capital management and at Transnet, Mr Ramosebodi, I have to put to you that you were grossly negligent in relation – you were at best grossly negligent in relation to your conduct relating to the funding for the 1064 locomotives. Do you have any response to that?

MR RAMOSEBODI: Chairperson, I do not think so. I absolutely do not think so. My submission and my
10 responses are very clear. They could have made no negligence whatsoever at Transnet. My delegation of authority stipulate exactly my limits in terms of what I can and what I cannot do. The risk management policy that I was following for any transaction that we were doing, I follow it for the team. For all the transactions that I have done, I did not breach my responsibilities and accountabilities. I do not understand the conclusions or the inferences from what had been presenting.

ACSA, I really fail to understand why there was a
20 corrupt relationship between me and Regiments. I actually am baffled. Where I am sitting today I am baffled now. Regiments came into ACSA in 2006/2007, I came in ACSA in 2007. When they wanted to do some work re the mandate that they purport that they had, I myself said I do not have that capacity to do that with there. Came in the

FD on the particular date which I could remember till today. They came in in the office of the FD, it was a Tuesday of April after the Monday of Easter Monday, I was coming from Limpopo. My secretary – I had a meeting with my FD at ten o'clock. When I was supposed to have a meeting with the FD at ten o'clock and then she tells me that they have been meeting with people from Treasury. I asked – I went to the office and then the secretary says she has a meeting with these people. It was Regiments. And I said
10 okay, I will wait when they are finished.

I went to the office and then I asked why do you have meetings with people when we have got a time for ten o'clock without telling me that do not worry, we will postpone your meeting. She said that is none of – it is none of our business and we have got issues with you on these particular issues and you will cooperate with those people.

How do I, from that type of a relationship, do I have a corrupt relationship with Regiments? The fact that I did
20 not respond on questions does necessarily mean that I am guilty or charged, not at all.

Similar to SAA – I cannot go on Chairperson, I think we have the whole day here today.

CHAIRPERSON: Thank you.

ADV CHASKALSON SC: Thank you, Chair, I have no

further questions and thank for saying that.

CHAIRPERSON: Yes, okay, alright. I see your junior wants to give you something there.

ADV CHASKALSON SC: Sorry, Chair. The final submission can be VV4.4, Chair.

CHAIRPERSON: The document that Mr Ramosebodi has handed up will be admitted as EXHIBIT VV?

ADV CHASKALSON SC: 4.

CHAIRPERSON: 4. And then your team ...[intervenes]

10 **ADV CHASKALSON SC:** 4.4, Chair.

CHAIRPERSON: 4.4. Your team will then put it in the right place and paginate it appropriately. Okay, alright.

ADV CHASKALSON SC: Thank you, Chair.

CHAIRPERSON: Okay, counsel for the witness, did you intend re-examining or not really?

ADV NAIDOO: I did not intend to, Chair.

CHAIRPERSON: Okay, no, thank you. Mr Ramosebodi, thank you very much for availing yourself. I am going to excuse you now. Should a need arise for us to ask you to
20 come back we will ask you but hopefully it will not be necessary. Thank you very much, you are now excused. Thank you. Thank you to everybody including the witness counsel for – cooperation for us to sit till late. Thank you to you, Mr Chaskalson and your team and to everybody for being able to work till this time. Thank you very much.

Next week - this is just for the benefit of the public, next week on Monday I will hear Mr Gordhan, will be cross-examined by counsel for Mr Moyane and then I will hear some witnesses connected with SARS for most of next week. I think on Friday, Mr Chaskalson, there is a witness that is connected with money flows but will be led by Ms Hofmeyr.

ADV CHASKALSON SC: Chair, no, but if maybe you and I can have this conversation...

10 **CHAIRPERSON:** Oh, okay, that will be alright. Okay, no, that is fine, we can talk about it at the right time, I just thought I did not want to misrepresent that all the evidence I will be hearing is SARS-related in case on one day it is not SARS-related.

ADV CHASKALSON SC: Yes, Chair, I would happily take Friday.

CHAIRPERSON: Yes.

ADV CHASKALSON SC: But I need to speak to you about it.

20 **CHAIRPERSON:** Okay. No, that is alright. Okay, we are going to adjourn for the day. We adjourn.

INQUIRY ADJOURNS TO 30 NOVEMBER 2020