

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

27 MAY 2021

DAY 404



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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 MAY 2021

CHAIRPERSON: Good morning Mr Myburgh, good morning everybody.

ADV MYBURGH SC: Good morning Chairperson.

ADV VAN DEN HEEVER: Good morning Chairperson.

CHAIRPERSON: Good morning. Good morning Mr Singh.

MR SINGH: Morning Chair.

CHAIRPERSON: We are on our last mile of this journey so it has been a long journey. How many times have you
10 appeared here now Mr Singh – have you been keeping a count?

MR SINGH: No Sir.

CHAIRPERSON: Okay all right please administer the oath or affirmation.

REGISTRAR: Please state your full names for the record.

MR SINGH: Anoj Singh.

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

MR SINGH: No I do not.

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

MR SINGH: I do.

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

me God.

MR SINGH: So help me God.

CHAIRPERSON: Thank you. Mr Myburgh.

ADV MYBURGH SC: Thank you Chairperson. Good morning Mr Singh.

MR SINGH: Morning Sir.

ADV MYBURGH SC: Could I ask you please to turn to Bundle 5(c) and to page 2011 – 5(c) ja. It must be there.

MR SINGH: Sorry Sir.

10 **ADV MYBURGH SC**: So it is towards the end page 2011.

MR SINGH: 2011. I am there Sir.

ADV MYBURGH SC: All right. So this is an affidavit of Craig Sinton and perhaps I could – do you know that he worked at – together with Mr Bester. Let me take you to page 2012 following the last proceedings we obtained this affidavit. At paragraph 6 he says:

20 “I watched the evidence of Mr Singh and in particular his evidence on Friday 23 April 2021 I heard Mr Singh deny Mr Bester’s version that he attended a meeting at Melrose Arch where Mr Essa was present. Mr Singh also stated that there was no confirmatory affidavits from me and Craig Simmer regarding this matter.”

He goes on to say at paragraph 7.

“I confirm Mr Bester’s version that a meeting occurred at Melrose Arch in 2014 attended by Mr Singh and Mr Essa. I was present at this meeting.”

Paragraph 8.

10 “As I recall this meeting came about for two reasons. First to discuss the reasons for delayed payment of Hatch’s invoices and the new multi pipeline project MMPP and secondly to have a discussion about 00:04:20 approach to supply development on Transnet projects where Hatch was involved.”

At paragraph 9.

20 “As I understood it at the time the supply development was a relatively new concept and everyone was learning in that process. Hatch was of the view that he had done a relatively good job insofar as supplier development was concerned but if Transnet and in particular Mr Singh had any issues we were more than willing to have a discussion because Mr Bester had suspected that Mr Singh’s issues would – with Hatch regarding supply development

was one of the reasons causing the delay in the payment of Hatch's MEP invoices."

And then perhaps I can get to the nub of it. He says that as far as he was concerned at paragraph 3 he addresses the intention of the meeting.

In paragraph 11 he deals with your evidence that you felt it strange that Mr Bester was involved in the meeting.

At paragraph 12 he deals with the fact that on the morning of the meeting he was requested by Mr Bester to
10 attend it.

And then if I can get to the heart of it at paragraph 13 he says:

"When I arrived at the restaurant Mr Bester was already there and I got introduced to a gentleman by the name of Salim. To the best of my recollection the restaurant where we met was the Meat Company and Mr Simmer also attended the meeting. We engaged in some small talk and basically
20 just waited for Mr Singh to join us. I was not briefed about who Salim was and I did not ask. Later after the Gupta Leaks became public I came to know that Salim was in fact Mr Salim Essa. Mr Essa said that he would call Mr Singh. I cannot say

whether he in fact called Mr Singh because I did not hear the telephone conversations. I remember Mr Essa making about three or four calls but I cannot confirm that these were all to Mr Singh. What I recall is that shortly after Mr Essa made these calls Mr Singh arrived. I heard Mr Bester's evidence that Mr Singh arrived quite literally a few seconds later but my recollection is that Mr Singh arrived a few minutes after the call. In his statement Mr Bester does state that Mr Singh arrived a few minutes after the call which is the same as my recollection. If I were to guess I would say it was approximately five minutes from the time Mr Essa made the calls to when Mr Singh arrived."

Paragraph 14.

"During the meeting I sat next to Mr Singh quite apart from the fact that I did not understand the presence of Mr Essa at the meeting. Mr Singh's behaviour was also extremely odd. My understanding was that Mr Singh would be in charge of this meeting since he was the CFO of Transnet and the

meeting related to Transnet business but in fact Mr Essa dominated the meeting.”

Paragraph 15.

“As I have said Mr Essa was running the meeting and while I thought we were there to discuss non-payment of invoices and issues with supply development on the existing programs Mr Essa wanted to discuss the next phase of the MEP. He
10 discussed the need to bring in specific supply development partners in the next phase but he was very vague and did not mention any names as they wanted us to read between the lines.”

Paragraph 16.

“Since Hatch had prior experience with receiving pressure on which supply development partners – which supply development partners to appoint on projects
20 I was very wary of where the discussion was going.”

In paragraph 17.

“When I came – sorry – when it came to the discussion about our outstanding invoices not only was it a very short discussion but

Mr Singh was extremely non-committal on when our invoices would be paid. I did not push the discussion about the payments because quite frankly the entire meeting was strange and it was clear that at least to me Mr Singh did not come armed with detail to be in a position to answer specific questions.”

You want to comment on that before I get to the last
 10 two paragraphs?

MR SINGH: Maybe you can conclude the two paragraphs and then (inaudible).

ADV MYBURGH SC: Paragraph 18.

“Mr Singh left the meeting before all of us. When the rest of us left the meeting I heard Mr Essa say that Mr Molefe who was then the Chief Executive Officer of Transnet would become the next Chief Executive Officer of Eskom. I find it bizarre that he
 20 would make such a statement but I thought that perhaps Mr Essa had received this inside information from Mr Singh given that they seem to know each other quite well or from other some other source who would be privy to such information.”

And then the last paragraph 19.

“I am aware that in his evidence before the commission and in his statement Mr Bester testified that Mr Essa told him about Mr Molefe being appointed as the Chief Executive Officer of Eskom at a subsequent meeting. However I remember distinctly that Essa mentioned this in my presence after Mr Singh left.”

10 Please go ahead.

MR SINGH: Thank you Mr Myburgh. Chair I think from my perspective I deny the meeting once again. As you will recall Mr Chair this meeting was 00:09:52 at a place at Melrose Arch with Mr Bester and I did on a previous occasion provide my views on this meeting and at that stage I also denied the meeting having taken place. Mr Chair I stand by that denial in terms of the meeting taking place with myself.

I am not too sure if there is anything else to say in
20 this regard Mr Chair.

ADV MYBURGH SC: Sure. Could I then take you to page 2017. This is an affidavit from Ms Takane your ex-secretary, is that correct?

MR SINGH: That is correct Sir.

ADV MYBURGH SC: And she deals with two things in this

affidavit. The meeting that Mr Gama spoke about in your office in July/August 2015 and then an earlier meeting. If I could just paraphrase for the interests of time what she says about the meeting that Mr Gama alleged.

She says that she – she deals with the configuration of the offices. She makes the point that she would not allow somebody to go into your office unannounced and at paragraph 9 she speaks about her core working hours are from – or 7:30 to 16H00 however there were occasions
10 where should would leave the office around 17H00.

She says at paragraph 11

“I cannot recall a meeting between Mr Singh and Mr Essa taking place during July and August 2015 in the board room situated in the GECFO's office. Further and for reasons explained hereunder in respect of the incident alluded to in paragraph 4.2 above I do not recall seeing a gentleman resembling Essa exiting from the board room
20 after having a meeting with Mr Singh. In addition to the visit alluded to in paragraph 4.2 above Mr Essa was at that time in 2015 mentioned frequently in newspapers so I would have been able to notice him.”

Then she says at paragraph 12.

“Mr Singh left Transnet for Eskom SOC Limited in August 2015.”

Paragraph 13.

“I wish to stress to the commission that my evidence only pertains to the periods within which I would have been at my desk during my core working hours June, July and August 2015. I cannot provide any insight as to what occurred outside of my core working hours.”

You wish to comment on anything there.

MR SINGH: Mr Chair other than the fact that this confirmation of my testimony that I have given at my previous session regarding the visit of Mr Essa to my office as alleged by Mr Gama.

ADV MYBURGH SC: Unless the meeting happened outside of her core working hours.

MR SINGH: According to her yes.

ADV MYBURGH SC: Right. Then she deals with an earlier interaction. There is a heading Mr Essa’s visit to Transnet offices in Carlton Centre.

Paragraph 14.

“Mr Essa visited Transnet Head Offices in Carlton Centre in late 2012 whilst Mr Singh was still the acting Group Chief Financial

Officer. During this meeting his office was situated on the 44th floor as the 49th floor which was reserved for executives could not be occupied as it was still undergoing renovations.”

Next paragraph.

“Whilst I am unable to recall the exact date of Mr Essa’s visit I am able to recall the events of the day which included the visit as follows:

- 10 1. In the morning in question at around 09H50
 Mr Singh came out of his office and gave me a document facing down. He asked me to get an envelope and put the document in it. He further instructed me to address the envelope to Mr Salim Essa.
2. I took the document and kept it in the way that he gave it to me and typed “Mr Salim Essa” for purposes of printing it onto a sticker label to put on the envelope.
- 20 3. As I was putting the document into the envelope without intending to do so my eyes picked up some information. I recall seeing that it was a memorandum addressed to the board acquisition and disposal council of Transnet. Further I

recall seeing the words “Hedge Goba” I did not read the document beyond noticing what I have stated.

4. At approximately 10H15 Mr Singh came out of his office and told me that he was going to the bank.

10 5. Between 10H30 and 10H45 Mr Essa came to collect the envelope from me. When he arrived at my desk he asked for an envelope addressed to Mr Salim Essa. I handed over the envelope to him. Whilst I did not verify with this gentleman if indeed he was Mr Essa I believe that it was him for the following reasons.

20 1. The gentleman did not seek to confirm if I was Mr Singh’s personal assistant or whether he was at Mr Singh’s office. He was aware of where he had to collect the envelope from and to whom the envelope would be addressed to.

2. In 2015 when I saw Mr Essa in the newspapers I could not help but realise that he had somewhat aged from this encounter in 2012. I have no doubt that this was the same gentleman who had

collected the envelope from me in 2012.

6. Mr Essa took the envelope and left he did not sit down or wait neither did he enquire about Mr Singh. On the day in question I recall that he was wearing a white t-shirt with a cartoon character on the front.

7. When Mr Singh came back from the bank he did not enquire as to the whereabouts of the envelope. He never spoke about it again.”

10

Paragraph 16.

“The reason why Hedge Goba perhaps caught my eye was because previously Transnet had had dealings with them. As far as I know Hedge Goba was mainly used by Transnet Capital Projects for the various projects that Transnet undertook. In the course of compiling meeting packs for Mr Singh I would see documents referring to Hedge Goba.”

20

Now before I ask you to comment there is just two things. Firstly I just want to point out this affidavit was obtained from Mr Carney after the issuing of a Regulation 6 – 10.6 Notice by the Chairperson and secondly that Mr Carney is represented by Bowman Gilfillan Attorneys and

we are advised that a supplementary or correcting affidavit has been produced where the term Hedge Goba is corrected to reflect Hatch – Hatch Goba. That affidavit is apparently on its way and we will provide it to you Mr Singh as soon as we get it.

Do you want to comment then on this?

MR SINGH: Thank you Mr Chair. Mr Chair firstly the allegation relating to Mr Essa collecting a document at my instance is denied. Mr Chair the reason for me denying this
10 is the following issues.

Mr Chair if you have a reference to the name which is now corrected thankfully to Hatch Goba else I was going to say Hedge Goba did not exist or does not exist but we now know it is Hatch Goba.

Mr Chair the first point to raise is that Hatch and Goba were actually individual companies and became Hatch Goba subsequent to a merger. That merger Mr Chair actually only occurred in April or May of 2013 from media articles that we have been able to research.

20 So for Mr Carney to have reference to a document that existed in 2012 that references Hatch Goba is a bit of a mystery because Hatch Goba did not exist in 2012.

Mr Chair secondly like with witness 3 it is improbable that Ms Takane would meet Mr Essa once not having identified himself as Mr Essa and then three years

later actually identify or recall the person that she saw once in 2015 as Mr Essa.

Equally so Mr Chair if you look at her affidavit she does not recall the timing other than to say sometime in late 2015 – I mean sorry 2012 when this incident occurred.

Mr Chair however she is very exact about the times at which this alleged collection occurred referencing paragraph 15.4 and 15.5 which refers to 10:15, 10:30 and 10:45.

10 Mr Chair also in terms of Mr Carney's version of events the 44th Floor of the Carlton Centre equally had access control like the 49th Floor which she describes. Maybe not as let us say – as sophisticated as the 49th Floor but it certainly had access control. So you would not have been able to get access to the floor had you not identified yourself or actually had a Transnet access card. And if you were visiting the – or let us say my office at the time when I was – and actually Mr Chair in late 2012 I was actually not acting CFO I was actually CFO at the time. I had been
20 appointed in June or July sorry.

So Mr Chair it is – it is highly improbable that Mr Carney's recollection of events is probable correct.

ADV MYBURGH SC: So Mr Singh just to ask you this. I mean you – you were – you said in your early – earlier testimony that the commission should approach your

secretary to see whether or not she could confirm the meeting Mr Gama spoke about, correct?

MR SINGH: That is correct.

ADV MYBURGH SC: So I take it she was your trusted secretary someone who you had trust and faith in?

MR SINGH: I do so.

ADV MYBURGH SC: So a meeting was had with her. She was asked about the Gama meeting. She then volunteered this other knowledge of this other meeting. Is this a case
10 where you say that she got some of the detail wrong or is it a case where you say well I never asked her to put a document and address it to Mr Essa and he would never have come to fetch such a document.

MR SINGH: Mr Chair in response I think the latter supposition from Mr Myburgh is probably my response is that this sequence of events never happened. I never requested Ms [?] to on a 00:22:56 document from me. I had no interaction with Mr Essa.

ADV MYBURGH SC: And when you compare her to Witness
20 3 who put her name to a face years later I want to suggest to you that a fair reading of her affidavit is she always assumed that the person that collected the affidavit was Mr Essa.

MR SINGH: Sorry I do not understand Sir.

ADV MYBURGH SC: Well it is not a matter of her putting a

name to a face later as Witness 3 did as you say. Ms Takane assumed that the person who collected the envelope was Mr Essa and later on she says well she could not but notice that he had aged.

MR SINGH: Yes Mr Chair but that is three years later Mr Chair and having seen a person once I would still hazard to say that it is highly improbable that you will remember a person three years in.

ADV MYBURGH SC: Well let me take you to paragraph
 10 15.5. Between 10:30 and 10:45 Mr Essa came to collect the envelope from me. When he arrived at my desk he asked for an envelope addressed to Mr Essa. I handed over the envelope to him. Whilst I did not verify that this gentleman – sorry whilst I did not verify with the gentleman if indeed he was Mr Essa I believed that it was him for the following reasons.

1. The gentleman did not seek to confirm if I was Mr Singh's personal assistant or whether he was at Mr Singh's office. He was aware of where he had to
 20 collect the envelope from and to whom the envelope would be addressed to.

MR SINGH: As I said Mr Chair if you look at the 00:24:40 there is no way you can access the 49th Floor if you are not allowed access. So there was no way that Mr Essa would have gained access to the 49th Floor to be able to walk to

my office, engage with Ms Takane and basically pick up any document that purportedly was left there to be collected.

ADV MYBURGH SC: But we are not talking about the 49th Floor.

MR SINGH: I mean sorry the 44th Floor.

ADV MYBURGH SC: So could he have gained access to the 44th Floor?

MR SINGH: No, no my point is that the 44th Floor had access control as well. There was no way that he would
10 have had free access into the 49th Floor to access Ms Takane's office as she alleges.

ADV VAN DEN HEEVER: Chairperson I seem to lose some of the evidence of my client.

CHAIRPERSON: Yes.

ADV VAN DEN HEEVER: He must please try and speak up.

CHAIRPERSON: Ja.

ADV VAN DEN HEEVER: Because we cannot hear him very well this side.

CHAIRPERSON: No I – that is true. You know you seem to
20 swallow some of the words or you drop your voice so try and speak up.

MR SINGH: Let me make some cosmetic adjustments to the seating arrangements here Mr Chair. I think this should be better.

ADV MYBURGH SC: All right do you have any other

comments on this affidavit?

MR SINGH: No Mr Chair other than to just say that I would never – I mean – paragraph 17 and 18 relates to her personal safety and concerns Mr Chair I just want to say that I would never in any way Chair 00:26:21 ever threaten or have any safety issues relating to Ms Takane.

ADV MYBURGH SC: Of course there is a connection between this and the evidence of Mr Bester and Mr Sinton because the meeting that they say they attended where you
10 were present was a meeting attended by Mr Essa and related to Hatch.

MR SINGH: Well Mr Chair if I can respond. Clearly the alleged document that Ms Takane was referring to was a Hatch Goba document which we now know Hatch Goba did not exist in 2012. The meeting that Mr Bester and Mr Sinton refers to was a meeting that happened in 2014. In between all of this Mr Chair in 2013 you will recall that there was a NEP phase 1 that was happening with Hatch Goba and the meeting in 2014 related to I would assume
20 according to – if you want to take Mr Bester's version of events it was only to discuss outstanding invoices whereas if you take Mr Sinton's version of events it was to discuss outstanding invoices as well as supply development on NEP phase 2. So Mr Chair if you look at the events – if you look at Ms Takane's standalone there was nothing happening in

2012 with Hatch Goba. If you look at Mr Bester and Mr Sinton if they were actually trying to clarify issues they have actually created more of an issue because Mr Sinton directly contradicts Mr Bester's version of events directly on numerous accounts.

CHAIRPERSON: Is your version that they are making all this up.

MR SINGH: Mr Chair I would find it very hard any other reason as to why this has happened. Mr Chair from Ms
 10 Takane's perspective she may have known about Hatch Goba through as she says the fact that she was exposed to documents that would have flowed through my office in terms of compilation of facts but that would have only happened post the merger which would have been April/May 2013 when NEP 1 was actually happening if indeed documents did go. And being 00:29:24 would have been engaged in NEP 1 I would assume sometime in June/July/August 2013 there or thereabouts. So this sequence of events about a year later or a year earlier on
 20 Ms Takane's version of events. In terms of Mr Bester and Mr Sinton Mr Chair we had occasion to go and try and verify whether these invoices that they say were outstanding were actually sent to – we are not able to – the emails that they alleged to have sent to me. So my emails do not reflect any emails that would query these outstanding invoices.

The curiosity of why Mr Sinton would now find condensed two meetings that Mr Bester alleges happened... I am not too sure because as you would know, Mr Chair. If you look at the sequence of events in terms of the timing, you would recall that Remi(?) P1, which happened in around 2013, was subject to an issue relating to SD and the issue relating to ...[intervenes]

CHAIRPERSON: Relating to?

MR SINGH: SD, Mr Chair. Supply Development.

10 **CHAIRPERSON:** Ja.

MR SINGH: And you will recall that the issue was whether 30% SD was more appropriate versus 50% SD. And you will recall again, Mr Chair, that Hatch actually accepted Transnet's proposition in that regard for 50% SD. So on Mr Sinton's version as to the second objective of that meeting being SD issues that needed to be resolved with Transnet and in particular with myself.

Mr Chair, this does not – there was nothing to resolve because Hatch had more than exceeded their
20 expectation in meeting the 50% requirement that Transnet had already issued an NEP Phase 1. So the second issue in terms of Mr Sinton's objective for the meeting with Mr Essa or alleged meeting with Mr Essa, in my view, does not hold any credence, Mr Chair.

CHAIRPERSON: With regard to your – with regard to

Mr Carney(?). Do you think she is just mistaken about this other information she has volunteered or you think that she too is making this up?

MR SINGH: Mr Chair, I would think that she is – she would be making this up. For whatever objective and whatever motive, Mr Chair, I would not be – I would not know.

CHAIRPERSON: So you accept that you do not know of any reason why she would want to make this up to
10 prejudice you?

MR SINGH: Mr Chair, other than the – following the previous line of reasoning around the fact that – Mr Chair, it is very coincidental that you have an issue with Hatch Global, with Mr Bester and Mr Sinton and Mr Carney then also has an issue with Hatch Goba did not exist at the time. So the question about as to where did Ms Thakani gets this Hatch Goba in 2012 from?

CHAIRPERSON: Well, is the position not, Mr Singh, that if she really wanted to make up something, she would have
20 confirmed – she would not have confirmed your version in regard to the other meeting that Mr Gama just spoke about.

MR SINGH: That is true, Mr Chair.

CHAIRPERSON: Yes. So why is it that when she confirms your version in regard to that meeting, do you – you have no problem but when she happens to then say something

that does not go with your version in regard to the other meeting, then suddenly she is making this up?

MR SINGH: Well, Mr Chair, in one instance it is the boot(?), in the other instance it is not.

CHAIRPERSON: But you are not even saying: No, no. She must be mistaken. She would not make this up. She is not that type of person. You are not even saying that. You are saying she is making it up.

MR SINGH: Well, from what I know of her, Mr Chair, it is
10 very unlike her to have done something like this.

CHAIRPERSON: Yes.

MR SINGH: Ja.

CHAIRPERSON: So why do you – what is the basis for saying that she is not even mistaken, she is fabricating this?

MR SINGH: Well, Mr Chair, maybe she is mistaken in – but Mr Chair, I would not know how she would have mistaken Mr Essa because she is directly making an allegation that I instructed her to get the document from Mr
20 Essa.

CHAIRPERSON: H'm.

MR SINGH: So in that case, I do not know how she is mistaken.

CHAIRPERSON: Well ...[intervenes]

MR SINGH: That is why ...[intervenes]

CHAIRPERSON: Well, it seems difficult to think that she would be mistaken about the name of the person that she says you said must – she had to put on the envelope. And of course, on her version, a certain person came and ask for this envelope and took it and she assumed it was Mr Essa. When you came back, you did not ask whether Mr Essa came and took the envelope.

It appears that you would have understood that if Mr Essa had come and taken the envelope or he would
10 have known that if it was not him, he would have send somebody because otherwise he would ask and say: Has he arrived? Or something like that.

MR SINGH: But Mr Chair, we are back in the same situation as we were with Mr Gama in that, if this is a complete fabrication of fact, then none of this would have happened, which is the case.

CHAIRPERSON: I am not sure I understand what you are saying, Mr Singh.

MR SINGH: Mr Chair, I was saying ...[intervenes]

20 **CHAIRPERSON:** Obviously, a fabrication is something that never happened.

MR SINGH: But that is my – this is what I am saying, Mr Chair. This could not never have happened because as I said to you, Hatch Goba did not exist in 2013. I mean 2012.

CHAIRPERSON: Would it make any – well, we are told that there is a supplementary affidavit but would it make any difference whether this happened in 2012 or 2013?

MR SINGH: Yes, Mr Chair, because as I said Hatch Goba did not exist in 2012.

CHAIRPERSON: Ja, but ...[intervenes]

MR SINGH: ...no transaction.

CHAIRPERSON: In 2013?

MR SINGH: There were no transactions that I recall that
10 would require – needed to have gone to the BADC in 2012 relating to Hatch.

CHAIRPERSON: H'm. Mr Myburgh.

ADV MYBURGH SC: Thank you. Perhaps, I just want to put one thing to you. Mr Carney did not want to give this affidavit. We had to issue a summons to get it from him. Would you like to comment on that?

MR SINGH: No, sir.

ADV MYBURGH SC: Alright. I want to go back to the locomotives and to pick up from where we left off on that
20 topic before. You might remember that essentially the only thing that we have dealt with in any detail was the role that you played specifically in the acquisition of the 1064 locomotives. We went through the various roles that you played. Do you recall that evidence?

MR SINGH: Yes, I seem to recall it.

ADV MYBURGH SC: Alright.

MR SINGH: Ja.

ADV MYBURGH SC: I just want to pick up on the one piece of evidence that you gave and I just want to clarify something. If I can? You recalled saying that you were not involved in the tender evaluation process part of the acquisition.

MR SINGH: That is correct, sir.

ADV VAN DEN HEERDEN: I am so sorry. There must be
10 an issue with the sound because I cannot hear
...[intervenes]

CHAIRPERSON: You cannot hear?

ADV VAN DEN HEERDEN: ...Mr Myburgh at all.

CHAIRPERSON: Is that so? Maybe try again, Mr Myburgh. Let us see.

ADV MYBURGH SC: Alright. Mr Singh, can I ask you please to take out Exhibit BB4(f).

CHAIRPERSON: How was that – can you hear? Could you hear that?

20 **ADV VAN DEN HEERDEN:** [Microphone not switched on]

CHAIRPERSON: Ja.

ADV VAN DEN HEERDEN: Sorry. Maybe the sound can just be ...[intervenes]

CHAIRPERSON: Ja, if the technicians could attend to that so that the sound is clearer. Okay alright.

ADV MYBURGH SC: This is Mr Laher's exhibit. And you should find under the divider. In fact, the first statement.

MR SINGH: Yes.

ADV MYBURGH SC: Could you go to page 87, please? I just want you to assist me with two documents.

MR SINGH: Page 87?

ADV MYBURGH SC: 87, ja. YIL-87.

MR SINGH: Oh, Mr Laher's thing?

ADV MYBURGH SC: YIL-87.

10 **MR SINGH:** I am there, sir.

ADV MYBURGH SC: Alright. So that is in the first statement. Are you there?

MR SINGH: Yes.

ADV MYBURGH SC: So there you have ...[intervenes]

CHAIRPERSON: One second. How is it going?

ADV VAN DEN HEERDEN: [Microphone not switched on]

CHAIRPERSON: Okay alright.

20 **ADV MYBURGH SC:** Then you have a memorandum to the Transnet Board of Directors dated the 17th of January. Do you see that?

MR SINGH: That is correct.

ADV MYBURGH SC: And the subject is:

“Request for approval to negotiate an award of business to shortlisted tenderers for the supply of 599 Coco new dual voltage

locomotives for the general freight business.”

You will see that you signed this memorandum. That is at page 95. You signed it on the 21st of January 2014. Is that correct?

MR SINGH: That is correct.

ADV MYBURGH SC: And I just want to take you through this. If you look at the purpose of the memorandum at page 87.

10 “- This is to provide an update to the Transnet Board of Directors.

- The process on the tender evaluation process.

- Note and approve the tender evaluation process from step 1 up to step 6 to the Transnet Board of Directors.

- Approval and recommendation of the shortlisted tenderers as a result of the tender and evaluation process for the negotiation and award of business.

20 - Delegate all powers to the Group Chief Executive to sign, approve and conclude all necessary documents to give effect to the above resolutions and noted that the above resolutions are subject to the recommendation of the Board Disposal And Acquisitions

Committee to be held on 24 January 2014...”

And then you will see, if you go through the memorandum and background, go to page 88. It explains the evaluation methodology through six different steps. And if you go, for example, to page 92. There you will see the scoring and what was being measured. And ultimately, at page 95 what was recommend to the Transnet Board of Directors was to note the updates on the progress of the tender valuation process.

10 “Note and approve the tender evaluation process from step 1 up to the step 6 to the Transnet Board of Directors and approve the recommendation of the shortlist of tenderers as a result of the tender and evaluation process for the negotiation and award of business as contained in paragraphs 49 and 50...”

20 So I take it you accept that you were apprised of those various things and that you supported that recommendation.

MR SINGH: That is correct, sir.

ADV MYBURGH SC: So it was not that you were – and I am not critical of your evidence, I was just trying to get a sense – as I understand then, you yourself were not physically involved in the evaluation process but you were

obviously advised of it. You analysed what the situation was and you were in a position then to support this recommendation.

MR SINGH: Mr Chair, I think it is a fair summary of the – of my involvement. I think, if I just need to elaborate. Mr Chair, in terms of the evaluation process – ja, in terms of – up to this point in time in terms of the preparation of this memo, the tender received the tender opening the tender evaluation and all those type of adjudication would
10 have been under the directorship of Mr Jiyane and Mr Gama together with the cross-functional evaluation team. And we would have relied on the reports of the cross-function evaluation team as well as the internal audit evaluation of those processes to make the recommendation to the board.

ADV MYBURGH SC: And then – so this relates to the electric locomotives.

MR SINGH: Sorry, sir?

ADV MYBURGH SC: This memorandum related to the
20 electric locomotives?

MR SINGH: Mr Chair, just give me one second.

ADV MYBURGH SC: The 599.

MR SINGH: You see, Mr Chair – no...

ADV MYBURGH SC: It talks about due voltage and ...[intervenes]

MR SINGH: Ja ...[intervenes]

ADV MYBURGH SC: [Indistinct]

[Parties intervening each other – unclear]

MR SINGH: Ja, dual voltage. Yes.

ADV MYBURGH SC: Oh.

MR SINGH: ...599... [Speaker unclear]

ADV MYBURGH SC: Yes.

MR SINGH: Yes.

ADV MYBURGH SC: Yes. So I then just want to take you
10 to the corresponding memorandum in relation to the diesel
locomotives. Could you go to page 100?

MR SINGH: I am there, sir.

ADV MYBURGH SC: There you will see – obviously, the
content is different but the format is the same. A similar
memo relating to the new diesel locomotives. You will see
that you signed that memorandum also on the
14th of January. OH, sorry, on the 21st of January 2014.
Do you see that?

MR SINGH: I do, sir.

20 **ADV MYBURGH SC:** And the recommendation read with
the necessary changes brought about by change in context
is essentially the same. Could you confirm that?

MR SINGH: That is correct, sir.

ADV MYBURGH SC: And that is – this is really then after
both decisions were taken that you became involved in the

negotiation process.

MR SINGH: Mr Chair, yes. This then led to the shortlisted bidders being the two electrics and the two diesels and then culminated in the - what we called it the post-tender negotiation process.

ADV MYBURGH SC: Could I ask you, please, but just so that we can go backwards, one step in relation to this issue of Hatch Goba. Could I ask you to turn up Transnet Bundle 4(a)?

10 **MR SINGH**: Yes, 4(a).

ADV MYBURGH SC: 4(a).

MR SINGH: Yes.

ADV MYBURGH SC: That is – it is different to the Laher bundle. My colleague will assist you.

MR SINGH: We got it.

ADV MYBURGH SC: You have it?

MR SINGH: Yes.

ADV MYBURGH SC: Okay. Can we go to – you should have different tabs there. Go to tab BB-20. Exhibit BB-20.

20 **MR SINGH**: Ms Strydom?

ADV MYBURGH SC: Yes. You know Ms Strydom, do you?

CHAIRPERSON: Have you got the page number, Mr Myburgh.

ADV MYBURGH SC: It starts at 131, DCJ.

CHAIRPERSON: [No audible reply]

ADV MYBURGH SC: Ms Strydom's affidavit itself is at 133. You know Ms Strydom, do you?

MR SINGH: Yes, Mr Chair.

ADV MYBURGH SC: Alright. And what do you know her to have done? What was her job?

MR SINGH: Mr Chair, she was involved in the capital project space and I think she was, from the time that I recall, she was a Programme Manager, Programme Director responsible for the MEP of the ...[intervenes]

10 **ADV MYBURGH SC:** The MEP, yes.

MR SINGH: ..the Manganese Expansion Project.

ADV MYBURGH SC: Alright. So that is what she worked on, the MEP?

MR SINGH: Yes, sir.

ADV MYBURGH SC: And you are right because at page 135 she says there she is the Programme Director. Do you see that?

MR SINGH: Yes.

20 **ADV MYBURGH SC:** Now can I take you, please, to paragraph 32?

MR SINGH: [No audible reply]

ADV MYBURGH SC: Just above that – above 31, she deals with phase 1 of the MEP. Do you see that?

MR SINGH: Have you – yes, paragraph 31.

ADV MYBURGH SC: And then at paragraph 32, she says:

“During 2011, Hatch Goba (Hatch) was appointed by the TCP on behalf of the OD’s via task order under the Hatch Mod McDonald Goba Contract to conclude the FEL 2 and 3 Rail Import Studies supporting the MEP...”

Do you see that?

MR SINGH: That is correct.

ADV MYBURGH SC: Would you like to comment on that?

MR SINGH: No, sir.

10 **CHAIRPERSON**: Well, I note in that paragraph, Mr Singh, that Ms Strydom in the context of 2011 also refers to Hatch Goba.

MR SINGH: Yes, Mr Chair, this, I would think, is a – the two companies were probably into some sort of joint venture.

CHAIRPERSON: H’m.

MR SINGH: And then submitted a house order or a work order to work as a consortium.

CHAIRPERSON: H’m. But of course, if she could refer to
20 it as Hatch Goba in the context of 2011, you or your secretary could also refer to it in 2011 as Hatch Goba.

MR SINGH: Mr Chair, probably.

CHAIRPERSON: In that context.

MR SINGH: Probably in that context, yes.

CHAIRPERSON: Ja. Okay, Mr Myburgh.

ADV MYBURGH SC: Thank you. So going back to the locomotives. We have dealt with your role.

MR SINGH: Mr Chair, this is the point – I am sorry, Mr Myburgh.

ADV MYBURGH SC: Yes.

MR SINGH: If you look – if you would just have reference to paragraph 32 on page 144, you would see that this was appointed by TCP, which means it was appointed by Transnet Capital Project. So this would have had no
10 impact coming to group or coming via this office of the CFO in any way, shape or form because this decision was taken by Transnet Capital Projects at their level. As you can see, it says on behalf of the OD.

CHAIRPERSON: What is the importance of that?

MR SINGH: Mr Chair, if we are trying to make a connection between, let us call it Hatch Goba, and Mr Carney's engagements in 2012.

CHAIRPERSON: Ja, which is what I was putting to you.

MR SINGH: Yes.

20 **CHAIRPERSON:** Ja.

MR SINGH: I am saying that this appointment that we referred to, that refers to Hatch Goba, occurred by or was need by Transnet Capital Projects which is a division of Transnet. And they would have done that independently of us.

CHAIRPERSON: Yes.

MR SINGH: When I say us, meaning the people that is in that group.

CHAIRPERSON: Ja.

MR SINGH: So we would not have had access to this information.

CHAIRPERSON: Yes.

MR SINGH: There would have been no need for us to have access to this information.

10 **CHAIRPERSON:** Ja. But why does that matter in terms of what I was putting to you? What I was putting to you is Ms Thakani, your previous secretary, when she – when in her affidavit she mentioned Hatch Goba in the context of 2011, your reaction was there was no Hatch Goba in 2012.

MR SINGH: Yes.

CHAIRPERSON: There was only Hatch Goba in 2013.

MR SINGH: Yes.

CHAIRPERSON: So what I was putting to you is. Here is somebody else referring to Hatch Goba in 2011 when, on
20 your version, there would not have been a Hatch Goba.

MR SINGH: Mr Chair ...[intervenes]

CHAIRPERSON: So I found it interesting that somebody else does that. Refers to – use of the same name. And of course, you said they may have been made joint venture. But I think the fact of the matter is. Somebody else used

the same name, even a year earlier than Ms Thakani.

MR SINGH: Okay, sir.

CHAIRPERSON: Ja. Mr Myburgh.

ADV MYBURGH SC: Thank you. Going back to the locomotives.

CHAIRPERSON: Mr Myburgh, you have no assistance of a junior today?

ADV MYBURGH SC: [No audible reply]

CHAIRPERSON: You have no assistance of a junior?

10 **ADV MYBURGH SC**: No, I do not. There is no one hiding behind my boxes, DCJ.

CHAIRPERSON: [laughs]

ADV MYBURGH SC: I am sorry. I am sorry if it is disruptive. I will just put the files down.

CHAIRPERSON: Ja-no, that is fine.

ADV MYBURGH SC: I will sort it out ...[intervenes]

CHAIRPERSON: No, that is fine.

ADV MYBURGH SC: Just going back to – I just want to ask you personally if you intend to take a short break for
20 tea or you want to carry on?

CHAIRPERSON: Let us take it half-past. So...

ADV MYBURGH SC: Thank you.

CHAIRPERSON: Ja, okay.

ADV MYBURGH SC: Going back to the locomotives. We had discussed it. I think I have completed my leading of

you in relation to your role, seen what you did. I just want to also then sketch for you the Gupta linked corruption that appears to have been at play in relation to ...[intervenes]

CHAIRPERSON: Shall I put away this file?

ADV MYBURGH SC: Yes, you can, DCJ.

CHAIRPERSON: Ja. And which one do I take? Her one, must also go?

ADV MYBURGH SC: The ...[intervenes]

CHAIRPERSON: The BB-4(f) that we used.

10 **ADV MYBURGH SC:** Yes, both of those can be put away, DCJ.

CHAIRPERSON: Okay.

ADV MYBURGH SC: Both of her and Strydom's files.

CHAIRPERSON: Okay. You may continue.

ADV MYBURGH SC: I just want to then sketch for you the Gupta linked corruption that appears to have been taking place. Firstly, in relation to all contracts where McKinsey worked alongside Regiments, including the 1061 transaction advisor contract that you were involved in. Mr
20 Essa, in the form of his shell companies, was paid 50% of Regiments' fees of laundering payments then having been made to the Gupta Enterprise.

As you know, McKinsey had accepted that these contracts are tainted and I think it was a day or two ago that it was announced that they had ups their offer, I think

it was, for 650 million, which would have included SAA to 850 million, payback in relation to Transnet alone. So you accept that you were instrumental in pointing these transaction advisors?

ADV MYBURGH SC: Mr Chair... Well, I guess we would need to define instrumental but yes I did play a role in appointing McKinsey.

CHAIRPERSON: And you would accept, even if you might not be sure about instrumental, you would accept that you
10 played a significant role?

MR SINGH: Well, Mr Chair, there was a business need that was required.

CHAIRPERSON: Ja.

MR SINGH: And the need required for us to appointed advisors to be able to satisfy that need and the advisors happened to be McKinsey.

CHAIRPERSON: H'm, okay.

ADV MYBURGH SC: Yes, not to be quibble about language, but we could go to one of your affidavits. I
20 mean, you made the point that you decided that these were your advisors. You needed them. It was your call. You agree with that?

MR SINGH: Well, Mr Chair, the issue of a business need came into play and also an element of understanding who would be best place to be in a position to execute the

business need in the time in which it needed to be executed. And in our view at the time, McKinsey was probably best placed because of the significant history of Transnet as well as their international expertise to be able to execute the projects in the time that was required.

ADV MYBURGH SC: So one must accept on that evidence that every time that you met with McKinsey and Regiments were present. Do you understand that what it means is that 50 cents in every rand that Regiments was billing was
10 going to Mr Essa.

MR SINGH: No, Mr Chair, I was not aware of it.

ADV MYBURGH SC: Must have come as a shock.

MR SINGH: That is correct, sir.

ADV MYBURGH SC: Alright. Then secondly, what the evidence reflects and let me make myself very clear. I do not make any decisions in this matter. The DCJ does. So I am putting to you the evidence that has been presented in the Money-Flow Stream, whether that is going to be accepted or not, it is something that the DCJ will decide on
20 in time.

But what the evidence of Money-Flow's secondly reflects is that Mr Essa concluded so-called business developments services agreements. These are, essentially, kickback agreements with CSR in respect of 359 electric locomotives that had a contract value of

R 18 billion where he was to secure commission of 21%.

He then concluded a similar kickback agreement with CNR in relation to 232 diesel locomotives. It had a contract value of R 9.9 billion. So, Mr Essa had more than half of the 1064 locomotives covered and he had a 21% interest in the acquisition. Do you want to comment on that?

MR SINGH: Mr Chair, other than to say I have no knowledge of any of these contracts or any of Mr Essa's
10 dealings.

ADV MYBURGH SC: So when, for example, we come to discuss the interest in the ETC. He had a 21% interest to that.

MR SINGH: Mr Chair, again. When we discussed the increase in the ETC, you will see it was a completely justifiable increase in the ETC, Mr Chair. Who got 21% thereof, Mr Chair, I was under the impression that we will be paying the justified increase to the... [Speaker unclear]

ADV MYBURGH SC: What Mr Essa also had was a BDSA,
20 Business Development Services Agreement, in respect of the locomotive maintenance contract as well. Do you want to comment on that?

MR SINGH: Mr Chair, I was not aware of that, I have no knowledge thereof.

ADV MYBURGH SC: And Mr Essa concluded similar

contracts with CSI in respect of the acquisition of both the 95 and 100 locomotives.

MR SINGH: Similarly, Mr Chair, I have no knowledge of Mr Essa's dealings with CSR.

ADV MYBURGH SC: Then thirdly, you were involved as well in the relocation of CNR South Africa from Pretoria to Durban, do you remember that?

MR SINGH: Yes, Mr Chair.

ADV MYBURGH SC: Here a BDSA was concluded
10 between CNR South Africa and a company called BEX, similar kick-back agreement, BEX received and pocketed 67 million as a result of that contract. BEX is also a Gupta-linked company and monies – those monies were laundered to the Gupta enterprise.

MR SINGH: Mr Chair, again I have no knowledge of this agreement or the laundering of the monies.

ADV MYBURGH SC: So Mr Essa from the 1064 advisory contract through all of the locomotives including maintenance agreements and even including relocation,
20 each one of those things you were involved in.

MR SINGH: To a greater or lesser extent, yes.

ADV MYBURGH SC: Yes. And then fourthly perhaps something that I must bring to your attention is Mr Sharma, the Chairperson of the BADCO, the evidence is and further evidence will be led had a matrix of business relationships

with Mr Essa.

MR SINGH: Mr Chair, I was not aware of that.

ADV MYBURGH SC: You confirm though that Mr Sharma was the Chairperson of the BADC certainly at all material times in relation to acquisition of the 1064 locomotives?

MR SINGH: Yes, Sir.

ADV MYBURGH SC: Then let us get to the funding of these locomotives. In relation to the China Development Bank loan where Regiments were success fee of 198
10 million, 147 million of that was paid to Albatime with the 122 million of it having been laundered to Sahara Computers. Know that?

MR SINGH: No, Sir.

ADV MYBURGH SC: You were involved in that transaction.

MR SINGH: As a CFO I would have been, yes.

ADV MYBURGH SC: And then sixthly, also as part of the funding of the locomotives there was the ZAR club loan, correct?

20 **MR SINGH:** I have heard of that but I do not think I was there when that was executed.

ADV MYBURGH SC: So this I think was at the time when you had left or were just about to leave. What happened there is that Trillian was paid 93 million for arranging the ZAR club loan with Mr Essa having been a 60%

shareholder in Trillian and four days later 74 million of that was paid to Albatime Gupta-linked money laundering company.

MR SINGH: I am not aware of that.

ADV MYBURGH SC: So, Mr Singh, what I just want to put to you is this. I mean, on that evidence, assuming it was to be accepted, the Guptas really pulled off something of a heist, did they not, in relation to these locomotives from the beginning right to the end.

10 **MR SINGH:** If the allegations are true, Mr Chair.

ADV MYBURGH SC: And, in fact, just when I had got my head around the 3.5 billion you would have read in the press that Mr Holden gave evidence that I think it was – and the Chairperson will correct me if I am wrong, it was R50 or R60 billion was laundered through the Gupta enterprise and 85% of that actually derived from funds from Transnet. So we are dealing with just 3.5 billion of what was 45 or 50 billion. I hope I have the sums right.

CHAIRPERSON: The total was 49 billion. 49 billion was
20 the total and I cannot remember the percentage but Transnet is where they got the bulk of that money.

ADV MYBURGH SC: Chair, what is your – I really need to understand what you say about this. I mean, whilst this was going on you were the Chief Financial Officer, you were, we know, signing and authoring very important

documents, we will come to them in a moment and you were involved in all of these things other than the club loan. We have heard evidence from people like Mr Molefe and Mr Gama, have said these are complicated financial documents which they knew you were drafting and they relied on you. Is it your case that you knew nothing about this?

MR SINGH: That is correct, Mr Chair.

ADV MYBURGH SC: Is it your case then that you were
10 really scammed by Mr Essa and the Guptas, they pulled one over you?

MR SINGH: Well, Mr Chair, I think from my perspective, Chair, we followed all the required policies, procedures and internal processes of Transnet which, as you will see when we go through the transactions, resulted in justifiable expenditure. There was value added, there was work performed and payments were made.

CHAIRPERSON: Mr Singh, you might be able to assist me
20 to think of another scenario but it is difficult to think of any scenario other than that if this is what they achieved to do, the Guptas at Transnet while you were CFO and you were involved in these transactions, either you were party to their agenda or you were so incompetent that you could not, you know, see all of this. Now it may be that there is another scenario other than those two but those are the

only two I can think of. So Mr Myburgh's question is really to say to you which one is it?

MR SINGH: Well, Mr Chair, I do not think it is either of those.

CHAIRPERSON: Ja, which other scenario could it be?

MR SINGH: Mr Chair, I certainly do not advocate that I was party to any of the agendas or assisted in any other their agendas in any way, shape or form. Secondly, Mr Chair ...[intervenes]

10 **CHAIRPERSON:** Well, then how does one explain this massive looting?

MR SINGH: Well, Mr Chair, the ...[intervenes]

CHAIRPERSON: In circumstances where there is a CFO who got involved in approving or recommending a lot of these transactions and it is a lot of financial matters involved.

MR SINGH: Well, Mr Chair, if we are allowed to engage with the transactions and understand and see justifications of the transactions and value that was derived and the
20 conclusions that were arrived at maybe then we can engage on this. If we engaged with it on this basis where you are coming to a conclusion before we engage on whether the allegations are – have merit or not, you know, it is difficult to engage on that basis.

CHAIRPERSON: You see, we are enquiring, okay? There

is evidence of what has happened.

MR SINGH: Yes, Mr Chair.

CHAIRPERSON: The evidence – the Commission has been collecting evidence for three years, so there is evidence of what has happened. You are getting the opportunity to say do not accept that evidence, it is not true, do not accept that evidence, it is not true, You are getting that opportunity.

MR SINGH: Well, it is ...[intervenes]

10 **CHAIRPERSON:** Now the question is, one of the things we have got to ask is how did this happen?

MR SINGH: Now, Mr Chair ...[intervenes]

CHAIRPERSON: In order to be able to make recommendations as to what measures should be put in place in the future to avoid a repeat of this. So that is where the question comes up, whether people who occupied certain positions were party to this and knew what was happening or whether they just were incompetent and did not do their job properly.

20 **MR SINGH:** Well, Mr Chair ...[intervenes]

CHAIRPERSON: And I said there could be another scenario and I invite you to tell me it could be that it is not a question of them or you, in your case, being party to these people's scheme. Two, it could be that it is not a question of incompetency, there is another scenario and

this is the scenario.

MR SINGH: Well, Mr Chair, that is what I was getting to.'

CHAIRPERSON: Ja.

MR SINGH: Well, Mr Chair, again, if it comes to my competence or otherwise I would suggest to say that it is not incompetence on my part. If it was incompetence on my part I would assume that Mr Molefe would have said that when he came and gave evidence and I do not think he actually indicated in any way, shape or form that that
10 was the case.

Secondly, Mr Chair, in terms of it being my incompetence, at the end of the day these transactions were not approved by me at all. I did not originate these transactions alone, neither did I conclude these transactions alone.

CHAIRPERSON: Well, you see there is evidence which suggests that you may have been involved with the Guptas more than you would like me to believe you were, okay? I am not saying that I have accepted that that is the case
20 but I am saying there certainly is evidence which, if true, will suggest that, okay? Mr Brian Molefe has himself admitted in this Commission that he had a relationship with the Guptas. I cannot remember whether he put it at a friendship level but he said he had been to their residence several times and I think some of them had been to his

house of dinner once or twice and he said his interaction with them had stretched over a certain period of time. There has been evidence that his appointment as Group CEO of Transnet seems to have been known to the Guptas before he even applied for the job, that is why the New Age published an article in December 2010 where it was suggested that he was going to be the next Group CEO of Transnet and indeed he became Group CEO of Transnet and I am aware on the basis of information before the

10 Commission, I am aware that the board of Transnet gave Minister Gigaba I think three names of for the position of Group CEO of Transnet and that in terms of the points that he had been allocated in the interviews to three candidates, Mr Molefe was not number one, it was another candidate, he was number two. Nevertheless, Mr Gigaba, you know, went with his name and of course there is the evidence of the drivers who have given evidence about yourself, about Mr Gama, about – who was the other one? I cannot remember whether Mr Brian Molefe was involved.

20 And, of course, there is some evidence from Travel Excellence about Mr Salim Essa. Now I did say that the evidence of the two witnesses from Travel Excellence coincides with your evidence to a very large extent but there is evidence which suggests that at least in regard to one transaction, maybe two, I am not sure, Mr Salim Essa

may have paid for your trips. So this Commission, if it is to do its job properly it has to ask the question, if all of these things are true, if these things, this looting happened, how did it happen, you know, were people sleeping on the job? Were people who were in the SOEs, were they working the people whose agenda was to loot the SOEs? So it has got to ask those questions and obviously somebody like you, against whom there are all kinds of allegations, must get an opportunity to say this is
 10 what happened, this is what I think happened, this how I think it happened, that is why one puts these propositions to you.

MR SINGH: Thank you, Mr Chair, I certainly do not believe that the propositions are unfair hence I was responding to the proposition.

CHAIRPERSON: Yes, okay.

MR SINGH: In – and I was getting to a point where I was saying, Mr Chair, that the – as I was alluding to the fact that the transactions did not happen by myself in isolation,
 20 Mr Chair, there were circumstances as to why there was a business requirement for these services or assets to have been acquired in the manner that it was acquired. Transnet internal audit was integrally involved in most if not all of the transactions that Mr Myburgh has alluded to. I think we have actually in one of the annexures that we

have just seen, there was internal report that was attached to it which was a high value tender process, so those we took significant assurance from those processes that occurred. Mr Chair, in terms of the board acquisition and disposal committee, they reviewed documents, they have reviewed, they interrogated submissions. To the extent that Mr Molefe and Mr Gama approved documents, they interrogated documents, they reviewed the information that was presented before it. To the extent that they did not
10 believe that it was justified, the prerogative was theirs as to whether they approve or not. The board, for example, Mr Chair, on the locomotive transaction, I think there were 14 to 16 non-executive board members that were sitting on the award of these – as Mr Myburgh read out. The submissions went to the BADC, it then went to the board. If I was at any point incompetent in dealing with these matters to the board, Mr Chair, the board had the prerogative to say Mr Singh, you are talking nonsense, please leave. And, Mr Chair, the justification of how
20 actually is in the detail of the transactions and I am hoping that Mr Myburgh during the course of the day will take us through the detail of the transactions that I may be able to then demonstrate to you that from perspective I did what was required of me to be done and each of the transactions can be explained in the circumstances that

that occurred at the time.

ADV MYBURGH SC: I do not know if you still want to take tea or can we push on through to lunchtime?

CHAIRPERSON: I think we must take at least ten minutes adjournment.

ADV MYBURGH SC: Thank you.

CHAIRPERSON: Ja, let us take a ten minutes adjournment.

INQUIRY ADJOURNS

10 **INQUIRY RESUMES**

CHAIRPERSON: Yes let us continue.

ADV MYBURGH SC: Thank you. Mr Singh just to round off on my line of questioning before tea, if one accepts the money flow evidence then it seems that there are three possibilities, firstly it is that you were party to these nefarious dealings; secondly that you were incompetent or thirdly that you were deceived/scammed. As I understand – or let me ask you, you have denied being party, you say you were not incompetent, so it seems that you must have
20 been deceived or scammed, is that correct?

MR SINGH: It would seem so sir.

ADV MYBURGH SC: In relation to transactions that you were involved in, and in some instances intimately, correct?

MR SINGH: Sorry, sir your question?

ADV MYBURGH SC: In relation to transactions that you were involved in and in some instances intimately.

MR SINGH: Yes, sir.

ADV MYBURGH SC: Can you accept what I have sketched to you is a program of looting, in relation to all of the elements of the 164 transactions from the consultancy in the room advising on business cases, right through to the funding program of looting.

MR SINGH: Mr Chair, I would not categorise it as a
10 program, I would – well it is a logical sequence of the evolution of the transaction.

CHAIRPERSON: So what is the logical conclusion of what?

MR SINGH: No, Mr Chair I said it could - Mr Myburgh put a proposition to say that, it was a sorry you said, again it was a?

ADV MYBURGH SC: A program of looting.

MR SINGH: A program of lootings.

CHAIRPERSON: Ja.

20 **MR SINGH:** And he used the example of the business case through to the funding of the transaction, and my view, Mr Chair, is that it was not - it is not automatic that you get to a point of saying it was a program of looting, it was just the manner in which the transactions involved you get from a business case to contracting from contracting

funding, you cannot do funding before you do a business case, for example.

CHAIRPERSON: Do you say that it was not a program, even though you say your view is that you were scammed?

MR SINGH: Mr Chair, in the context of the example that was used.

ADV MYBURGH SC: So Mr Singh, perhaps then I can ask you, because I mean, it is an important piece of evidence that you give, now you were the Group Chief Financial
10 Officer on the money flows evidence under your watch, you were scammed. Now, what do you think you could have done differently, I mean, presumably, you have agonised over this. What is it that you think you could have done differently or better, perhaps, so that this might have been avoided?

MR SINGH: Mr Chair, I think if you - in my view, Mr Chair, I am again, thinking of the fact that these issues are best dealt with if we deal with the transaction detail. If you look at the transaction detail, Mr Chair, you would then be in a
20 position to understand what could have been done better.

But Mr Chair, if you ask me to answer the question at this point in time, Mr Chair, on the locomotive transactions, Mr Chair, I think it was quite a significant achievement for Transnet to acquire 1064 locals in the time that it did, I think it is probably one of the transactions that

would probably be quite significant in South Africa's history if not in globally. I mean, you do not have a company that orders 1100 locomotives at any given point in time.

If you look at the transactions in the...[intervene]

CHAIRPERSON: Do you think people will remember that more than the corruption connected to it?

MR SINGH: Well, Mr Chair again, Mr Chair, the corruption would as you said, it is an allegation.

CHAIRPERSON: That is the first thing that comes to
10 people's minds when you talk about those transactions, is the corruption.

MR SINGH: That is true Mr Chair, but again, this is without having afforded me the opportunity to provide the justification relating to the transaction.

ADV MYBURGH SC: But Mr Singh, you see what - we are going to get to the transactions, I am quite sure you are able to justify them in your own mind and there is many ways these things can be argued but despite that there was still this looting. So I mean, you may come and tell
20 us, well, I can justify the increase in the ETC and so we go on, but despite that on the money flow evidence. There was the looting, there was the heist, there was the 21% kickback.

MR SINGH: So, Mr Chair, let me answer the original question. In terms of saying, what was my view in terms of

the transactions? I think if you look at the advisory transactions, Mr Chair, again the advisory transactions, if anything needed to improve, I think it is the case of the – getting by the main contractors in terms of the subcontractors that they are required to use.

And I think to that extent, McKinsey has already in some way, acknowledged the fact that the vetting processes on Regiments and Trillian maybe were not completely up to scratch and that may have been the
10 reason why they have decided to pay back the money. Mr Chair, in terms of the - well, those are the two broad categories of transactions.

ADV MYBURGH SC: Ah, you make a very important point, because the Commission also will have to reflect on what - how to prevent something like this from happening, and something that definitely has come to light is the rigor with which the appointment of supplier development partners, consultants, is analysed.

But just on that, before we get to - we will get to the
20 transactions but I just want to make sure that I understand that when you are in the room and you are negotiating. You were assisted by McKinsey and Regiments.

MR SINGH: Sorry, which room and transactions?

ADV MYBURGH SC: During the negotiations, during the acquisition phase, they were assisting you, they were your

transaction advisors.

MR SINGH: Not McKinsey, at the time.

ADV MYBURGH SC: Yeah, well Regiments was.

MR SINGH: Regiments were, yes transactions. So just so that the public understands this, you were relying on the advice of an organisation that was paying 50 cents in the rand to Mr Essa. I mean, do you understand how radical that is?

MR SINGH: I do, Mr Chair and that is the reason why we
10 are here trying to explain our role in this process.

ADV MYBURGH SC: So when you say, well, you can easily justify these transactions, those were your advisors. The transactions in the contracts are tainted.

MR SINGH: Well, Mr Chair, they may be tainted but at the end of the day, the transactions and the transaction advice that was given to us at that point in time, Mr Chair was evident and relied on market indicators that existed at the time.

ADV MYBURGH SC: Oh, well, let us go then...[intervene]

20 **CHAIRPERSON:** And they were appointed without any competency met, or processes.

MR SINGH: The transaction advisor process, Mr Chair was a limited confinement, I think there were five companies that were invited, if memory serves.

ADV MYBURGH SC: But we are going to come to that

now, let us start off by looking at these the procurement of consulting and advisory services and start with the 1064 transaction advisors. So I think you may have touched on this before, but I suppose it is important just to reflect on why it is that Transnet needed advisors, transaction advisors.

And perhaps if I could just ask you to comment on this, it seems to accord with documents and the evidence given the magnitude of the 1064 locomotive of Transnet.

- 10 Transnet procured transaction advisors to provide advisory services in respect one, the validation of the business case. Two, technical evaluation and optimisation of bids. Three, deal structuring and finance and, four, procurement advice and legal service, is that correct?

MR SINGH: That is correct, sir.

ADV MYBURGH SC: So those various elements are important. So you appoint these 1064 transaction advisors to advise on the validation of the business case.

MR SINGH: That is correct.

- 20 **ADV MYBURGH SC:** On technical evaluation and optimisation of bids.

MR SINGH: Yes, sir.

ADV MYBURGH SC: That is the part of the process that you were not personally involved in.

MR SINGH: No, Mr Chair. So that technical optimisation

of the bids part would have actually happened or should have happened...intervene]

CHAIRPERSON: I think raise - speak up Mr Singh, your voice is very soft.

MR SINGH: Sorry, sir. That aspect relating to bid optimisation, Mr Chair, would have happened prior to the bids actually been – or prior to the RFP's being issued, there would not be an opportunity to optimise the bids, that is one sided.

10 **ADV MYBURGH SC:** And then deal structuring and finance?

MR SINGH: Deal structuring and finance would be the funding and the...[intervene]

ADV MYBURGH SC: That comes afterwards.

MR SINGH: Yes.

ADV MYBURGH SC: And procurement advice?

MR SINGH: That would also have been prior.

ADV MYBURGH SC: But just to pick up on the
20 Chairpersons questions, and I want to get to the key issue that I want to discuss with you now. What the chronology shows is that on the 30th of May 2012, Transnet issued an RFP to nine consortiums on a confinement basis, and you made that point.

Then on the 26th of July 2012, the contract was

awarded to the McKinsey Consortium and it was led by McKinsey as the main bidder together with amongst others, Letsema as a co-bidder, McKinsey's supplier development partner, would you confirm that?

MR SINGH: Sir, that is correct.

ADV MYBURGH SC: And then I want to get to what happened on the 22nd of August 2012, could I ask you please, to turn to page 882 of Transnet Bundle 5B.

MR SINGH: I am at 5B.

10 **ADV MYBURGH SC:** Are you there? Bundle 5B, page 882.

CHAIRPERSON: Yes, I have got it.

ADV MYBURGH SC: Alright, you will see at 882, this is a memorandum to Mr Molefe from yourself, subject being appointment for transaction advisors on the 1064 locomotives tender, and if you go to page 885, you will see that you recommended it on - is that the 20th of August 2012? **MR SINGH:** It would appear so, sir.

ADV MYBURGH SC: Alright, if you go back to page 882,
20 at paragraph 1.1, under the heading purpose it says:

“For the group chief executive to note that McKinsey would be advised to partner with another firm with equal or better credentials than Letsema with the procurement elements due to a potential conflict of interest with Barloworld and Letsema.”

Do you see that?

MR SINGH: I do, sir.

ADV MYBURGH SC: And then at paragraph 14 it says there that:

“The tender evaluation process was concluded whereby the McKinsey Consortium consisting of McKinsey, Letsema etcetera were evaluated as the preferred bidder.”

Do you see that?

10 **MR SINGH:** That is correct, sir.

ADV MYBURGH SC: And then at 15:

“The Transnet Acquisition Council awarded the McKinsey Consortium, the complete advisory services and split the award regarding legal advisory to Webber Wentzel.”

Do you confirm that?

MR SINGH: That is correct.

ADV MYBURGH SC: And then at paragraph 17:

20 “The estimated value for locomotive advisory services required is 50 million, a percentage split of work is anticipated to be as follows, McKinsey 35% and the procurement partner 20%.”

Do you see that?

MR SINGH: That is correct.

ADV MYBURGH SC: “And then Utho and Nedbank 10%,

Webber Wentzel 20 and Advanced Rail Technology
15.”

Do you see that?

MR SINGH: That is correct.

ADV MYBURGH SC: And then the recommendation was
as per the purpose:

“It is recommended that the group chief executive
note that McKinsey will be advised to partner with
another firm with equal or better credentials, than
10 Letsema over procurement elements due to
potential conflict of interest.”

So what we know is the contract is awarded on the 26th of
July and then a month later, less than a month later, we
have this recommendation, correct?

MR SINGH: That is correct.

ADV MYBURGH SC: Could you please just explain what
potential conflict of interest or potential conflict, I see it is
referred to – arose as between Letsema and Barloworld?

MR SINGH: Mr Chair, I am not completely recall but I
20 would assume - I think that Barloworld was a potential
partner with one of the OEM's and hence there was a
conflict there, and I think there was a – Letsema was in
some way, shape or form involved with Barloworld.

ADV MYBURGH SC: Sorry what did you say?

MR SINGH: I said, Barloworld had a relationship with one

of the potential suppliers for the locomotives and Letsema had some relationship with Barloworld.

ADV MYBURGH SC: That is what you can remember?

MR SINGH: That is correct.

ADV MYBURGH SC: So why is that conflict not set out in this memo, I mean, it is just assumed there is a conflict. Why is it not explained and dealt with?

MR SINGH: I am not too sure, Mr Chair.

ADV MYBURGH SC: And I raised that with you because I
10 would like to get your comment. When I asked Mr Molefe about this, he really had very little idea if any actually as to what the conflict was, if...[intervene]

CHAIRPERSON: It cannot be that the CEO and the Group CEO and the Group CFO do not know.

MR SINGH: Well, Mr Chair these as you would have seen, if we look at page 886 Mr Chair, these matters are actually dealt with by the procurement team, and it actually gets to the Transnet Acquisition Council, and these matters of conflict, then, looking at potential conflicts are dealt with
20 by the procurement team.

ADV MYBURGH SC: Dealt with by who?

MR SINGH: By the procurement team.

CHAIRPERSON: I am sorry, but you would ask the questions, you would ask the type of question that Mr Myburgh is asking to say what is the conflict?

MR SINGH: Well, hence, Mr Chair...[intervene]

CHAIRPERSON: Because you do not want to exclude somebody who should be included, you do not want to include somebody who should be excluded.

MR SINGH: Well hence, Mr Chair, my response in terms of what I understood the conflict to be at the time.

CHAIRPERSON: But you are not confident that that was the - as I understand your evidence, it is more speculative.

MR SINGH: No, Mr Chair, there is no other reason that is
10 in my mind, so that is the reason from my perspective.

CHAIRPERSON: Ja, Mr Myburgh.

ADV MYBURGH SC: I just wanted to point out to you that 886 was actually the original decision of the Transnet Acquisition Council to appoint the McKinsey Consortium that would have included Letsema, you see, that is a decision taken on the 27th of July.

MR SINGH: No, I agree.

ADV MYBURGH SC: The meeting was held on the 26th.

MR SINGH: I agree with you; sir I am just using it as an
20 example to say that these issues are...[intervene]

ADV MYBURGH SC: Ja, because what is...[intervene]

CHAIRPERSON: Do not lower your voice Mr Singh, do not lower your voice.

MR SINGH: Ah, sorry sir.

ADV MYBURGH SC: So why it is important is, we will go

into the chronology but one does not see anything where the Acquisition Council is approached to approve what was a fundamental change in the composition of the McKinsey Consortium?

MR SINGH: Yes, Mr Chair.

ADV MYBURGH SC: You do not see that do you?

MR SINGH: No, Mr Chair I would think that we would need to understand whether there was a requirement for that to happen and in my view, if there was a requirement
10 for that to happen, Mr Chair, Mr Peter would have been in a position to advise us if that was required.

ADV MYBURGH SC: But do I not understand you to have accepted a little bit earlier that you agreed this is one of the potential areas of weakness, not so?

MR SINGH: Sorry, which areas?

ADV MYBURGH SC: Did you not accept that this - the appointment ultimately of Regiments which we are going to come to is a potential area of weakness it could have been done better.

20 **MR SINGH:** In hindsight, yes.

ADV MYBURGH SC: Then we know that on the 6th December Transnet and McKinsey conclude a letter of intent which reflected that Regimens had replaced Letsema. Could I ask you to turn to another bundle that is Exhibit BB3B, Mr Mahomedy's annexures.

CHAIRPERSON: What is the bundle called?

ADV MYBURGH SC: Exhibit BB3B, it is one of the very early files.

CHAIRPERSON: Oh, okay.

ADV MYBURGH SC: Could you please go to page MSN 354, there is two sets of numbers but could you take the one at the top right hand MSM 354. Are you there?

MR SINGH: That is correct.

ADV MYBURGH SC: You will see this is a document at
10 MSN 354 dated the 30th of November 2012. It is addressed to McKinsey and it is a letter of intent and that is what you see in the second paragraph:

“The parties to this agreement are Transnet SOC and McKinsey Incorporated and other members of the consortium namely Regiments Capital, Advanced Rail Technologies, Nedbank Capital and Utho Capital.”

Do you see that?

MR SINGH: That is correct.

20 **ADV MYBURGH SC:** So this is a letter of intent that you sign as I can see on the 4th of December 2012, is that correct? And then it is signed by McKinsey on the 6th of December.

MR SINGH: That is correct.

ADV MYBURGH SC: Between the - well were you

involved at all in the replacement of Letsema by Regiments, were you involved at all in that or was that left entirely to McKinsey?

MR SINGH: Mr Chair, I do not recall being involved in the replacement. I may have - well, let me start here Mr Chair, I think the choice of subcontractor is always the choice of the main contractor. We do not dictate or the principle is that we do not dictate, in this case I did not in any way shape or form dictate to McKinsey that Regiments would
10 need to be subcontracted to McKinsey for the transaction advisory services.

There may have been occasion for me to meet with the Regiments once it was proposed, or once McKinsey had proposed that Regiments would be there subcontractor, I do not recall that

CHAIRPERSON: I may be asking you something that does not belong to what we are dealing with bow but let me put this version. Do you know why in relation to supplier development partner seems both at Eskom and Transnet
20 and you were at both, you did not do and that is now Transnet and Eskom things were not done in such a way that if you tender or put in a bid for a job you bring your SD partner there, there and then when you put in your bid it is known who your SD partner is going to be if you get this job, so that that partner gets scrutinised itself as well.

Rather than have a situation where you have a particular entity bidding, getting the job, and then it is told to go and get a partner, I can get whatever partner, it wants. That partner who has not been subject to the scrutiny to which it would have been subjected, if there had been a disclosure at the time of bidding for the job, that if we get given this job, this is our partner, you can scrutinise them as well. Do you why things were done like that?

10 **MR SINGH:** Mr Chair I do not – well I could only speak from a finance perspective. I am not a procurement expert; I am not too sure what the procurement rules are relating to that. But one of the things that one would consider is as I explained to you before, Mr Chair from a - let us call it from an Eskom or a Transnet perspective, we would not want to assume any subcontractor risk.

CHAIRPERSON: Yes, you might not but if your interest is that there should be transformation in the relevant sector, yes you are in and you want big companies that have been
20 around for some time, you do not want them to have to continue to enjoy a monopoly and so on, you want to develop other people as well and other entities. You say, by the time you put in your bid, you must have spoken to the entity that you want to partner with, put that in the bid, let us scrutinise them all of you before we decide whether

to give you the tender, rather than we say, you can come on now on your own, put in a bid and we will grant you the job.

If we grant you the job or give you the tender, but it will be on condition that you can go and look for an SD partner and as long as you have got a SD partner, that is fine.

MR SINGH: Mr Chair, I think, again, I am speaking from memory and I stand to be corrected but it is my
10 understanding that that is a requirement that once you submit your partner, your bid for example, you have to disclose who your SD partner is.

Let us say for example, the locomotives for example each of the OEM's had to submit who their BEE partners were and that as you quite correctly stated, gets evaluated in some way shape or form. If you have regard for the memorandum that Mr Myburgh referred to previously, where the 22nd of August memorandum, Mr Chair, you will see the words that we carefully put there, we said we will
20 replace Letsema with an alternative supplier with the same level or better credentials.

CHAIRPERSON: Ja, but that is not what I want, I want the identity.

MR SINGH: No, I agree Mr Chair.

CHAIRPERSON: Ja.

MR SINGH: So what I am saying is I think it is a general requirement the identity of the supply development department, it is part of the tender and it gets evaluated.

CHAIRPERSON: Ja, but regard to some of these transactions my impression is that they were allowed to get an SD partner both at Eskom and Transnet, I think almost certainly it was both. It is like it is your business to get an SD partner as long as we are giving the job to you, whereas the consent should be – the interest should be
10 giving the job to this entity and we know who they are going to work with, we have scrutinised them, they are fine.

MR SINGH: I think Mr Chair, from what I can recall, I think the Transnet case is probably the former and maybe the Eskom case is a bit different, I think I stand under correction but based on what you have seen thus far I think you probably correct.

CHAIRPERSON: H'm Mr Myburgh I am sorry...[intervene]

ADV MYBURGH SC: Yes, thank you.

20 **CHAIRPERSON:** I moved off to something else ja.

ADV MYBURGH SC: Mr Singh I – I just want to go back to what interaction if any you had with Regiments and or McKinsey during the period 22 August 2012 when Mr Molefe approved your memo and the time that this LOI was concluded on the 6th of December 2012.

In short did you have any interactions with McKinsey over the replacement of Letsema by Regiments during this period in time.

MR SINGH: Well Mr Chair if you – if we look at the way it would have probably unfolded and I do not have a complete recollection of – of the events I would assume that this conflict would have been picked up post the award of the tender by the Transnet Acquisition Council in July. It would have been picked up between July and let us say August
10 when the memo was sent to Mr Molefe.

ADV MYBURGH SC: Yes.

MR SINGH: Hence it declared it in the memo and then between let us say August and December McKinsey would have been in the process for identifying an alternative to Letsema.

Whether they engaged with me or not Mr Chair I am – I am at a loss to remember that but I would have assumed they would have told me or they would have told procurement.

20 **ADV MYBURGH SC**: You would have assumed they would have talked to you.

MR SINGH: No I do not recall completely but I would have thought they would have had to at least declare that to the procurement.

ADV MYBURGH SC: All right. When you dealt with

McKinsey as you say you did at this time after they were awarded the contract did you deal with Mr Sagar?

MR SINGH: Yes.

ADV MYBURGH SC: Now just going back to this LOI it is unfortunately not a very good copy and there is a better copy somewhere else which I will find in a moment but can I just ask you to go to MSM355 it is the second page. You will see at the top that it says some words that are not clear that it goes on to say:

10 “Will remain in effect until the agreement you signed by both parties or 90 days have elapsed from the date of the issue of this LOI whichever event should occur first.”

Do you see that?

MR SINGH: Yes I see that.

ADV MYBURGH SC: And then if you go to paragraph 3.1 at page MSM 356 you will see here that the fees were capped at 35 million. Is that correct excluding disbursements.

MR SINGH: That is correct Sir.

ADV MYBURGH SC: As I understand it you must correct
20 me if I am wrong. What had happened is initially the budget was 50 million but the legal services were spun out of this and that is how one gets to 35.

MR SINGH: That is correct.

ADV MYBURGH SC: Now before we go on in this chronology perhaps I could just deal with the fact there was

then another replacement on account of the conflict of interest a year later. You will remember that Regiments Capital replaced Nedbank. You recall that?

MR SINGH: That is correct Sir.

ADV MYBURGH SC: Let me take you to that document – could ask you to go to your exhibit – Transnet Bundle 5(b) and that document you will find at page 881.

MR SINGH: Black or red numbers Sir – black.

ADV MYBURGH SC: Black number.

10 **MR SINGH**: Black.

ADV MYBURGH SC: 881.

MR SINGH: I am there.

ADV MYBURGH SC: So a year after Regiments Capital replaced Letsema what then happened is Regiments Capital also replaced Nedbank. Now this letter you will see at 881 is dated the 19th of November and it is headed – it is addressed to Mr Clost from McKinsey letter confirming a conflict of interest Nedbank Capital and the recommended alternative Regiments Capital in regard to advisory
20 services. It says at 1 that McKinsey and other members of the consortium were awarded the business to provide advisory services to McKinsey was awarded the business and Nedbank Capital was its partner to provide financing funding etcetera – we have seen that.

MR SINGH: That is correct.

ADV MYBURGH SC: Then you say at 3.

“In May 2013 a potential conflict of interest was raised with McKinsey concerning Nedbank to which a response from McKinsey confirmed the conflict and an alternative solution to provide the services to Transnet was proposed in terms of Regiments Capital to provide the services.”

And then you say at 4.

10 “The 1064 – sorry the 1064 locomotive tender is entering phase 2 which will now include the funding and deal structuring work envisaged by Transnet for the acquisition of the 1064 locomotives.”

So now one was moving into the fund raising part of it, correct.

MR SINGH: Not completely but yes.

ADV MYBURGH SC: And that – well that is – it is phase 2.

MR SINGH: Yes Sir.

20 **ADV MYBURGH SC:** All right. The funding and deal structuring. That is when Nedbank was going to play its role presumably.

MR SINGH: That is correct.

ADV MYBURGH SC: And at that point in time it is replaced by Regiments Capital.

“It is thus in the best interest of Transnet and McKinsey to confirm the proposed alternative of Regiments Capital. This letter serves to confirm Regiments – oh sorry – confirm Transnet’s agreement to McKinsey’s request for Regiments Capital to provide the required services.”

So you say this was a request by McKinsey.

MR SINGH: That is correct Sir.

10 **ADV MYBURGH SC:** And did you again liaise with Mr Sagar in this regard?

MR SINGH: Mr Chair I do not have a complete recollection but I would assume that he was the – the lead partner at Transnet at the time so I would have yes.

ADV MYBURGH SC: So different to the first conflict of interest and change of Letsema to Regiments Capital here you did not seek the approval of Mr Molefe or anyone for this change.

20 **MR SINGH:** Mr Chair I think if you look at the original memo that we saw I think Mr Molefe had delegated to me the award of this contract. So this was done in terms of that.

ADV MYBURGH SC: So you had the delegated authority.

MR SINGH: I would assume so yes. That is my recollection.

ADV MYBURGH SC: Okay. When you talk about the original document are you talking about the one you find at the next page 882?

MR SINGH: Ah yes I think this is the one that we have seen yes.

ADV MYBURGH SC: All right.

MR SINGH: This is the one yes. But there was another one that actually delegated me authority to conclude these transactions which I do not see here but I am sure we can
10 find. Okay it is the one at 888.

CHAIRPERSON: At what page?

MR SINGH: 888 same bundle Mr Chair. And so if you say – to answer your question Mr Myburgh at 1.3 there is a request to ratify the amendment in the makeup of the transaction revised at consortium from Nedbank Capital to Regiments Capital.

ADV MYBURGH SC: Yes to ratify.

MR SINGH: Yes Sir.

ADV MYBURGH SC: And then you say we are going to
20 come to this document because it is forward in time.

MR SINGH: Yes.

ADV MYBURGH SC: So this happened in April of 2-014.

MR SINGH: That is correct.

ADV MYBURGH SC: Perhaps can you just tell me where you are – what paragraph you referring to and I will come

back to it.

MR SINGH: It is document 888.

ADV MYBURGH SC: Yes I am there.

MR SINGH: And then paragraph 1.3.

ADV MYBURGH SC: 1.

MR SINGH: 3. It is on the first page.

ADV MYBURGH SC: To ratify the amendment and makeup.

MR SINGH: Yes.

ADV MYBURGH SC: Okay.

10 **CHAIRPERSON:** And then of course 1.5 talks about the delegation of authority. Is that right?

MR SINGH: Yes that is – but that is overlooking as Mr Myburgh has pointed out.

ADV MYBURGH SC: So we will come to that. So going back to this page 881. So just so that I understand this. We initially - you have got McKinsey, you have got Letsema and you have got Nedbank. What happens is Regiment Capital replace Letsema as this – as the supply development partner, is that right.

20 **MR SINGH:** That is correct Sir.

ADV MYBURGH SC: And then a year later Regiments Capital now replace Nedbank.

MR SINGH: That is correct.

ADV MYBURGH SC: What happened to Utho?

MR SINGH: I have no idea Mr Chair.

ADV MYBURGH SC: So in terms of the initial structure this supply development partner would get 20% and the banks would get 10%.

MR SINGH: If I recall you are correct.

ADV MYBURGH SC: Right. So now Regiments went from nothing to a 30% stake in the 1064 advisory contract.

MR SINGH: Well if we looked at that – where was the LOI again Mr Chair – I mean sorry Mr Myburgh?

ADV MYBURGH SC: It was in Mr Mohamedy's bundle. I
10 can take you back there but otherwise...

MR SINGH: I mean it is a fact. I mean if you look at 1.5 – paragraph 1.5 of that LOI McKinsey actually nominates Regiments as their procurement.

ADV MYBURGH SC: Yes, no, no I accept that.

MR SINGH: Service provider as well as their supplier development partner.

ADV MYBURGH SC: All right.

MR SINGH: In that LOI.

ADV MYBURGH SC: All right but I just wanted to then ask
20 you something else because it is – it is obviously important for our work to understand this. So the same organisation was acting as a supplier development partner is rendering general consulting services or perhaps you can explain how – did they have two hats or what is happening? So you know that is what I am struggling with.

MR SINGH: In terms of Regiments?

ADV MYBURGH SC: Ja.

MR SINGH: In terms of Regiments itself.

ADV MYBURGH SC: Yes so what happens is Regiments replaced Letsema.

MR SINGH: Yes.

ADV MYBURGH SC: Perhaps you can address what it is that they did – Regiments and then a time later Regiments also started to do the work of the bankers. That is really
10 what I want to discuss with you and perhaps you can just explain to us how that worked.

MR SINGH: Yes. So Mr Chair I think as one would appreciate the issue of supplier development there would be areas where a supplier would need to develop and that is the reason behind supplier development.

So Regiments Capital I think at the time was made up of a number of businesses. They had property, they had I think an advisory business, they had funding and net capital markets business and like so the net capital markets
20 business was obviously the issue where they replaced Nedbank and the advisory business I would think is the area where they agreed to take over from Letsema and build that business as part of the supplier development process with McKinsey.

ADV MYBURGH SC: Okay but just – just that I understand

it what I mean what work did Regiments do before – before this? I mean during the course of that year as the supplier development partner what physically – what did they do?

MR SINGH: I think they partnered with McKinsey across most of the work streams that was – that was undertaking at the time the business case development, the procurement strategy, the ...

ADV MYBURGH SC: So they worked hand in hand alongside McKinsey.

10 **MR SINGH:** For most of the part that I interacted (inaudible).

ADV MYBURGH SC: And then a year later they also stepped into the shoes of Nedbank.

MR SINGH: yes.

ADV MYBURGH SC: And now they were going to advise you as well on – is it put here – funding and deal structuring.

MR SINGH: Yes.

ADV MYBURGH SC: Now – so this is in November of 2013
20 we had been talking about what happened between your memo to Mr Molefe advising of the conflict in relation to Letsema and the 10th of December that three month period when the LOI was concluded. I just want to put to you what some of the evidence indicates what happened during that three month period.

According to what was reported to a Mr Ian Sinton of Standard Bank this is how Regiments came to be appointed. In October of 2012 Mr Kuben Moodley arranged a meeting between Regiments and McKinsey in the form of Mr Sagar and Mr Essa. And at this meeting Regiments were informed that Transnet required McKinsey to appoint a black owned supplier development partner with 30% of the fees earned. McKinsey offered to appoint Regiments as its supplier development partner provided Regiments agreed to pay 30%
 10 of all its income from Transnet to Essa and 5% to Moodley. And money flows has determined that that 30% then increased to 50%. You want to comment on that? So that is what was going on in this three month period behind the scenes so to speak.

MR SINGH: Mr Chair I was not aware of any of these happenings.

ADV MYBURGH SC: All right. Did you know or have you ever met Mr Kuben Moodley?

MR SINGH: No Sir.

20 **ADV MYBURGH SC:** I think you – his name has arisen once before in our – in our evidence. You will remember you might not have arisen directly but you remember when you thought that Witness 3 may have got wind of your or been told of your safety deposit boxes at Knox Vault because it was in the media that the commission had seized

some boxes. Do you recall that?

MR SINGH: Yes.

ADV MYBURGH SC: Well the person that was involved – the boxes that were seized actually it belonged to Mr Kuban Moodley. You not come across his name in the context of your reading the press in that regard.

MR SINGH: Yes.

ADV MYBURGH SC: You did.

MR SINGH: Yes.

10 **ADV MYBURGH SC:** But you had not met him before.

MR SINGH: No Sir. Certainly not at this time or ever.

ADV MYBURGH SC: I beg your pardon.

MR SINGH: Certainly not at this time or ever for that matter.

ADV MYBURGH SC: Ja well you have never met him.

MR SINGH: No.

ADV MYBURGH SC: And then after that perhaps I could just put to you the rest of course is history. We know that Regiments appoints – are appointed as McKinsey's skills
20 development partner and on other contracts and ultimately according to money flows in excess of R200 million was transferred from Regiments to the Gupta Enterprise. You want to comment on that.

MR SINGH: I think Mr Chair I cannot comment on the – on the – well I know that we did award other contracts to

McKinsey where Regiments was the sub-contractor so that – yes I can confirm. The exact amount of those contracts Mr Chair I cannot confirm.

ADV MYBURGH SC: We are actually going to come to those contracts where you are right you were involved in awarding other consulting contracts to McKinsey and Regiments.

MR SINGH: That is correct.

ADV MYBURGH SC: And in fact in some of those contracts
10 as we will come to later Regiments appointed Homix and Albertine as their supplier development partners. Do you know that?

MR SINGH: I know Sir.

ADV MYBURGH SC: You did?

MR SINGH: No.

ADV MYBURGH SC: Well we will come to the documents. And Homix and Albertine are two of the Gupta money laundering companies.

MR SINGH: Yes Sir.

20 **ADV MYBURGH SC:** All right. So I was going to end this off by putting to you what I think the – or asking what I think the DCJ has already asked you and that is – and I think you have accepted that this a potential area of weakness but what potentially is a challenge here Mr Singh is how – how does Regiments come in to be appointed and replace

Letsema without any on the face of it form of – of vetting, any form of re-evaluation of – of the bid. And it is only a month after the contract was initially awarded where the problem arose. How does that happen?

MR SINGH: Well Mr Chair in this regard I think we – I would refer the commission to Mr Mieszala's evidence that was presented before the commission I think on day 322 and I think the transcript page reference is page 185 where Advocate Chaskalson basically put to Mr Mieszala that the –
 10 that Regiments was basically brought to Transnet by McKinsey and in more particular Mr Sagar. And that is how I think Regiments ended up at Transnet. I certainly did not have – I actually did not know Regiments before this contract.

I had no interactions with Regiments before this contract and secondly Mr Chair if we have regard to the money flow work stream evidence as well you will note that Mr Sagar was in receipt of a business profile of Regiments sometime in July of 2012 I think if memory serves. So from
 20 that perspective Mr Chair it would seem that Mr Sagar was the person that actually introduced Regiments to Transnet and I think McKinsey has accepted that based on the money flow work stream evidence that has been presented to them. Mr Chair in terms of the Transnet side I would – I can only assume that at some point between August and December

Regiments would have been proposed by McKinsey as a alternative to Letsema and some sort of review of McKinsey's credentials – sorry not McKinsey – Regiments' credentials would have been done by the procurement team because the memo of 20 – of 22 August basically says that we will replace Letsema with a alternative that has the equal or better credentials than Letsema. So I can only assume that that work had been done between August and December.

10 **ADV MYBURGH SC:** But we can find no record of that Mr Singh. I mean you do not know whether that happened. Does not the very sentence that you referring to you now in the memo indicate that McKinsey was simply given carte blanche to do what it wanted to.

MR SINGH: Mr Chair I would not say so I think the LOI document is prepared by procurement itself so I would assume that they would have done what they needed to do to enable us to issue the LOI and I think one of the reasons for the delay between August and December which is a
20 period of four months it is normally not that a long a period that you have an award and a LOI that is then issued four months later. It is indicative of something that actually was happening during that period of time.

ADV MYBURGH SC: But Mr Singh there was – there was a scam going on behind the scenes.

MR SINGH: We were not party to that.

ADV MYBURGH SC: Yes.

CHAIRPERSON: And we have no idea of that.

ADV MYBURGH SC: Yes. And what I also want to put to you I asked the same questions of Mr Molefe and my recollection he – he accepted that this was a weakness that there was – he was not aware of any re-evaluation.

MR SINGH: Mr Chair he would – he would probably not have been aware of any re-evaluation. Being the GCE in
10 his position he would rely on the – the documents that – that is submitted to him.

ADV MYBURGH SC: He would rely on you.

MR SINGH: Yes.

ADV MYBURGH SC: Can I take you please to Transnet Bundle 6. Can you turn please to page 380 – 380.

MR SINGH: Which number Sir? There are three references here.

ADV MYBURGH SC: Ja black numbers left hand side.

MR SINGH: 380. I am there Mr Chair.

20 **ADV MYBURGH SC:** I just wanted to take you to the – a few paragraphs. At page 380 from paragraph 2.4.6 it says:

“The appearance of Regiments name as a member of the McKinsey consortium and accordingly a service provider to Transnet at this stage of the procurement process was irregular

for the following reasons.

- 1.Regiments was not a member of the McKinsey consortium when it submitted its proposal for the 1064 transaction advisory tender.
- 2.The 1064 transaction advisory tender was awarded by the TAC to the McKinsey consortium based on its stated composition at the time of submission of its proposal.
10 The capabilities of the McKinsey consortium members to perform the various aspects of the 1064 transaction advisory tender and accordingly the McKinsey consortium's eligibility for the award was assessed based on the verification and evaluation of the claims made by its constituent members of which Regiments was not one.
- 3.Transnet has a statutory duty to ensure that
20 when its contracts for goods and services – when it contracts for goods and services it does so in accordance with the system that is fair, equitable, transparent, competitive and cost effective.”

And then at 2.4.7.

“It is apparent that the inclusion of

Regiments as a member of the McKinsey consortium in LOI that after the adjudication and award of the tender by Transnet the McKinsey consortium was permitted to change its composition and to introduce a new member viz Regiments. As such the capabilities and other credentials of Regiments were not subject to the rigour of the verification, evaluation and adjudication process inherent in the tender process.”

10

You want to comment on that.

MR SINGH: Mr Chair these aspects relate to aspects that would have been looked at by the procurement department and would have been vetted by the procurement department prior to us being given or me being given the LOI to be able to sign on behalf of Transnet.

ADV MYBURGH SC: But as I understand it Mr Singh you do not know that as a matter of fact.

MR SINGH: No I know as a matter of fact that the LOI was prepared by the procurement department.

20

ADV MYBURGH SC: Yes.

MR SINGH: And in the LOI Regiments was mentioned.

ADV MYBURGH SC: Yes.

MR SINGH: As a replacement to...

ADV MYBURGH SC: Because McKinsey had said well that

is our replacement.

MR SINGH: That is correct Sir.

ADV MYBURGH SC: Ja. And you can see that in the course of the preparation of this report by MNS they obviously did not come across those documents by procurement and nor have we been able to.

MR SINGH: Well Mr Chair in this regard I do not think MNS has actually afforded the procurement department an opportunity to comment and I am not sure but in terms of
10 the commission we have requested affidavits of Mr Edward Thomas, Mr Gary Peter and in this regard we have been informed that the commission has not obtained affidavits in these regards from Mr Peter or Mr Thomas or for that matter any other people that were involved in these – in the procurement of Regiments and or McKinsey on the transaction advisor contract.

ADV MYBURGH SC: Chairperson I see that it is on the stroke of one o'clock if this would be a convenient time to adjourn.

20 **CHAIRPERSON:** Yes it is. Let us take the lunch adjournment and we will resume at two.

We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let us continue.

ADV MYBURGH SC: Thank you, Chairperson. Mr Singh, before lunch we were dealing with the replacement of the sale by Regiments and the conclusion of the LOI on the 6th of December 2012. I would like to just go forward with the chronology, if I may? Could you turn to Transnet Bundle 6, page 382?

MR SINGH: I am there, sir.

ADV MYBURGH SC: So what you will see is that MNS at paragraph 2.4.10 on page 381 that deals with the LOI We
10 know that is 6 December 2012. Then at page 382, the first addendum to the LOI was on 4 March 2013. And they say in the third line at paragraph 2.4.11:

“As at 4 March, the MSA was still not finalised and therefore the LOI expired on 6 March.

To avoid the expiry of the LOI, Transnet and McKinsey concluded the first addendum to the LOI which extended the validity of the LOI from 6 March 2013 to 15 October 2013...”

Do you see that?

20 **MR SINGH:** I see that.

ADV MYBURGH SC: And then came the second addendum on the 14th of October. They say:

“The day before the expiry of the LOI on 14 October, Transnet and McKinsey concluded the second addendum to the LOI which

extended its validity period from 15 October 2013 to 30 November 2013 to allow the parties to conclude the MSA...”

They go on to say:

“As at 30 November 2013, Transnet and McKinsey had neither concluded the MSA nor an addendum to extend the validity period of the LOI.

10 As a result, the LOI lapsed due to the effluxion of time...”

And then in the next subparagraph they say:

“There was no valid agreement governing the relationship between Transnet and McKinsey as at 1 December 2013...”

Do you want to comment on that?

MR SINGH: Mr Chair, the matters of the LOI and the addendums thereto, Mr Chair, would have been taken care of by the procurement department. As you would see, Mr Chair, the first addendum was concluded, I think, a day
20 or two before the LOI expired. The second addendum as well, Mr Chair, was concluded a day or two before the first addendum expired and I would assume, Mr Chair, that the further addendum to the LOI would have followed a similar process. So, Mr Chair, the procurement department within Transnet Corporate Centre would have been taken care of

these details relating to the LOI's.

ADV MYBURGH SC: Well, if they did, they did not do a very good job.

MR SINGH: On fact, Mr Chair, I would agree.

ADV MYBURGH SC: Did you not sign these addendums?

MR SINGH: I did, sir.

ADV MYBURGH SC: Right. Alright. Well, I am going to come back to the third addendum which you will see was signed on the 4th of February but before that, I want to –
10 and you can leave this open – I want to take you to something that happened in between the second and third addendums and that is a document that you will find at Exhibit BB-3(a). It is Mr Mohamedy's bundle, BB-3(a).

MR SINGH: B(a) or is it 23(b)?

ADV MYBURGH SC: Exhibit BB-3(a). And if you could please go to page MSN-177.

MR SINGH: [No audible reply]

ADV MYBURGH SC: So this is a letter dated the 20th of January 2014. And perhaps I could just take you to
20 the end of the document at MSM-180. You will see – and we will come to the handwritten annotations in a moment, but you will see that it was signed on the 20th of January 2014 by Mr Pillay on behalf of Regiments and it was signed by you, it seems, on the 23rd of January 2014. Is that right?

MR SINGH: Correct.

ADV MYBURGH SC: Now let us deal with this document. If you go back to 177, you will see at the end of the first paragraph, there is a line, third last line, reads:

“There was a conflict of interest arising from engaging Nedbank Capital who has made the reallocation of the tasks that were originally thought to be handled by Nedbank to other members of the consortium.

10 This document is, therefore, intended to clarify the updated scope of transactions advisory work that Regiments Capital will perform in relation to the acquisition of the 1064 locomotives...”

So that is upon the replacement of Nedbank by Regiments Capital. Is that correct?

MR SINGH: That is correct, sir.

ADV MYBURGH SC: If you go to paragraph 2. It deals with 2.1. It reads:

20 “Deliverables except for actual fundraising must be executed for a fee of R 15 million over a period of 12-months...”

And then sub-2:

“A performance fee equal to 20% of the achieved against the benchmark interest

rate...”

You see that, the performance fee?

MR SINGH: Is that correct?

ADV MYBURGH SC: And then if we get to the end of the document at MSM-180, you confirm that you signed this document after, on the face of it, Mr Pillay?

MR SINGH: H’m. I would – yes.

ADV MYBURGH SC: And it was then ...[intervenes]

MR SINGH: Based on events.

10 **ADV MYBURGH SC**: And you signed it. You will see where it is designated Group Chief Financial Officer and then you have go the date. To the right of that you will see the words subject to items listed below. Is that your handwriting?

MR SINGH: No, sir.

ADV MYBURGH SC: Whose is that?

MR SINGH: I do not recall off hand.

ADV MYBURGH SC: Well ...[intervenes]

MR SINGH: It seems like it is the witness. I do not recall
20 off hand, sir.

ADV MYBURGH SC: But these are presumable your conditions.

CHAIRPERSON: It would not make sense for the witness to make that kind of note, Mr Singh.

MR SINGH: Sorry, sir?

CHAIRPERSON: It would not make sense for a witness to make that kind of note.

MR SINGH: I am not sure who the witness is, Mr Chair, but if I recall, these notes would probably have been made by Ms Thomas from Ms Dawood Thomas from procurement at the time who was dealing with this matter.

CHAIRPERSON: Ja, see, a witness is only signing to say they saw you sign. They are not signing to say they agree with the contents of the document.

10 **MR SINGH:** Yes, Mr Chair ...[intervenes]

CHAIRPERSON: Whereas, somebody in your position would be signing to indicate agreement with the contents.

MR SINGH: Agreed, sir.

CHAIRPERSON: H'm.

MR SINGH: Hence I say, it is – I do not recognise the signature of the witness. It may or may not be Ms Thomas. I am not too sure but if I recall, this aspect of this transaction was being handled by Ms Thomas at the time.

ADV MYBURGH SC: Alright. So whose conditions are
20 these or items? Because they are very important.

MR SINGH: Well, Mr Chair, I would assume it is Transnet's conditions which were agreed to.

ADV MYBURGH SC: Yes.

MR SINGH: So...

ADV MYBURGH SC: I mean, you agreed with them.

MR SINGH: Yes, sir.

ADV MYBURGH SC: And whoever wrote this, you agreed to these conditions or these items.

MR SINGH: Yes, sir.

ADV MYBURGH SC: Alright. So the first point at the foot of the page:

“The contract for the Supply B Services is with McKinsey and Regiments Capital is contracted to them...”

10 Is that correct?

MR SINGH: That is correct, sir.

ADV MYBURGH SC: Alright. In terms of Section 2:

“There will not be a performance fee for fundraising. Thus, 2.1.2... [which we have read] ...will be removed as well...”

Is that correct?

MR SINGH: Yes, I would – it is correct in terms of what was stated.

20 **ADV MYBURGH SC**: So there would be no performance fee equal to 20% of savings?

MR SINGH: Yes, sir.

ADV MYBURGH SC: So let us just go through what was excluded, if you do not mind?

MR SINGH: [No audible reply]

ADV MYBURGH SC: 2.1:

“Fees on related costs are quoted in South African currency and are exclusive of VAT.

Expenses will be capped to 10% of the value of the total retainer...”

Sub-sub-2:

“A performance fee equal to 20% of the savings achieved against benchmark interest rates...”

So there was going to be a performance fee but
10 one of the conditions or items that were inserted at the foot of page MSM-180 is that that – effectively, that clause was to be removed. Is that correct?

MR SINGH: That is correct, sir.

ADV MYBURGH SC: And if you go to the foot of 180:

“Expenses will be capped at...”

I do not know what that is.

“...at ten(?)...”

You are able to decipher that?

“...and paid on the proofed actual costs in
20 terms of Transnet’s policies and procedures...”

Do you know what that figure is?

MR SINGH: I would assume 10%. It seems like
...[intervenes]

ADV MYBURGH SC: Oh, 10%...

MR SINGH: ...the stroke is missing between the two dots.

ADV MYBURGH SC: Alright.

“Payment will be made to McKinsey and costs and payments against the scope and not be made above nine million without specific approval by Transnet...”

Is that correct?

MR SINGH: That is correct, sir.

ADV MYBURGH SC: Now, Mr Singh, I mean on the face of it, this is a counteroffer, really, that you are making.

10 **MR SINGH:** That is right.

ADV MYBURGH SC: Well, did Regiments ever agree to this?

MR SINGH: I am not too sure, sir. I would assume so.

ADV MYBURGH SC: But – so, in other words, when you got this document that have already been signed by Mr Pillay, on the face of it, you then – you did not agree with your own document. And this is a Transnet generated document. It is not a – this did not come from Regiments.

MR SINGH: Well, you will see that it is actually a
20 Regiments and a Transnet document.

ADV MYBURGH SC: Oh.

MR SINGH: So I would assume that there would – it has a Transnet reference number ...[intervenes]

ADV MYBURGH SC: I beg your pardon. Yes. Alright.

MR SINGH: So I would assume this is a joint document

between – or was prepared between Transnet and Regiments and I would assume the people – the procurement department would have been engaging with Regiments to be able to prepare this.

ADV MYBURGH SC: So you cannot tell us whether this was taken back to Regiments and whether they agreed?

MR SINGH: No, sir.

ADV MYBURGH SC: Okay.

MR SINGH: But to provide context in terms of the Section
10 2 or item. In terms of Section 2 there will be – there will not be a performance fee for fundraising. This items was excluded from the scope of this assignment at this stage ...[intervenes]

ADV MYBURGH SC: Yes.

MR SINGH: ...due to the fact that, at this stage, you would understand that we had not awarded the contract for the locomotives at this stage. So there would not have been a need for us to engage in ...[intervenes]

CHAIRPERSON: Mr Singh, try to speak up.

20 **MR SINGH:** Oh, sorry, sir. There would be no need for us to engage in fundraising just yet.

ADV MYBURGH SC: Alright.

MR SINGH: So it would form a separate mandate that we would have engaged with later on.

ADV MYBURGH SC: I see. Alright. Let us go back then

to the MNS report at page 382, Bundle 6. And that brings us to the third addendum. So this was... [Speaker moves away from microphone] ...20 January. The third addendum is the 4th of February. And we will come to the document now, but it says that:

“In May 2013, Transnet raised a conflict of interest involving Nedbank Capital...”

We have gone through this.

CHAIRPERSON: Have you got the page number?

10 **ADV MYBURGH SC**: Page 382.

CHAIRPERSON: [No audible reply]

ADV MYBURGH SC: So at 382, we were dealing with the third addendum and paragraph 2.4.16 just gives you the context about Regiments having replaced Nedbank Capital. And then at 2.4.17, it says:

“Despite the LOI having lapsed...”

We know that it lapsed on the 1st of December.

“...Transnet and Regiments concluded the third addendum to the LOI on 4 February 2014...”

20 Do you see that?

MR SINGH: That is correct, sir.

ADV MYBURGH SC: Now that document, the third addendum, you will find at Transnet Bundle 5, your exhibit, 5B, page 906. You will see that is signed at nine o eight on the 4th of February 2014 and it appears to have been

signed by Eric Wood on behalf of Regiments. Is that right?

MR SINGH: Yes, sir. Sorry. That is correct, sir.

ADV MYBURGH SC: But the document itself says it is a third addendum between McKinsey and Transnet.

MR SINGH: That is correct, sir.

ADV MYBURGH SC: And at paragraph 3.1, it talks about the deliverables. It says in the third line:

10 “The object of this work specific project is to
 conduct all the necessary studies and
 preparatory work...”

And it sets it out, correct?

MR SINGH: Yes, sir.

ADV MYBURGH SC: And then there is a whole lot of other deliverables if you go over the page. Perhaps I can take you to 7:

 “Evaluating all potential funding sources and
 mechanisms to select the most appropriate
 avenues...”

Is that correct?

20 **MR SINGH**: Yes, sir.

ADV MYBURGH SC: And then the variation of the contract priced at 4.1.

 “As a result of the additional scope of work
 required on the financial phase of this
 contract, the initial price of R 35 million...”

We know where that comes from.

“...will therefore increase by R 6 million.

This increase will bring the total contract value
to the fixed amount of R 41 200 000,00...”

Is that correct?

MR SINGH: That is correct, sir.

ADV MYBURGH SC: Now why did you not conclude – I
mean, the intention clearly had been to conclude this
addendum to – or the intention had been to conclude this
10 addendum with McKinsey. Correct?

MR SINGH: Mr Chair, I think at this point in time there
was an intention for McKinsey to all of the obligations
under the transaction advisory services contract to
Regiments and I think this was the mechanism with which
that was achieved ...[intervenes]

ADV MYBURGH SC: That came later, Mr Singh. You
advised already in April. We are going to come to the
chronology.

MR SINGH: Yes, Mr Chair, but that I think was backdated
20 in some ...[intervenes]

ADV MYBURGH SC: Yes, but the intention – the cession
had been affected as of this date, had it? As of the
4th of February, or do I have it wrong? You have not been
advised of this cession.

MR SINGH: Sorry, I could not hear you, sir.

ADV MYBURGH SC: You had not been advised of the cession from McKinsey to Regiments as at the 4th of February.

MR SINGH: Mr Chair, as I understand. There were issues that McKinsey were dealing with during that period of time between February and April when the actual cession actually occurred and the intention was always that from the – from a period within - from a within February, McKinsey would cede the actual contract on a transaction
10 advisory services to McKinsey. That was later confirmed in a cession agreement that was then signed and then backdate to sometime in February.

ADV MYBURGH SC: Yes, but my question is simple. As of the 4th of February 2014, had you been advised of the cession from McKinsey to Regiments?

MR SINGH: We were aware of the cession, Mr Chair.

ADV MYBURGH SC: But had the cession taken place?

MR SINGH: In terms of the discussions between Mr Wood and Mr Sagar, yes.

20 **ADV MYBURGH SC:** Yes, but what about the discussions with you?

MR SINGH: Oh, yes, yes. I was aware of that.

ADV MYBURGH SC: You were aware of that?

MR SINGH: Yes.

ADV MYBURGH SC: So that is why you concluded this

because it should have been concluded, on the face of it, with McKinsey. If you look where Mr Wood signed, he scratches out McKinsey and he writes Regiments.

MR SINGH: Yes.

ADV MYBURGH SC: You were comfortable with that because you had been told that there was a cession.

MR SINGH: That was – yes.

ADV MYBURGH SC: In the pipeline?

MR SINGH: Well, they said that they – they had agreed
10 that they would cede the word as of a date in February
...[intervenes]

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

MR SINGH: I do not know what that date was but that was then later confirmed in this actual cession agreement.

ADV MYBURGH SC: But you have been told that. You have not been advised of that formally.

MR SINGH: In terms of a formal agreement that came in April... [Speaker unclear]

ADV MYBURGH SC: So you had just been told that
20 ...[intervenes]

MR SINGH: Yes ...[intervenes]

ADV MYBURGH SC: ...that it might – that it was in the pipeline.

MR SINGH: Well, actually, physically on the ground, McKinsey had demobilised their team. So they were not –

because during this period of time, the contracts for the locomotive – the post-negotiation of the locomotives was occurring and McKinsey did not play any part in it.

CHAIRPERSON: But is the position that you did not satisfy yourself, as a matter of fact, that there was a cession and it had been completed, it had been done?

MR SINGH: In terms of a formal ...[intervenes]

CHAIRPERSON: Procedural ...[intervenes]

MR SINGH:no, that... [Speaker unclear]

10 [Parties intervening each other – unclear]

CHAIRPERSON: H'm. But that should not be like that, is it not? You should see the cession itself to be sure, is it not?

MR SINGH: Well, Mr Chair, I think ...[intervenes]

CHAIRPERSON: ...you were transferring – you may be concluding an agreement with somebody who – with whom you should not have been concluding an addendum.

MR SINGH: Mr Chair, I think there was – and we would have to go and research this, but there were emails to that
20 effect that the cession had been affected as of the date in February.

CHAIRPERSON: Ja, but is a very strange way of doing things, Mr Singh. I would think that somebody in your position would want to be given all the relevant documents including the cession before signing an addendum such as

this with Regiments when it had been intended to be with McKinsey.

MR SINGH: Well, Mr Chair, if you have a Regiments official and you have a McKinsey official at senior levels of the organisation that were operating with Mr Sagar and Mr Wood and they agree, I would assume that is an intention that the parties are willing to cede and ...[intervenes]

CHAIRPERSON: It is not a question of willingness. You
10 know, you are involved in a very big organisation, Transnet.

MR SINGH: Yes, Mr Chair.

CHAIRPERSON: We are talking about big amounts that are involved. So the proper thing is that if rights were held with a particular entity or a contract was had with a particular entity, before somebody in your position can sign something like this, somebody should place before you all relevant documents and say:

Now you can sign this document, this addendum
20 because the following requirements which needed to be satisfied had been satisfied. Here is the cession. Here is this. Here is that. Not on the basis of word of mouth when you get involved with such big amounts and such big transactions.

MR SINGH: Mr Chair, as I said, I do not think it was word

by mouth. I think there was written communication in this regard.

CHAIRPERSON: But you did not see a cession. That is what you have told me, I thought.

MR SINGH: A cession agreement? I agree, Mr Chair.

CHAIRPERSON: H'm.

MR SINGH: It was signed in April but I am sure there was email communication in this regard between ...[intervenes]

CHAIRPERSON: And what if it was not signed?
10 Something happened and it did not get signed, what would happen? You have already signed the addendum.

MR SINGH: Mr Chair, I would rely on the email communications... [Speaker unclear]

CHAIRPERSON: And why was this addendum signed by you and Mr Eric Wood without any witnesses signing?

MR SINGH: [No audible reply]

CHAIRPERSON: Where were you when you signed this with Mr Wood?

MR SINGH: Mr Chair, if I recall, I think I was at my office,
20 not...

CHAIRPERSON: But if you were at your office, you could have easily got your secretary or some other person to just come and witness the signing of this agreement of this addendum. So where were you when you signed it? Where were the two of you?

MR SINGH: Well, Mr Chair, I do not recall but I certainly would have think that it was in the office.

CHAIRPERSON: Mr Myburgh.

ADV MYBURGH SC: Thank you. Why do you not refer then to the cession in the preamble and introduction to the agreement?

MR SINGH: [No audible reply]

ADV MYBURGH SC: Because the preamble and the introduction refers to McKinsey.

10 **MR SINGH**: I know that, sir. [Speaker unclear]

ADV MYBURGH SC: Alright.

CHAIRPERSON: Now with regard to this addendum. Who prepared it? Do you know?

MR SINGH: It would have been the procurement department, Mr Chair.

CHAIRPERSON: Of Transnet?

MR SINGH: Yes, sir.

CHAIRPERSON: Would that mean that it did go through lawyers? Do you know?

20 **MR SINGH**: These are normally done through the procurement department. There is legal expertise within the legal department but not Transnet legal per se.

CHAIRPERSON: Yes, but of course, if you have a special legal department, I would imagine that even if some other department has got some lawyers involved, you would need

to involve that legal department because that is why they are there. They are there to affect certain things.

MR SINGH: Ja. Yes, Mr Chair.

CHAIRPERSON: H'm. You see, we were looking earlier on now – I cannot remember – Mr Myburgh, it might be one of the other bundles that – or was it an addendum? That agreement that you signed that had got – the annotation at the bottom, Mr Myburgh.

ADV MYBURGH SC: Yes.

10 **CHAIRPERSON**: Now, something is strange – looks strange to me with regard to that because when you look at the first pages, it is like a letter to you. You remember?

MR SINGH: [Indistinct] ...[intervenes]

CHAIRPERSON: It is a letter addressed to you. Do you remember where it is, Mr Myburgh?

ADV MYBURGH SC: Yes, that is in Mohamedy's bundle.

CHAIRPERSON: Yes.

ADV MYBURGH SC: Page 177. DCJ, Exhibit BB-3(a).

CHAIRPERSON: H'm.

20 **ADV MYBURGH SC**: Page MSM. You will find the annotations at page 180.

CHAIRPERSON: H'm, okay. Thank you. Yes, you see at page 177, it is – it looks like it is on the letterheads of Regiments Capital and Transnet. It is addressed to Transnet and says: "Dear, Anoj Singh..." So you think it is

a letter and you think you are going to come to the end and find the conclusion of the letter but it says: “Thus duly signed at...” and then it is blank. Transnet Stock Limited. Name, Anoj Singh.

So you say: What is this? This is a letter to Anoj Singh and he is writing to himself or what is going on here? And then you say: Oh, it is an agreement. But why is it not in the form in which an agreement normally – is normally formulated? Who prepared this document? Do
10 you know?

MR SINGH: Mr Chair, as I said originally. I do not recall who prepared it but on the face of it, it would seem, if it is addressed to me, it would have been coming from Regiments to me.

CHAIRPERSON: But as you can see, you are the first signature there.

MR SINGH: Yes, Mr Chair. I think ...[intervenes]

CHAIRPERSON: ...that is the end. On the last page.

MR SINGH: No, no – ja, we have first signatory but the
20 date of the signature, we have signed second(?).

CHAIRPERSON: Yes, but in terms of – if any [coughing]... Excuse me. You are the first immediately after the content of this document, you are the first one there.

MR SINGH: Yes.

CHAIRPERSON: Then there is Pillay that... So I do not

know. It just looks very strange to me. Did this go through lawyers?

MR SINGH: Mr Chair, as I said. This would have went through procurement and procurement would have maybe the annotations relating to the handwritten notes at the bottom. I will assume that they would have probably got input from legal but I cannot confirm that.

CHAIRPERSON: H'm. But would you not have sought to make sure that before you signed, it had – you knew that it
10 had gone through the legal department and they said it is fine?

MR SINGH: Mr Chair, in these type of cases, one would not specifically, given the fact that the procurement department has legal expertise within it. You would not specifically request the ...[intervenes]

CHAIRPERSON: But why then have the legal department? Because otherwise if everything that is legal goes to the legal department then if anything goes wrong you know who to hold responsible and they are paid to do exactly
20 that, vetting contracts and not procurement.

MR SINGH: Yes, Mr Chair, but in this case given the fact that it was a procurement-related let us say document, it would normally go into procurement, procurement would do the necessary requirements. If they deemed it necessary for it to go to corporate legal they would then engage

corporate legal on it.

CHAIRPERSON: And going back to the third addendum, why would you not have made sure that there was a witness who witnesses the signing of this addendum between you and Mr Eric Wood?

MR SINGH: Mr Chair, as I said, I think from my side it was just an oversight.

CHAIRPERSON: Mr Myburgh?

ADV MYBURGH SC: Yes, thank you. May I then – that
10 was on the 4 February 2014. On the 21 February 2014 Transnet and McKinsey then enter into a Master Service Agreement, do you recall that? And that agreement you find – I will take you there, bundle 5C page 2167.

MR SINGH: 2167?

ADV MYBURGH SC: 1267.

MR SINGH: Black number?

ADV MYBURGH SC: Yes, always.

MR SINGH: 5C?

ADV MYBURGH SC: I beg your pardon, 2167.

20 **MR SINGH:** Okay.

ADV MYBURGH SC: There is a whole lot of numbers on this document so Transnet 05-2167. Are you there?

MR SINGH: Yes, Sir.

ADV MYBURGH SC: So this is an agreement between Transnet and McKinsey Incorporated for the provision of

services relating to the acquisition of the 1064 locomotives. Do you see that?

MR SINGH: That is correct, Sir.

ADV MYBURGH SC: If I could take you please to – sorry, if I could just have a second? If I take you to the end of this document – unfortunately, Chairperson, this is a very poor quality reproduction which is causing me to try and get instructions from the investigators.

CHAIRPERSON: Yes.

10 **ADV MYBURGH SC**: But if I could take you please to page 2195 and we will produce a more legible copy. As I have it and I am now relying on my notes, you signed this on the 11 August – I have it as it having been signed, the last signatory being the 21 February 2014.

CHAIRPERSON: Well, my 2195 does not have a signature page, should it be a signature page?

ADV MYBURGH SC: Sorry, it must be 2194, DCJ, I do beg your pardon, I have got mine in landscape.

MR SINGH: 2194?

20 **ADV MYBURGH SC**: 219...

CHAIRPERSON: Yes, ja.

ADV MYBURGH SC: I have it being signed, the final signature being the 21 February 2014.

CHAIRPERSON: On my page 2194 Mr Singh signed on 11 August 2014. I cannot see another signature.

ADV VAN DEN HEEVER: There is also signatures on page 2190 it looks.

ADV MYBURGH SC: Ja, I think – I am indebted to my learned friend, ja.

CHAIRPERSON: Please do not forget what you have in mind, Mr Myburgh.

ADV MYBURGH SC: Sure, thank you.

CHAIRPERSON: Mr Singh? Mr Singh?

MR SINGH: Yes, Sir.

10 **CHAIRPERSON:** I am taking you out of what we are looking at now just for one second. You see at page 2202 of the same bundle.

MR SINGH: 2202?

CHAIRPERSON: Yes.

MR SINGH: Yes, Sir.

CHAIRPERSON: You see, that is the first addendum to MSA. You signed there and one of the witnesses who has witnessed is Noma [indistinct] who I think was your PA.

MR SINGH: That is correct, Sir.

20 **CHAIRPERSON:** Ja, that must have been probably in the office. Okay, alright, Mr Myburgh?

ADV MYBURGH SC: Yes, thank you. I am indebted to my learned friend. In fact the signatures and the dates appear more clearly at page 2190. Are you there, Mr Singh?

MR SINGH: 2190, I am, Sir. I am, Sir.

ADV MYBURGH SC: Are you there?

MR SINGH: Yes.

ADV MYBURGH SC: So you will see – and perhaps you can help us, we can see on the left hand side it is not very clear but you signed on the left hand side, Mr Fine signs on the right. The date under his signature appears to be 21 February 2014. The date under your signature is that 11 August 2014?

MR SINGH: Seems like it, Mr Chair.

10 **ADV MYBURGH SC:** I beg your pardon?

MR SINGH: It does seem like it.

ADV MYBURGH SC: If you go to page 2166 you will see that the commencement date is 15 January and the expiry date was 31 March 2014. Do you see that?

CHAIRPERSON: That is at page?

ADV MYBURGH SC: At page 2167, DCJ.

MR SINGH: 2167, yes.

ADV MYBURGH SC: 2167.

MR SINGH: That is correct.

20 **ADV MYBURGH SC:** Do you see the commencement date 15 January 2013 and the expiry date 31 March 2014.

MR SINGH: That is correct.

ADV MYBURGH SC: So Mr Fine signed this contract shortly before the assignment was going to expire and you signed it after that, is that right?

MR SINGH: Yes, Sir, but there is a memo in between this I think that effectively extends the delivery date or the contract date of this agreement that was approved by Mr Molefe, I think.

ADV MYBURGH SC: Alright, so we see here Fine on 21 February 2014. Now I want to take you to the cession letter that you spoke about earlier in your evidence. That you fine – again we are in the Mahomedy bundle, EXHIBIT BB3(a). Page 175. Can you got to page 175 please?

10 **MR SINGH:** On EXHIBIT BB3(a)?

ADV MYBURGH SC: BB3(a). Now this document, MSM175, this is dated the 16 April 2014. Do you see that?

MR SINGH: Yes.

ADV MYBURGH SC: And it says pursuant – and this is a letter addressed to you by Mr Sagar, correct?

MR SINGH: That is correct.

ADV MYBURGH SC: So it says:

20 “Pursuant to our discussions and agreement on 5 February 2014 we hereby confirm that the mandate awarded to McKinsey Incorporated and all rights and obligations created thereby was on 5 February 2014 ceded and/or delegated to Regiments Capital in accordance with such discussion and agreement.”

Do you see that?

MR SINGH: That is correct.

ADV MYBURGH SC:

“On account of and pursuant to the aforementioned cession and delegation, all work related to and in respect of the mandate was conducted by Regiments and not by McKinsey Incorporated.”

Do you see that?

MR SINGH: I see that.

ADV MYBURGH SC: What does that mean?

10 “On account of and pursuant to the aforementioned cession and delegation, all work related to and in respect of the mandate was conducted by Regiments and not by McKinsey.”

MR SINGH: Mr Chair, I can only understand that to be that once the cession had been agreed to between Eskom – Transnet, McKinsey and Regiments, the intervening period, whatever work had been done, was basically done on behalf of – was done by Regiments and not McKinsey. As I said to you, there was a period of time once the cession had been agreed to in principle that work had still
20 need to be one on the – let us say post the negotiation for the locomotives and that work was then done by Regiments instead of McKinsey.

ADV MYBURGH SC: So can I then take you back to the MNS report? So at paragraph 2.4.20 at page 383, the MNS report reads with reference to the cession that:

“This cession was invalid on the basis that at the time when McKinsey purported to cede the contract, McKinsey’s rights in respect of the transaction advisory services had lapsed.”

We have gone through the fact that they lapsed on the 1 December 2013. Do you want to comment on that?

MR SINGH: No, Sir.

ADV MYBURGH SC: Alright. And then another thing that they pick up is at paragraph 2.5 at page 384 dealing with
10 the Master Service Agreement.

“Subsequent to the purported cession on 21 February Transnet and McKinsey concluded an MSA.”

Now that may not be correct because it appears that you and Mr Fine signed on different dates.

MR SINGH: That is correct.

ADV MYBURGH SC: But what they do go on to say at 252:

20 “If the purported cession between McKinsey and Regiments was valid, then McKinsey did not have legal authority to conclude the MSA as it had ceded its rights and obligations in terms of the cession to Regiments.”

MR SINGH: As you would have seen, Mr Chair, the MSA was actually signed by Mr Fine and as I had discussed

previously, the discussions around the MSA or the cession relating to the – the cession between Regiments and McKinsey was being discussed by Mr Sagar. But having said that, Mr Chair, I would think that Mr Sagar would have been communicating with McKinsey in that regard.

ADV MYBURGH SC: But you signed the MSA later in the year, after having learnt of the cession.

MR SINGH: Yes, Sir.

ADV MYBURGH SC: So you signed it we have seen in
10 August, you came to learn – or let me say formally on the
16 April of the cession.

MR SINGH: Yes, Sir. Mr Chair, this would have been a document that – the MSA, for example, this would have been a document that would have been brought to me by procurement and they would have then said listen, this document needs to be signed and having regard to the fact that ...[intervenes]

CHAIRPERSON: Sorry, this document is?

MR SINGH: This document would need to be signed
20 because it was unsigned at that time and I would have then signed it.

ADV MYBURGH SC: You see, Mr Singh – I mean, so you were aware that there was not(?) a cession with effect from the 5 February. You have told us that.

MR SINGH: Yes, Sir.

ADV MYBURGH SC: Right. The McKinsey MSA was signed by Mr Fine after that on the 21 February.

MR SINGH: Yes, sir.

ADV MYBURGH SC: And you signed it in August.

MR SINGH: Yes, sir.

ADV MYBURGH SC: And all along you knew that there was a cession with effect from the 5 February.

MR SINGH: That is correct, Sir.

ADV MYBURGH SC: I see. So what I just want to ask you
10 one thing again because it is important for us to try and get a sense of this. If you go to MSM175, what is it saying here, this cession letter where it talks about all work was conducted by Regiments and not by McKinsey. During what period?

MR SINGH: Mr Chair, this relates to the issue of the nature of the reason why McKinsey decided to, how can I say, abandon the project, if I want to call it because this is basically what it means, is that McKinsey came to a decision that they did not want to be – or they did not want
20 to be part of the project anymore.

ADV MYBURGH SC: Why was that?

MR SINGH: I do not recall completely offhand but I think there was some issues relating to a disagreement between Transnet Freight Rail and one of the McKinsey – I think it was Mr Fine, that there was some animosity between – or

there was some disagreement around numbers or something on the other hand, that is what led to this.

ADV MYBURGH SC: Just to locate the Chairperson, correct me if I am wrong, this is at the time following the conclusion of the LSAs, Locomotive Supply Agreements.

MR SINGH: No, this was five.

ADV MYBURGH SC: Okay. When were those agreements concluded?

MR SINGH: That was I think March 2014.

10 **ADV MYBURGH SC:** Yes but I mean this letter is dated the 16 April.

MR SINGH: No, hence I am saying the discussions and the ...[intervenes]

ADV MYBURGH SC: What I want to get at is that you got this letter in between the conclusion of the LSAs and approaching the board to increase the ETC.

MR SINGH: Yes, sir.

ADV MYBURGH SC: Correct?

MR SINGH: Yes.

20 **ADV MYBURGH SC:** Right. And now you are told that all the work that has been has been done by Regiments, that relates also to the business case and the assistance that they would be giving you in relation to the increase in the ETC, correct?

MR SINGH: That is correct.

ADV MYBURGH SC: Alright.

MR SINGH: Well, having said that, Mr Chair, I think this is a – in a way of speaking, McKinsey wanted to distance themselves from having had input into the business case but I think at the end of the day the business case was developed jointly between Regiments and McKinsey else we would have paid McKinsey for no work.

ADV MYBURGH SC: But just – you know – I know I have kept close tabs on the evidence given by McKinsey, we can
10 find the transcript if my memory is incorrect and does not accord with yours, but did Dr Fine not testify that McKinsey, they fell out, they ceded and it was in that short point of time that there was this huge increase into the ETC that Regiments was at the helm and he considered that completed unjustifiable. Do you remember him giving that evidence?

MR SINGH: Ja, well that may be his view, Sir, and I am again saying hopefully when we get to the transactions we will be able to understand the real reasons as to why the
20 increases occurred.

ADV MYBURGH SC: Yes. But, Mr Singh, we are dealing with the transactions here.

MR SINGH: No, no, I am saying ...[intervenes]

ADV MYBURGH SC: This is one of the – these are your advisers who are tainted, who are assisting you with the

transactions but this is a transaction that we are scrutinising, this one here.

MR SINGH: Yes, I understand, but you are leading evidence relating to the increase in ETC which is a separate transaction.

ADV MYBURGH SC: Yes. What I am trying to get at, though, is – I simply put – I want to track the timeline and I think that we have agreed that there was a conclusion of the LSAs in March, there was an approach to the board to
10 increase the ETC, this letter comes in between and I have paraphrased for you the evidence of Dr Fine.

MR SINGH: Yes, so if we are dealing with that then let us deal with it.

ADV MYBURGH SC: Alright.

MR SINGH: Then I say that the increase was completely justified and if you want to know the reasons, let us deal with them.

ADV MYBURGH SC: What I am struggling with, is to work out what work are we talking about because if McKinsey
20 are saying all the work that has been done on this contract, okay, is Regiments' work, then why on earth do you go and conclude a contract with McKinsey? McKinsey are saying, on the face of this letter, that we have not done any work, Regiments have done all the work.

MR SINGH: As I said to you, Mr Chair, it was an attempt

from McKinsey to distance themselves from the business case for whatever reason that they thought they needed to do it at the time.

CHAIRPERSON: I am sorry, just ...[intervenes]

MR SINGH: I am saying, Mr Chair, this ...[intervenes]

CHAIRPERSON: The question is, why conclude an agreement with McKinsey when McKinsey says for such and such a period it is Regiments who did the work? That is the question, so what is your answer to that?

10 **MR SINGH:** Well, Mr Chair, the agreement needed to be signed, regardless, because there was going to be ceding of the work that they had been awarded, so the award of the tender needed a contract which then subsequently would be ceded. You cannot cede a non-existent contract. You had to inherit the rights to that and then cede.

CHAIRPERSON: Mr Myburgh?

ADV MYBURGH SC: Ja. I think that is point made by MNS, this was not a valid cession because the was not a contract and the addendum had lapsed.

20 **MR SINGH:** Well, Mr Chair, as I said, in terms of the letter you will see that pursuant to our discussions and agreement on 5 February, so there was an agreement that had been reached on 5 February and that is per the cession letter.

ADV MYBURGH SC: Alright. Now this cession letter, as

you call it, is dated the 16 April, correct?

MR SINGH: That is correct, Sir.

ADV MYBURGH SC: You received it on that day.

MR SINGH: I do not recall, Sir.

ADV MYBURGH SC: Okay. Now that brings us to what I really want to get to and that is something else that happened on the 16 April. Can I ask you please to go to page 888 of bundle 5B, your exhibit.

MR SINGH: 5B?

10 **ADV MYBURGH SC:** Yes.

CHAIRPERSON: Did you say 5B?

ADV MYBURGH SC: Yes, Chairperson, 5B.

CHAIRPERSON: Okay.

ADV MYBURGH SC: And by that I mean Transnet bundle 5B.

CHAIRPERSON: Oh, okay, and what is the page number?

ADV MYBURGH SC: The page number is 888. So, Mr Singh, if you go to page 896, would you confirm that you signed this on the same date as the cession letter, the 16

20 April 2014?

MR SINGH: Sorry, one second? That is correct.

ADV MYBURGH SC: Please go back to the beginning ...[intervenes]

CHAIRPERSON: I am sorry, you referred him to what page, Mr Myburgh?

ADV MYBURGH SC: 888, Chairperson.

CHAIRPERSON: Ja?

ADV MYBURGH SC: 888.

CHAIRPERSON: I thought you referred to a page with his signature as well, is that at 896?

ADV MYBURGH SC: Yes, I beg your pardon, so the document starts at 888 and then, you are absolutely correct, at 896 is the signature and there you will see that Mr Singh signed it on the 16 April 2014, the same date as
10 the cession letter.

CHAIRPERSON: Ja, okay.

ADV MYBURGH SC: So if we then go back to the beginning of the document, Mr Singh, and in fact you have referred to this briefly already.

20 “The purpose of the submission. Note, the deliverables executed by the transaction adviser on the locomotive transaction compared to the original scope per letter of intent ratify the amendment to the allegation of scope of work from McKinsey to Regiments, ratify the amendment in makeup in the transaction adviser consortium from Nedbank to Regiments, approve a change in the remuneration model of the transaction adviser compared to the original remuneration model and delegate power to the GCFO to give effect to the above proposal.”

Is that right?

MR SINGH: That is correct.

ADV MYBURGH SC: And then you say or what is said at paragraph 2, is:

“The GCE approved the appointment with McKinsey led consortium to provide complete advisory services on the 1064 locomotive tender. A letter of intent was signed by the Group CFO on 4 December for 35.2 million excluding VAT and disbursements.”

10 Agree with that?

MR SINGH: Yes, sir.

ADV MYBURGH SC: And then what it talks about at page 894:

“Change in remuneration model”

At the foot of the page.

“Regiments implemented extensive intellectual property and complex techniques and methodologies to achieve the above benefits to Transnet thereby mitigating the risks identified above.”

20

Do you see that?

MR SINGH: Sorry, where are you, Sir?

ADV MYBURGH SC: And ...[intervenes]

CHAIRPERSON: Where are you reading?

MR SINGH: Sorry, what page are on, Sir?

ADV MYBURGH SC: I am reading at paragraph 20.

MR SINGH: Page 894?

ADV MYBURGH SC: 894. And the work that is being spoken of is paraphrased in paragraph 16:

“As a result of the work done by Regiments the delivery schedule was accelerated thereby ensuring that the locomotives arrived earlier and there was consequent saving.”

Is that correct?

10 **MR SINGH:** Part of it, yes.

ADV MYBURGH SC: Yes. So when we go over the page at 895:

“The Regiments’ operating model for such engagements is usually based on a risk-sharing model, 25% of value created. In this case Regiments was transferred a mandate and remuneration model already accepted by McKinsey.”

Is that right?

MR SINGH: Yes.

20 **ADV MYBURGH SC:** Do you see that?

MR SINGH: In terms of the cession, yes.

ADV MYBURGH SC: Yes, so that it is in terms of the cession letter of the 16 April, the same day that you signed this, correct? So:

“Regiments was transferred a mandate and

remuneration model accepted by McKinsey.”

That remuneration model was a fixed cost model, correct?

MR SINGH: Yes and in terms of the LOI.

ADV MYBURGH SC: Ja, well it was 35 million.

MR SINGH: Yes.

ADV MYBURGH SC: And that is not just 35 million to McKinsey or to Regiments, to the whole consortium.

MR SINGH: Yes.

ADV MYBURGH SC: I see. So paragraph 23:

10 “Regiments’ initial indication were that they would have preferred to be engagement on a model consistent with paragraph 21 above.”

That is a success fee, correct?

MR SINGH: That is correct.

ADV MYBURGH SC:

“The initial request was rejected. However, based on the significant value created/saved as well as risks mitigated as noted above, the request to amend the remuneration model was submitted.”

20 A request by whom?

MR SINGH: Regiments.

ADV MYBURGH SC: By Regiments, by Mr Wood?

MR SINGH: Yes sir.

ADV MYBURGH SC: And he submitted it to you?

MR SINGH: Yes.

ADV MYBURGH SC: Yes, and then you say:

“Consequently an additional fee of 78.4million excluding VAT is recommended to Regiments, representing a 0.04% of the total savings.”

Is that right?

MR SINGH: Yes sir.

ADV MYBURGH SC: So then if we go to page 896:

10 “It is recommended that the Group Chief Executive
note the deliverables executed by the Transaction
Advisor on the locomotive transaction compared to
the original scope of the LOI, ratify the amendment
in the allocation of the scope of work from
McKinsey to Regiments Capital, ratify the
amendment in the make-up of the transaction
advisor consortium from Nedbank Capital with –
ratify the amendment in the make-up in the
transaction advisor consortium from Nedbank
Capital with Regiments Capital; approve a change
in the remuneration model of the transaction
20 advisor compared to the original remuneration
model and delegate to the GCFO to give effect to
the above proposal.”

Is that right?

MR SINGH: That is correct.

ADV MYBURGH SC: And ultimately we know that

Regiments were paid the success fee of 78 odd million, correct?

MR SINGH: That is correct.

ADV MYBURGH SC: Now, I put this to Mr Molefe of course, you did not have to pay this money. I mean, they came cap in hand to you.

MR SINGH: That is right, sir.

ADV MYBURGH SC: Because what happened here is the - as you have said, the entire 1064 transaction advisor
10 contract, the value was 35million, you acknowledged that, that they were transferred a mandate and remuneration model already accepted by McKinsey and here on the same day, as you receive the cession letter you effectively authorise payment of twice the value of the 1064 transaction advisor contract, which is going to be split along amongst a whole lot of partners to Regiments, correct?

MR SINGH: That is correct, sir however, Mr Chair, this is - has to be seen in the context of the value that was
20 derived through this process. Mr Chair, had we not had the transaction advisors on board, you would have seen that the locomotive contracts would have ballooned to a number in excess of 16billion and that number was untenable, Mr Chair in terms of being able to deliver on the market demand strategy and that is the reason why we -

well, I thought it would be...intervene]

CHAIRPERSON: But it did not balloon.

MR SINGH: Sorry?

CHAIRPERSON: It did not balloon.

MR SINGH: Sorry, I could not hear you.

CHAIRPERSON: It did not balloon into that amount, is it not? That did not happen, it did not go up to that amount.

MR SINGH: Yes, Mr Chairman, had we continued on the basis that we were going the 55 would have been 68, that
10 is the point, sir.

CHAIRPERSON: Yes.

MR SINGH: And this 68, Mr Chair was not known to anybody.

CHAIRPERSON: Was not?

MR SINGH: Was not calculated or envisaged by anybody. So the risk that was identified was another R20billion worth of risk that was mitigated through this process and that was the reason why they had come and motivated to say they had added significant value in this process.

20 Our original mandates would have required us to enter into a risk sharing basis and Mr Chair to be honest, if you remember, we did recall, where we had the handwritten notes that said that the remuneration model was going to be risk based but we rejected that and we make note of that that we said the original intention relating to that was

rejected.

Our base from the performance in terms of being able to demonstrate the R20billion mitigation of risk it is deemed prudent that we consider this and again, Mr Chair, I think if it were to be - it was at Mr Molefe's discretion to say no and based on the value that was created, he thought it was reasonable for them to be remunerated on this basis.

ADV MYBURGH SC: But you were recommending this to
10 Mr Molefe.

MR SINGH: Yes, I did.

ADV MYBURGH SC: Mr Singh so the day that McKinsey advised you that they walking away from the contract the same day you recommend that Regiments, the mandates and the model must be changed and they should be paid to success of 78million.

MR SINGH: No, no I said you will recall that I said the day on which McKinsey actually advised us that they were walking away from the contract was in and around
20 February, if not before that.

ADV MYBURGH SC: So that is just a coincidence. Well, of course, you could not recommend this until you advised of the cession, formerly.

MR SINGH: Yes.

ADV MYBURGH SC: Right, so did you have this on the

back burner or what was happening?

MR SINGH: No, no, Mr Chair.

ADV MYBURGH SC: Or did you also then did you draft this on the 16th of April?

MR SINGH: Which one?

ADV MYBURGH SC: This document.

MR SINGH: I do not recall when it was drafted and I would be guessing if I had to say so.

ADV MYBURGH SC:

10 **CHAIRPERSON:**

MR SINGH: That is correct.

ADV MYBURGH SC: Is this not the case simply of Regiments having done their job?

MR SINGH: Sorry, sir?

ADV MYBURGH SC: Is it not a case of them simply having done their job?

MR SINGH: Well, Mr Chair, I think it is one version could be that they certainly did their job but from my perspective, Mr Chair it was a case of understanding. You would need
20 to understand the history that we have already alluded to in terms of the risks associated with the market demands strategy, and with a R300billion capital program Mr Chair, the last thing you wanted to happen is that you actually have capital over and again, when we come into the 38 to 55, you will see why this again plays out. Had we not done

this, the 55 would have been 68 without anyone knowing and that is the backdrop within which I saw value.

ADV MYBURGH SC: I see, let us go to the MNS Report. Could I ask you, please, and this is in Transnet Bundle 6, could you go to page 386.

MR SINGH: Sorry sir, two?

ADV MYBURGH SC: 386 of Bundle 6. So if you go towards the foot of the page, paragraph 2.5.13:

10 “On 17 April 2014, Mr B Molefe approved the request to pay Regiments on a risk sharing basis. On 23 April 2014, Mr Edward Thomas, person that you have referred to during your testimony, drafted a memorandum further opposing the proposal to amend Regiments pay structure. The memorandum reasons as follows. The benefits that Transnet obtained from the transaction advisor contract was as a result of the contract for deliverables being provided in terms of the current fixed fee agreement Transnet has with the service provider.”

20 Next paragraph:

 “The fact that Regiments Capital operating model is based on risk sharing model or success fee is irrelevant. Regiments Capital willingly accepted the rights and obligations of an existing contract, whose fees is fixed fee for the delivery of the deliverables.

Regiments also agreed to an increased fixed fee for the detailed deliverables that they delivered on.”

Next paragraph:

“Based on the above notwithstanding the GCE’s approval, we do not agree to the implementation of the change in remuneration model, as the service provider has been sufficiently remunerated for the services provided as per the agreement.”

You want to comment on that?

10 **MR SINGH:** Mr Chair, I think it is in line with the discussion with the question that Mr Myburgh asked previous to this indication. I think Mr Thomas has the right to his views in terms of him saying, basically, he is saying, listen, there was a fixed pay contract, and these services fell within that. Mr Chair, in my view, as I said, the issue was, what did they bring to the party that actually no one else was seeing? And that was...[intervene]

CHAIRPERSON: He was saying, although we are not obliged to give them more money, let us give them more
20 money.

MR SINGH: Not on the basis that it was just for free, Mr Chair.

CHAIRPERSON: No, no...[intervene]

MR SINGH: There was - in my view, there was a full justification for the fact that there was an alternative

remuneration model that was required and Mr Chair in the memo to Mr Molefe, I made it very clear that there was this fixed fees and because of this value that was added I am now - we are now requesting that we that we - how can I say it, review the remuneration model.

CHAIRPERSON: Yes, but as I was saying the difference between you and Mr Thomas is that the one says, and that is Mr Thomas as I understand what his saying there – here is, there is an agreement, we have got we have got, we
10 have no obligation to pay more. You are saying, as I understand it, I accept that we do not have an obligation to pay them more but let us pay them more because of A, B, C, D.

MR SINGH: That is correct, sir.

ADV MYBURGH SC: So what I did note is if you go to your page 896 of Exhibit 5B, the memorandum. You recommended it to Mr Molefe and he approved, there are no other signatories here.

CHAIRPERSON: That is 895 of?

20 **ADV MYBURGH SC:** 896.

CHAIRPERSON: Of?

ADV MYBURGH SC: Of Bundle 5B, do you see that?

MR SINGH: Yes, sir.

ADV MYBURGH SC: You did not canvas the view of your procurement people.

MR SINGH: Sorry, sir?

ADV MYBURGH SC: You did not canvas the view of your procurement people who write to Mr Molefe and he approves it.

MR SINGH: Mr Chair, in this in this instance, I think the issue relating to Mr Thomas's reservations I did not see the memo Mr Chair, that Mr Thomas or paragraph 2.5.1.4 refers to, I think Mr Peter did have a discussion with me at the time advising that, you know, maybe we do these type
10 of services are properly included in the original scope.

And I then had the same, very same discussion with him in terms of saying, listen, I understand that it is there but in terms of the work and the deliverables that I have seen, I believe this is something we should consider. And hence the - let us call it omission of the signatures of Mr Thomas and Mr Peter in this regard, but we do cover the general principles of the procurement procedure manual that enables this type of payment to be made.

ADV MYBURGH SC: You had a discussion with who?

20 **MR SINGH:** Sorry?

ADV MYBURGH SC: You said you had a discussion with who?

MR SINGH: With Mr Peter.

ADV MYBURGH SC: With Mr Peter, but he is also not a signatory.

MR SINGH: Yes, sir.

ADV MYBURGH SC: Well what I am struggling with, have a look at page 885.

MR SINGH: 885?

ADV MYBURGH SC: That is the memorandum where Regiments replaced Letsema.

MR SINGH: Yes.

ADV MYBURGH SC: He signs that.

MR SINGH: Yes.

10 **ADV MYBURGH SC:** Why does he not – why is he not party to 896?

MR SINGH: Because as I have just explained, sir.

ADV MYBURGH SC: Yes, but Mr Singh, as I understand you realise this is a procurement issue.

MR SINGH: Yes.

ADV MYBURGH SC: Now you have a discussion with him but he is not party to the memorandum.

MR SINGH: Because he did not agree with the fact that we needed to be remunerated different.

20 **ADV MYBURGH SC:** I beg your pardon.

MR SINGH: I said, because he did not agree that he was of the same view that Mr Thomas was.

ADV MYBURGH SC: Oh so he did not want to sign the memorandum.

MR SINGH: Well, if he did not agree with the

recommendations, why would he sign.

ADV MYBURGH SC: Did you tell him Mr Molefe - because this is really very important evidence. Did you tell Mr Molefe that Mr Peter was opposed to this?

MR SINGH: Well, Mr Chair as I say...[intervene]

ADV MYBURGH SC: Sorry did you tell him?

MR SINGH: No, because...[intervene]

CHAIRPERSON: Why not?

MR SINGH: Sorry?

10 **CHAIRPERSON:** Why not?

MR SINGH: Well, Mr Chair, these things happened by virtue of the fact that you prepare a memo and it goes through to the recipient for them to be signed. So I do not take this and go and sit with Mr Molefe and say, listen, can we please sign this.

This happens on the basis of you prepare the document, you submitted it to wherever you need to submit it to and based on what you read and what you are confronted with, you then sign or do not sign or you
20 approve or do not approve.

By virtue of the fact that Mr Peters signature was not here, I cannot see how Mr Molefe would have been able to say okay, Mr Peter was aware of this or was happy with it.

CHAIRPERSON: But was not important that if somebody

is occupying as a high position as Mr Peter did at the time in regard to a procurement matter, that if he did not agree with your view, that the Group CEO should be alerted that this is not just one view there are different views, so that he could make – take a decision with the benefit of different views.

MR SINGH: Mr Chair, I think we have - in preparing the memo, it makes it very - we have disclosed the fact that we are changing the remuneration model, we are making it
10 quite clear that there was an original contract in place that was on a different operating model and I thought that was adequate disclosure to be made at that time.

CHAIRPERSON: How is that adequate, when it does not – how is that adequate to tell him that there are different views because it does not tell him - what you have read it does not tell him that there are different views at senior level.

MR SINGH: Well, Mr Chair there was not a different view - there was not a different view in terms of procurement.
20 There was a different view in terms of whether the services were value adding or not.

CHAIRPERSON: No, as I understand you, you said Mr Peter disagreed with you for paying more, is it not?

MR SINGH: Yes, as Mr Edwards is saying here that the contract includes - the contract basically was for a fixed

fee and in their view these services were included in the fixed fee contract.

CHAIRPERSON: Mr Myburgh.

ADV MYBURGH SC: Yes, thank you. So if you go...[intervene]

MR SINGH: So are we just dismissing this explanation or, so I am trying to explain this to you.

CHAIRPERSON: I thought you were done, were you not done, were you not finish giving the explanation?

10 **MR SINGH:** No, sir.

CHAIRPERSON: Oh, I am sorry then continue, I know - I thought you were done.

MR SINGH: No, no Mr Chair.

CHAIRPERSON: Okay.

MR SINGH: You have requested and I need to explain if this was important or not.

CHAIRPERSON: Yes, no, no, I thought you were done so I wanted Mr Myburgh to continue. If you were not done, finish your explanation.

20 **MR SINGH:** No, I thought you were dismissing me, Mr Chair.

MR SINGH: No, no I am listening to it.

MR SINGH: Okay, no Mr Chair I was trying to explain that the issue of difference comes about in terms of the interpretation of the contract, we did not disagree with

that. Where, I saw value, I said listen let me approach Mr Molefe to understand whether he agrees if there was value or not and if a new remuneration model could be accepted. The procurement procedure manual actually allows for it, which is quoted in paragraph 27 of the document. So it was not a procurement issue. It was an issue of whether value was derived and what was the appropriate remuneration that needed to be made, if recognition needed to be had, for the value, that was received.

10 **CHAIRPERSON:** Okay, Mr Myburgh.

ADV MYBURGH SC: But I suppose what the difference of opinion boiled down to is Mr Peter did not think that you should disburse 78million of Eskom's funds - of Transnet's funds in favour of Regiments, that is what it boils down to.

MR SINGH: And if Mr Peter was the decision maker, then yes, he would have not signed.

ADV MYBURGH SC: So you had a different view, but I just want to confirm you did not tell Mr Molefe of Mr Peters view?

20 **MR SINGH:** No.

ADV MYBURGH SC: Why not?

MR SINGH: Because as I said these memos, I was not sitting in front of Mr Molefe and saying, please sign this memo for me, sir. These memos happen - as you can see...[intervene]

ADV MYBURGH SC: But Mr Singh, I am not sure that I understand and I do not want to quarrel with you. I just need to understand the facts, so is it before you sent the memorandum to Mr Molefe did you know of Mr Peters concerns?

MR SINGH: Well, based on the date the 23rd of April, Mr Thomas prepares the memorandum, which is a draft memorandum given the fact that he has not signed on the 16th Mr Chair, I would have thought that I did know, yes.

10 **ADV MYBURGH SC:** You did know?

MR SINGH: Yes.

ADV MYBURGH SC: So then I am not sure that I understand when you say you were not in front of Mr Molefe, you knew of his concerns, you nevertheless prepared the memo and you sent it to Mr Molefe.

MR SINGH: Yes.

ADV MYBURGH SC: And you did not think it was necessary to alert Mr Molefe to the fact that Mr Peter had a different view.

20 **MR SINGH:** At the time, no.

ADV MYBURGH SC: Alright, so if we carry on with MNS at 387 what we know is if you go to paragraph 2.5.16 just continue with the chronology on the 24th of...[intervene]

MR SINGH: Sorry sir, what paragraph?

ADV MYBURGH SC: 2.5.16, so pretty much in the middle

of the page.

MR SINGH: Yes.

ADV MYBURGH SC: “On 24 April 2014, Transnet and
Regiments conclude the first addendum to the MSA,
which provided for a fixed fee of 78,400,000.”

Is that – I presume that should be a success fee?

MR SINGH: Yes.

ADV MYBURGH SC: Alright, you confirm that?

MR SINGH: Yes, sir.

10 **ADV MYBURGH SC:** It says;

“On the 23rd of April Mr D Smith sent an email to
you, E Wood, stating that.”

Do you know, Mr D. Smith?

MR SINGH: Yes, sir.

ADV MYBURGH SC: Okay, what is his position?

MR SINGH: He was a Deputy Treasurer back office.

ADV MYBURGH SC: And, I am not going to read the
whole of this email, I would like to take you to the third last
paragraph on page 387:

20 “On the cost costing and hedging I fully agree that
different alterations have been done by you guys to
calculate the possible cost of hedging should we
consider the various option structures at different
participation levels, you will recall that a decision
was made not to pursue this route and to rather go

the FEC structure as options remain expensive and does create some risk for suppliers. The idea of transferring the FS risk to the balance sheet of the suppliers was a Transnet idea and was included in the conditions of the RFP and as we have done many of these in the past.”

Then over the page:

10 “The cost of calculating forwards on if he sees is a simple technique [can get directly from Bloomberg or Reuters], and similar information was obtained from our dealers as well.”

And then he goes on to say:

20 “I am not a 100% sure why you guys are saying the FX it resulted in significant savings to Transnet but please help me if I am wrong on this one. On the performance guarantees we did not achieve any savings as only one small amount was involved. I fully agree that you guys did do your benchmarking exercise, and the majority of the bond cost to market related. The main reason for me, trying to summarise my observations is to try and ensure that ultimately all costs can be audited by our auditors once payments have been made and we get challenged.”

Do you see that?

MR SINGH: Yes, sir.

ADV MYBURGH SC: You have any comments on that?

MR SINGH: Yes, Mr Chair I did not see this email because I do not think I was copied on this email from Mr Smith but what is significant here Mr Chair is that you will see that Mr Smith, at paragraph 2.5.17 says:

“Eric, it is extremely difficult for us to consider signing off on, as we have not seen the engagement letter and I am not sure if Anoj has requested this, and if yes, please let me know so that I can have a detailed discussion with him.”

So I am not - I do not recall the detailed discussion that happened, Mr Chair. What is of interest is that Mr Chair, he does acknowledge that there were significant work done in developing the cost escalation models and assisting in principles with the suppliers and understanding the cost curves in different markets.

It also assists the team in making a decision to design on the economical amounts of locals that needs to be assembled by TE and the cost of the perspective. Niven also came forward with very practical approach to determine the indicative cost of fixing escalations.

Now, Mr Chair, if you look at that 20billion that we spoke about in the memo, that 20billion emanated from all of these things. So the value that was derived was

quantified by the 20billion, notwithstanding the fact that Mr Danny Smith does, and is correct in saying that the issue of transferring risk from a balance sheet we did before, so we did not derive much value from it, yet they did propose it. So in the motivation that they had sent to Transnet to say, please agree with our motivation. Mr Smith said but I cannot agree with this because we did it on our own before. Similarly, in terms of looking at the FX rates, for example, on page 388, FX rates, Bloomberg, you look at
 10 the screen, you get the rates. So it is not significant amount of value that they added in.

So they did not get the memo so the bulk of the remuneration related to the 20billion risk that was identified by them looking through the escalations and the forward looking, so that is what they were remunerated for.

ADV MYBURGH SC: Alright, I would like to then turn to a different transaction and that relates to the China Development Bank loan. It is also dealt within the MNS Report; we will come to that.

20 I just asked you to confirm that after the 1064 locomotives contract was awarded to the four OEM's, Transnet of course needed to secure funding for the R50billion expenditure, correct?

MR SINGH: It is correct, sir.

ADV MYBURGH SC: The Chinese bidders as I understand

CSR and CNR that included letters of funding support from the China Development Bank, which then brings us to the China Development Bank loan. What we know is that Regiments was then paid another success fee, this time of 166million for its role in securing the funding facility and the advice in splitting the capital raising between China Development Bank loan and the ZAR cub loan, would you confirm that?

MR SINGH: Yes, sir.

10 **ADV MYBURGH SC:** Now this is dealt with by MNS, and if I could ask you please to go to page 389, paragraph 2.6.1:

“On 28 April 2015, Transnet Group Treasurer, Mr Ramosebudi compiled a memorandum which was recommended by Mr Singh as well as Mr Gama and submitted to the BADC.”

You see that?

MR SINGH: That is correct.

ADV MYBURGH SC: “The memorandum provides the following, a request for the BADC to approve the contract extension from 99.5million to 265.5 million for the appointment of Regiments Capital for transaction advisory services and support to Transnet on the 1064 locomotive transaction.”

20

You see that?

MR SINGH: Yes, sir.

ADV MYBURGH SC: And the difference between those two figures I think is the 166million excluding VAT, correct?

MR SINGH: That is correct.

ADV MYBURGH SC: “Summary of the services provided by

Regiments in relation to securing the China Development Bank loan in the amount of US dollars 1.5billion and the motivation for the risk sharing basis payment of 166 million excluding VAT to
10 Regiments on the basis that the services provided by Regiments for a period of more than 12 months were at risk.”

Do you see that?

MR SINGH: That is correct.

ADV MYBURGH SC: Then at paragraph 2.6.3:

“On 29 April 2015, the BADC approved the recommendation by Mr Gama and on 11 June 2015 Transnet paid Regiments 189million that is including VAT.”

20 Confirm that?

MR SINGH: That is correct, sir.

ADV MYBURGH SC: Then they go on to say in 2.4.6:

“Pursuant to the approval of the memorandum by the BADC Transnet and Regiments concluded the second addendum to the MSA.”

You confirm that?

MR SINGH: I will take it; I do not recall but I will take it as correct.

ADV MYBURGH SC: And it says on 14 October 20 but it actually was on the 16th of July 2015 I can take you to that. Can I ask you please to go to Exhibit BB28.

MR SINGH: I have got it Sir.

ADV MYBURGH SC: And could you please turn to page 250.306.

10 **MR SINGH:** 250.306. I am there Sir.

ADV MYBURGH SC: So that is the second addendum which you see was actually signed on the 16th of July 2015 by Mr Wood for Regiments and Mr Gama for Transnet. You see that.

MR SINGH: I see that Sir.

ADV MYBURGH SC: Now the point that is made by MNS and I just want to get your comment is that there was no legal cause – this is at paragraph 2.6.6 – there was no legal cause for this payment. This is the 166 success fee for
20 arranging or facilitating the China Development Bank loan. Due to the fact that on 4 February 2014 Transnet and Regiments concluded the third addendum to the LOI which we saw earlier which allocated a fixed fee of R50 million for all the funding and financing services.

MR SINGH: Mr Chair this is one of those issues that again

if you have go back to that 4th of February LOI I think we de-scoped through those handwritten notes.

ADV MYBURGH SC: Sorry I did not hear you.

MR SINGH: I said through the LO – that 4th of February 2014 LOI is the one where you had the handwritten annotations.

ADV MYBURGH SC: Where you had?

MR SINGH: The handwritten annotations.

ADV MYBURGH SC: Well no this...

10 **MR SINGH:** And we de-scoped the funding and the risk portion.

ADV MYBURGH SC: I beg your pardon.

MR SINGH: You recall the February 2014 LOI.

ADV MYBURGH SC: Yes.

MR SINGH: Was where you had the handwritten notes and you de – we – that handwritten notes de-scoped the funding and the risk share or the risk basis for the funding activities.

ADV MYBURGH SC: And allowed for this.

20 **MR SINGH:** Sorry.

ADV MYBURGH SC: And then allowed for this.

MR SINGH: I am not – I am just responding to this – this portion.

ADV MYBURGH SC: Yes. Sorry I interrupted you so the handwritten notes re-scoped.

MR SINGH: No de-scoped.

ADV MYBURGH SC: De-scoped.

MR SINGH: No de-scoped. Basically remember there was an element where the – the document referred to funding.

ADV MYBURGH SC: Yes.

MR SINGH: And a consequent 20 basis points remuneration on success. That handwritten note removed that.

ADV MYBURGH SC: Yes I remember that now.

MR SINGH: And remember I then said it was not the
10 appropriate time for that to have actually happened with the time therefore it was de-scoped.

ADV MYBURGH SC: Yes.

MR SINGH: So the 15 million fee related to the other activities that that memo – that document related to.

ADV MYBURGH SC: Right.

MR SINGH: Or the residual activities that it related to.

ADV MYBURGH SC: So in other words this activity of – I mean and perhaps you can help us with the language – I mean here they were actually executing a transaction.

20 **MR SINGH:** Yes.

ADV MYBURGH SC: Whereas if I understand you correctly that is addendum related to simple advisory services.

MR SINGH: Yes in terms of planning and identifying sources and so on.

ADV MYBURGH SC: Is that what you say.

MR SINGH: Yes. This was actual fund raising.

ADV MYBURGH SC: Yes so this is fund raising.

MR SINGH: Yes.

ADV MYBURGH SC: So perhaps I could just whilst we are in Mr Gama's documents and we talking about the third addendum just have a look at page 250.380. This was signed on 4 February the third addendum.

MR SINGH: Yes.

ADV MYBURGH SC: And you saying it was on that
10 document and I will take you to your handwritten notes, is that right.

MR SINGH: Ja I am looking for the handwritten notes.

ADV MYBURGH SC: Okay just give me a second. Those handwritten notes we find at MSM 177. Mr Mohamedy's documents.

MR SINGH: Yes.

ADV MYBURGH SC: BB3(a)

CHAIRPERSON: What number is that Sir 177?

ADV MYBURGH SC: MSM 177. And the actual annotations
20 Mr Singh you find at page MSM 180.

MR SINGH: Yes Sir. So if you look at MSM 178 you will see that 2.1 it says:

“Deliverables except the actual fund
raising.”

ADV MYBURGH SC: Yes.

MR SINGH:

“Would be executed for a fee of 15million
over a period of twelve months.”

CHAIRPERSON: I am sorry you are reading from 2.1

MR SINGH: Sorry Mr Chair. On...

CHAIRPERSON: Just raise your voice.

MR SINGH: On page MSM 178 2. – paragraph 2.1.1

CHAIRPERSON: Ja.

MR SINGH:

10 “Deliverables (except) the actual fund
raising must be executed at a fixed fee of 15
million. A performance fee equal to 20% of
savings achieved against the benchmark
00:07:58 basically this is now for actual fund
raising.”

So what the handwritten notes on page 180 did was
it took out 2.1.1 and consequently 2.1.2 which only left the
15 million. But it still – we still needed to do the actual
fund raising which is what the memorandum to the BADC
20 was about.

ADV MYBURGH SC: All right. So if I understand what you
saying and of course MNS have a different view to you but
if I understand what you saying is this was a new – a new –
there was not a contract that regulated this. This was a
new deal and it required a new contract. Is that right.

MR SINGH: Well Mr Chair the activity

ADV MYBURGH SC: Yes.

MR SINGH: Required a new –

ADV MYBURGH SC: Yes.

CHAIRPERSON: A new?

MR SINGH: Sorry Chair.

CHAIRPERSON: Required a new?

MR SINGH: Mr Chair the activity was obviously de-scoped
from here so when the activity happened it needed a new
10 home.

CHAIRPERSON: Okay.

MR SINGH: So the home that then was – it was placed in it
was placed in the existing contract that existed at the time.

CHAIRPERSON: Okay.

MR SINGH: Therefore we requested a contract extension
for the activities that then happened.

ADV MYBURGH SC: So let us go then to the memorandum
that is dealt with this. I have already referred you to 28
April memo to BADAC. That you find in Bundle 5(b).

20 **MR SINGH:** 5(b).

ADV MYBURGH SC: And could I ask you turn up page
1039.

MR SINGH: Just one second. 5(b) page?

ADV MYBURGH SC: 1039.

MR SINGH: 1039.

CHAIRPERSON: You just have to repeat that Mr Myburgh – the page.

ADV MYBURGH SC: Page 1039 Chairperson.

CHAIRPERSON: Okay.

ADV MYBURGH SC: Let me just take you to the signature page quickly Mr Singh 1047. You see that sign it.

CHAIRPERSON: I am sorry somewhere Bundle 5(b) my one is just ...

ADV MYBURGH SC: Transnet Bundle 5(b) yes page 1039.

10 **CHAIRPERSON:** 1039.

ADV MYBURGH SC: Yes.

CHAIRPERSON: Oh okay.

ADV MYBURGH SC: Mr Singh you will see there – there is the subject Request to appoint JP Morgan and Regiments Capital to conclude on the China Development Bank loan. Do you see that?

MR SINGH: That is correct.

20 **ADV MYBURGH SC:** And then I had taken you to the signature page that is at page 1047 and it seems that everybody signed on the 28th of April 2015 you agree with that?

MR SINGH: That is correct Sir.

ADV MYBURGH SC: If you have a look at page 1043 at paragraph 67 it reads:

“Regiments have been working together with

the risk management/middle office of Transnet Treasury for over the last twelve months to achieve the outcome below.”

You see that.

MR SINGH: Yes Sir.

ADV MYBURGH SC: At paragraph 73 at 1044.

10 “The financial advice and negotiations support that Regiments provided through this entire process which took in excess of twelve months was done at risk with the expectation of compensation only on successful completion.”

You see that.

MR SINGH: Yes Sir.

ADV MYBURGH SC: And then it sets out the fees and the proposal is 166 million fee – success fee. Is that correct.

MR SINGH: That is correct.

ADV MYBURGH SC: And then if we go to the end of the document 1047 the recommendation is

20 “Approved the confined appointment of JP Morgan to hedge the financial risk.”

That we do not have to deal with now.

“Approve the confined appointment of JP Morgan.”

And then the important one.

“Approve the contract extension from 99.5 million to 265.5 million for the appointment of Regiments Capital for transaction advisory services and support to Transnet on the 1064 locomotive transaction.”

Is that right?

MR SINGH: That is correct.

ADV MYBURGH SC: So just the points that I have put to – to Mr Gama let me put them to you as well and that is if this
10 was something different to that covered by the addendum – it is not advice it is actually execution then surely it would have been irregular to allow Regiments to have worked as it appears on the face of this document for twelve months without there being any contractual provision at all.

MR SINGH: Mr Chair as I said the – the contract required or the services required a home and the home that we then – that was then found was the existing contract and therefore the existing contract was extended and ...

ADV MYBURGH SC: But it was done after the event Mr
20 Singh.

MR SINGH: Sorry.

ADV MYBURGH SC: I mean they worked on this for twelve months on the execution part of it. Not advisory because you saying this is different to advisory.

MR SINGH: Yes.

ADV MYBURGH SC: My concern is and I just want your comment on it that here you have Regiments now performing a different role not advisory but they executing. They working on this for twelve months but there is no contract at the beginning of that task regulating this very sizable piece of work on the face of this memo.

MR SINGH: Yes Mr Chair and I think it – it comes back to that exclusion that we had discussed the handwritten annotations. It was always envisaged that they were going
10 to be doing this work and they were going to be doing it at risk and as we – as I said once it came to the point of where we executed the con – the activities of the work needed a home and the home that was then found was this contract and the contract extension that was then reviewed and motivated by procurement.

ADV MYBURGH SC: But you accept that was done ex post facto.

MR SINGH: Because the work had been continuing for twelve months.

20 **ADV MYBURGH SC:** Yes. The other thing of course if that you again had no obligation to pay Regiments this money.

MR SINGH: No Mr Chair we had – well in my view we had an obligation to pay the money because there was an understanding that this work was actually being undertaken at risk.

ADV MYBURGH SC: When you say an understanding was there any contractual obligation?

MR SINGH: I think one of the addendums did allude to the fact that we needed to ...

ADV MYBURGH SC: And when you talk about an understanding and understanding between who and who?

MR SINGH: Well Mr Chair if you give me a ...

CHAIRPERSON: Well let us start with the confirmation of what I thought Mr Myburgh wanted to confirm with you. Do
10 you agree that there was no contract for a number of months with – when the work was being done?

MR SINGH: Mr Chair I – I have not read this document I think it is (inaudible).

CHAIRPERSON: Come closer to the mic.

MR SINGH: Sorry I said Mr Chair I have not read the memorandum.

CHAIRPERSON: Yes.

MR SINGH: That supports this so maybe it would be worthwhile if we could just come back to this after the break
20 so that I can have a – an opportunity to peruse this memorandum.

CHAIRPERSON: Yes but as – as things stand your recollection is that there was or there was not subject to checking?

MR SINGH: Mr Chair I think it would be better served if I

read this and then give you a proper answer otherwise I will have to change it again.

CHAIRPERSON: Okay all right.

ADV MYBURGH SC: Fair enough. But okay so we want to – we can come back to the question of whether there was a contract – I suppose that would then answer the question of whether they worked at risk and what the understanding was and whether that had been provided for. But let me put the rest of my proposition.

10 So the first one that I put to Mr Gama is it seems what I suggested is that it appears irregular that they were allowed to perform this work without there having been a contract in place.

 So there they were for twelve months doing this – there were no performance targets. Surely there were huge issues of confidentiality and the like there is no contract from what I can see.

 Allied to that and we can kill two birds with one stone once you have gone through this is that on the face of
20 it it seems there was no obligation to pay Regiments this money. I mean the fact that they – they may have been working at risk does not mean that they – you were obliged to pay them.

 And then perhaps I could ask you to – to deal with this if you can on the face of it Mr Singh this appears to be

a different procurement event. I mean where was there any – any procurement evaluation or analysis here?

So what you have is you have Regiments providing you with advisory services etcetera but now you going into the Chinese Development Bank loan – now you going into the execution of the deal. You want to comment on that?

MR SINGH: I think it is linked to the first one in terms of the contract extension.

ADV MYBURGH SC: All right. The other thing that I
10 explored with Mr Gama and I want to put it to you as well is
did you not ever think that there was a conflict here with
Regiments in a sense that they were your advisors. They
were – in terms of that addendum if you – if you read it as
that just purely advisory they were advising you on deal
structures, transaction structures. On the one hand they
advising you what you should do and what you should
explore and on the other hand at the same time they
actually executing the transactions. That is a – on the face
of it there is a tension is there not?

20 **MR SINGH:** I think you – well let us put it this way. When –
when we – let me see how do you put it. Okay. The actual
execution of the deal okay basically was with China
Development Bank. Okay so they – we exe – Transnet
executed a loan funding facility with China Development
Bank so that was the one leg of the transaction. In raising

that funding between China Development Bank and Transnet Regiments played an advisory role relating to that fund raising activity that was happening. And in that fund raising activity that was happening between the parties they had given advice as to how the cost of funding for that facility could be reduced. So that was one element.

The next element Mr Chair is the actual – how can I say – the cross-currency swop that would needed to have been executed to mitigate the exchange rate risk and
10 interest risk relating to the China Development Bank loan that was between Transnet and China Development Bank.

In executing the hedge for the underlying load that we had now agreed to enter into with China Development Bank we then also got advice from Regiments in terms of how do we actually optimise a cost relating to the interests
00:21:35 and well they have a hedge structure relating to the hedging of the risk relating to interest and foreign exchange on the loan.

So when you – when you see the elements of the
20 transaction in that manner there is no conflict because they did not participate in the actual fund raising neither did they actually participate in the actual hedging.

So the hedging was actually done by JP Morgan.

ADV MYBURGH SC: Because they – what did they do?

MR SINGH: Sorry.

ADV MYBURGH SC: What did they do?

MR SINGH: So that is what I am trying to allude.

ADV MYBURGH SC: Ja.

MR SINGH: If you look at the memo the memo basically outlines exactly what they did and what value they added in terms of the negotiations between China Development Bank and – on the one hand and JP Morgan on the other hand.

ADV MYBURGH SC: But surely that is just advisory services. We can go to that addendum that is what they
10 were supposed to help you with.

MR SINGH: And that is the reason I guess the contract extension was a route that we actually adopted for the procurement event.

ADV MYBURGH SC: All right but you go and have a look at this perhaps overnight.

MR SINGH: Yes.

ADV MYBURGH SC: And we can deal with it when we resume.

MR SINGH: Sure.

20 **ADV MYBURGH SC:** I just – the other thing that I put to Mr Gama and you can comment on this is Dr Blum testified that the fee he considered excessive. He felt there was a R90 million overpayment. He said that they got 0.15% on yield presumably that is the 15 basis points whereas in his view market convention and Transnet practice or a lead

arrangement fee was 0.06% of yield. Are you in a position to comment on that?

MR SINGH: No not at this stage.

ADV MYBURGH SC: Now you do know that this payment of R189 million in – to Regiments was part of the Gupta money laundering I have told you that.

MR SINGH: Sorry Sir.

ADV MYBURGH SC: This payment was part of the Gupta money laundering.

10 **MR SINGH**: I was not aware of that Sir.

ADV MYBURGH SC: I just want to then take you to the next document. So this is the – the memorandum that is signed by everyone on the 28th of April 2015. Then there is another memorandum if you have a look at page 1048. Now you will see that this actually deals with the same – the same thing. If you go to the recommendation at the end 1052 you see there that it is recommended that the acting Group Chief Executive approves the following.

20 1. The value of the contract be increased to a capped
 265.5million.

So that gives you the 166 million success fee. And then the allowance for the contract period to accommodate the successful conclusion of the funding and hedging agreements with CDB and JP Morgan in order to effect the remuneration (success or risk base fee) to Regiments

Capital. Do you see that?

MR SINGH: Yes I do.

ADV MYBURGH SC: Now something that arose in Mr Gama's evidence was this. You signed this recommendation on the 19th of May 2015, do you see that?

MR SINGH: That is correct.

ADV MYBURGH SC: He only signed it on the 16th of July 2015. You see that?

MR SINGH: That is correct.

10 **ADV MYBURGH SC:** And as I understand it you authorised payment of this money in the intervening period before you had actually signed the memorandum.

MR SINGH: When was this thing paid? I think at 1053 you see an invoice which I initialled and said approved by the acquisition and disposal committee but there is no date on it. I am not too sure when this was actually paid.

ADV MYBURGH SC: All right. If I can just have a second please Chairperson.

CHAIRPERSON: Okay. Well shall we take this opportunity
20 to take a ten minutes adjournment?

ADV MYBURGH SC: No, no I have found what I need if I could – sorry.

CHAIRPERSON: Ja okay.

ADV MYBURGH SC: As you would appreciate Mr Singh when you refer to the evidence of other people often those

documents are in their bundles and when they actually in yours as well. So I have – you looking at page 1053. There is the invoice.

MR SINGH: Yes 1053.

ADV MYBURGH SC: We cannot see at 1053 when you authorised it. But if you go to 1061.

MR SINGH: 1061.

ADV MYBURGH SC: There is a payment advice dated the 11th of June 2015.

10 **MR SINGH**: That is correct Sir.

ADV MYBURGH SC: Signed by you.

MR SINGH: Yes Sir.

ADV MYBURGH SC: You see that.

MR SINGH: That is correct.

ADV MYBURGH SC: Now that was before Mr Gama signed the memorandum at 1052.

MR SINGH: That is correct Sir.

ADV MYBURGH SC: In fact and Mr Gama could think of no reason why you would have authorised this payment before
20 he signed this memorandum. What was the rush?

MR SINGH: I do not think there was a rush Mr Chair.

CHAIRPERSON: But what it does mean is that unless there is some other written document we are not aware of is that you authorised payment before there was written approval from him of the memo and one wonders why.

MR SINGH: No Mr Chair the authorising authority in this case was the ADC.

CHAIRPERSON: Was?

MR SINGH: Was the acquisition and disposal committee.

CHAIRPERSON: Yes.

MR SINGH: Which is recorded on page 1047.

CHAIRPERSON: Yes.

MR SINGH: And if you look at the recommendations there that gave rise to the approval that occurred on the 11th of
10 June. And as I approved I said it – as I – attach my initial to the invoice it said approved by the acquisition and disposal committee. The document.

CHAIRPERSON: Sorry where is that part?

MR SINGH: I am sorry Sir. On 1053.

CHAIRPERSON: 1053. I am looking for the party that - where you say as you signed ...[intervenes]

MR SINGH: If you look at my initial, Mr Chair.

CHAIRPERSON: Oh, okay. Now I see it.

MR SINGH: It says approved by ABC.

20 **CHAIRPERSON**: Yes.

MR SINGH: So the approving authority, Mr Chair, for this transaction was the ABC.

CHAIRPERSON: H'm. But would – I mean, that is A Board Committee, is it not?

MR SINGH: Yes, sir.

CHAIRPERSON: But would board committee get involved the signing of paperwork?

MR SINGH: No, no. Hence, Mr Chair, I signed as the CFO, the invoice. Approving the invoice.

CHAIRPERSON: H'm?

MR SINGH: Noting that the ABC had approved this payment.

CHAIRPERSON: H'm. But Mr Myburgh's question would still arise because obviously, the memo contemplated that
10 Mr Gama must approve as well.

MR SINGH: No, Mr Chair, but the purpose of the memo – if you look at 1048...

CHAIRPERSON: H'm?

MR SINGH: ...was to request the acting DC to approve the contract addendum.

CHAIRPERSON: H'm?

MR SINGH: So this was basically a document that was submitted to Mr Gama on the 19th of May subsequent to the approval of ABC to approve the contract amendment.

20 **ADV MYBURGH SC:** But what would happen if you did not?

MR SINGH: Sorry?

ADV MYBURGH SC: What would have happened if you didn't approve it?

CHAIRPERSON: H'm.

ADV MYBURGH SC: Then you will have no contract and then it would have been ...[intervenes]

MR SINGH: No, but this was ...[intervenes]

ADV MYBURGH SC: ...a dispute as to whether there needed to be a payment.

MR SINGH: This was consequent to the ABC having approved the ...[intervenes]

ADV MYBURGH SC: But then why was there a need for this memorandum to Mr Gama.

10 **MR SINGH:** Because as Mr Chair had highlighted is that the ABC would not sign contracts.

ADV MYBURGH SC: But that is precisely the point.

MR SINGH: [Indistinct]

CHAIRPERSON: [Indistinct]

[Parties intervening each other – unclear]

ADV MYBURGH SC: You needed a signed contract by Mr Gama. That was the legal instrument. That was the contract. I mean there was a contract deviation here. What would have happened if he did not sign it?

20 **MR SINGH:** I guess, Mr Chair, we would have gone back to the decision taken by the ABC. I am not too sure. I did not really think of the contract amendment when I approved this payment, I assume.

ADV MYBURGH SC: Alright. Mr Chairman, I do not know for how much longer you would like me to go on with

Mr Singh. I am told by – I am getting a note by his attorney that he did not realise that he would sit before four. Oh, sorry, beyond four. I do not know if Mr Gigaba is here yet but I am in your hands as to how much longer we should continue.

ADV VAN HEERDEN: Chairperson, I passed the note on. We were not informed that we are sitting beyond four o'clock. I have got another work commitment. So I – I am afraid I have to leave.

10 **CHAIRPERSON:** We normally sit until four or until five, depending. In terms of the time – in terms of tomorrow, how does it look like now, whether we will have enough time or not with Mr Singh?

ADV MYBURGH SC: It is really difficult to predict ...[intervenes]

CHAIRPERSON: It is difficult, ja.

ADV MYBURGH SC: Because, I mean, you see it.

CHAIRPERSON: Ja.

ADV MYBURGH SC: Some of the stuff is quite dense.

20 **CHAIRPERSON:** Yes.

ADV MYBURGH SC: Ja.

CHAIRPERSON: No, no. I understand. And tomorrow – oh, tomorrow evening you are not involved in the evening session?

ADV MYBURGH SC: No, I ...[intervenes]

CHAIRPERSON: If there is any. There might not be any. So if we break now at four, can we accept that tomorrow if there is no evening session arranged with any other work stream, we can go beyond four to try and finish?

ADV VAN HEERDEN: Chairperson, again. We are not trying to frustrate you.

CHAIRPERSON: Ja.

ADV VAN HEERDEN: But unfortunately, I have got commitments tomorrow evening too.

10 **CHAIRPERSON:** Ja, but ...[intervenes]

ADV VAN HEERDEN: So we understood from the arrangement that we sit from ten to four every day and that is why ...[intervenes]

CHAIRPERSON: No, no, no. I have not said how much into the evening. It might be five. It might be six. It does not necessarily mean it is as late as it sometimes is. So I am just checking whether there is a possibility that we could go beyond four o'clock. I have not spoken about how much into...

20 **ADV VAN HEERDEN:** I can inform Chairperson tomorrow morning, if it is possible.

CHAIRPERSON: Ja.

ADV VAN HEERDEN: I will endeavour to make arrangements but I must be upfront and honest with you. My situation is that I have made alternative arrangements,

work commitments. So...

CHAIRPERSON: Please do the best you can for tomorrow because I would like us to finish with Mr Singh's evidence tomorrow. Okay. We will adjourn now with Mr Singh's evidence and as soon as – well, the evening session people are supposed to be here at four. And if they need to wait, they wait until five o'clock while we finish. So, hopefully, they are here. But tomorrow, let us try and finish. Okay alright. We will now adjourn the day session.

10 We adjourn.

INQUIRY ADJOURNS FOR THE DAY SESSION

INQUIRY RESUMES FOR THE EVENING SESSION

CHAIRPERSON: Good evening, once again, Mr Myburgh. Good evening everybody.

ADV MYBURGH SC: Good evening, Chairperson.

CHAIRPERSON: Before we start, I just want to make an announcement that I was planning to only make tomorrow morning but I understand that somebody has put in the media something that I was still to announce and I never
20 gave authority that it should be done.

The President was going to appear before the Commission on Monday and Tuesday, that is the 31st of May and the 1st of June. I have moved... [Speaker's microphone not working] ...late in June so that he would come at the end of the oral evidence.

So another date – I will announce another date or two dates in the course of June. So he will no longer appear before the Commission on Monday and Tuesday but he will still appear before the end of June. Okay alright. Let us continue.

ADV MYBURGH SC: Thank you, Chairperson. I do not know if it is necessary to administer the oath again to Mr Gigaba?

CHAIRPERSON: Yes, let us do that. Please administer
10 the oath or affirmation.

REGISTRAR: Please state your full names for the record.

WITNESS: My name is Knowledge Malusi Nkanyezi Gigaba.

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

WITNESS: No.

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

WITNESS: Yes.

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

WITNESS: So help me God.

KNOWLEDGE MALUSI NKANYEZI GIGABA: (d.s.s)

CHAIRPERSON: I think Mr Solomon is appearing virtually.
Mr Solomon, are you there?

ADV SOLOMON: [No audible reply]

CHAIRPERSON: Well, let us start because I am sure or I
hope he hears -he can hear. Okay ...[intervenes]

ADV MYBURGH SC: Thank you, Chairperson.

CHAIRPERSON: ...let us start, ja.

EXAMINATION BY ADV MYBURGH SC (CONTINUES):

Good afternoon, Mr Gigaba.

10 **MR GIGABA:** Good afternoon, Chair.

ADV MYBURGH SC: I just want to finish off by
...[intervenes]

CHAIRPERSON: Good afternoon, Mr Gigaba.

MR GIGABA: Thank you.

CHAIRPERSON: Thank you.

ADV MYBURGH SC: I just want to finish off, Mr Gigaba. I
would refer you to one document, if I may? Can you go to
your Exhibit 24? So this is Transnet Bundle 7(a),
Chairperson. And could you please go to page 979?

20 **MR GIGABA:** Page 1979?

ADV MYBURGH SC: Chairperson, I am told there is a
technical problem with the Zoom connection. Five minutes
is required to sort it out.

CHAIRPERSON: Oh. Shu, we are losing a lot of time
today. Okay we adjourn.

INQUIRY ADJOURNS DUE TO A TECHNICAL PROBLEM

INQUIRY RESUMES

CHAIRPERSON: Okay, let us proceed.

ADV MYBURGH SC: Thank you, Chairperson. Mr Gigaba, I wanted to take you to Transnet Bundle 7(a), page 979. Just one further question in relation to Ms Gigaba.

MR GIGABA: Yes.

ADV MYBURGH SC: Then what ...[intervenes]

CHAIRPERSON: What is the page number?

10 **ADV MYBURGH SC:** 979, Chairperson.

CHAIRPERSON: Okay.

ADV MYBURGH SC: What you will find at 979 is a letter from Themba Langa.

MR GIGABA: Yes.

ADV MYBURGH SC: ...attorneys. Those we Mr Gama's attorneys. I just want to direct your attention to paragraph 2 at page 979. It says:

20 “We confirm that when this matter was settled,
 it was agreed in writing with the then Minister
 of Public Enterprises that the costs incurred by
 Mr Gama, our client, would be borne by
 Transnet...”

Do you want to comment on that?

MR GIGABA: Thank you very much, Chairman. It is the first time I see this letter.

CHAIRPERSON: H'm?

MR GIGABA: It was not brought to my attention because this letter is submitted – it is dated 25 June 2014 when I was Minister of Home Affairs. The Department of Public Enterprises did not bring it to my attention to query whether there was or there had been such an agreement meeting to Langa Attorneys. There was no such an agreement. I was not involved in this thing.

10 There was no written agreement and if there was, it would have been presented to me because the Department of Public Enterprises would have queried why the Minister had made such a written agreement with attorneys of a client that was in dispute with an SOE. Now the Minister could not enter into such an agreement in any possible way. The ...[intervenes]

CHAIRPERSON: One second, Mr Gigaba. Registrar.

REGISTRAR: [No audible reply]

CHAIRPERSON: Yes, you may continue.

20 **MR GIGABA:** Thank you. Minister of Public Enterprises does not enter into legal contracts that are binding on state-owned companies. The Establishment Act of these SOE's would not permit that as well as the Companies Act, the Shareholder Comp Act. There is no legislation which creates such a precedent.

Now any letter that is written officially from a

means that to an SOE first goes through the various divisions in the department where it is approved by the relevant officials in the department right up to Director General before it is submitted to the Minister for signature.

And the department would certainly not have drafted or authorised a drafting of such an agreement because they would have clearly said to me that: Minister, this is not within your powers.

And therefore, there was no such advice
10 submitted to me, either in the form of internal memorandum by the department or in any other word that would essentially mean agreeing in writing to such a matter. This matter was an internal matter within Transnet.

Let me also add, Mr Chairman, that ministers are executive authorities. They are not accounting officers. I approved the budget insofar it is consistent with the policy framework which has been decided at that time.

The Minister does not enter into contracts. Does not commit funds for any function whatsoever and
20 therefore, to this extent, the Minister would have been acting or would have acted way beyond their powers and the Director General would have surely protested to say: Minister, this is not within your powers. You are committing funds which is the function of the accounting officer.

And therefore, I did not write any such letter to Langa Attorneys. I did not meet Langa Attorneys to make any commitment that they were going to be paid for representing their client.

ADV MYBURGH SC: So... Mr Gigaba, I mean, I think we are probably all in agreement that if you have done that it would irregular.

MR GIGABA: Yes.

ADV MYBURGH SC: That is what I just asked you. Do
10 you know – do you have any idea where Mr Langa would have got this from?

MR GIGABA: I think he was just trying to drop my name in order to solicit the payment.

ADV MYBURGH SC: Alright. Could I then ask you
...[intervenes]

CHAIRPERSON: Sorry, just repeat that answer. I have missed it.

MR GIGABA: I said, Mr Chairman, he was dropping my name in order to solicit payment. And it is very strange to
20 me that he would submit this letter to the department when he knew I had left the department because by the 25th of June, it had been a whole months since I had left the Department of Public Enterprises, if there had been any commitment by myself to this effect. This letter in all sincerity would have been submitted whilst I was still the

Minister of Public Enterprises.

ADV MYBURGH SC: But he is not submitting it to the department. He is submitting it to Transnet's attorneys.

MR GIGABA: Even then, the answer still stands. The letter is admitted to Transnet's attorneys when I was no longer Minister of Public Enterprises and it still defies logic why it would have – that such would have been done.

ADV MYBURGH SC: No, I then want to move to a different topic and this deals with ...[intervenes]

10 **CHAIRPERSON:** Well, before you move to a different topic, Mr Myburgh. I think it is important to get your view, Mr Gigaba, on the defensibility, or otherwise, on the settlement agreement that was reached by the Transnet Board with Mr Gama because that was a board that was appointed, at least the majority, I would imagine, appointed during your term. Number two and number two, it was during your term as Minister of Public Enterprises.

Number three, of course, there is the history relating to Mr Gama that I highlighted to you as given by
20 Ms Barbara Hogan in terms of her version being that Mr Zuma was being insisted that the position of Group CEO of Transnet would, therefore, not have to be fulfilled until his disciplinary processes were completed.

I think we – it was indicated to you the last time that Mr Mkwana who was the Chairperson of the board

conceded that the settlement agreement that they have reached with Mr Gama was indefensible. Now it may well be that somebody might say it is defensible. It is difficult for me how anybody can say it is defensible.

Now, obviously, being Minister of Public Enterprises at the time, you would have had an interest in boards of SOE's under your jurisdiction, performing their duties in a way that really advances the interest of the SOE's.

10 Now, let me ask. Have you seen that agreement? Do you – are you familiar with its terms, that settlement agreement? I think you would have. Now I remember. It was sent to you, I think, at some stage for you to comment. The settlement agreement between Transnet and Mr Gama.

MR GIGABA: Mr Chairman, it was sent to me and in my view, the matter involving this settlement agreement would have been difficult to me to comment on post facto, given the fact that by the time it was brought to my attention, the
20 agreement had been reached, the parties had negotiated it. So it was – it would be difficult for me to argue with any conviction that it should be – it can be defended or cannot be defended.

I think the views of the people who were involved, who studied it and those who perhaps – because

of the responsibilities which they carried at the time, the views that they would have expressed on the matter would be much authoritative than mine given the lapse of time and the fact that the matter, really, at the time did not serve before me in any way.

And certainly, the contract, the agreement was not brought to my attention since Mr Gama was the Divisional CEO. I had left it to the board to deal with the matter and resolve it.

- 10 **CHAIRPERSON**: H'm. Well, you see, I mean, I think last time you said – we took quite some time with Mr Gama or with Mr Mkwanaazi on this issue and you are right, we took quite some time, and certainly from my side it is because of the unusual features of this agreement, you know. Because you have a situation where, you know, a very senior position that is supposed to be filled at Transnet is not filled for – close to two years. Actually, it was not filled for two years.

- 20 And more than one and a half of that years it was not filled because from the version of the person who was Minister at the time and the President at the time said: I want so and so and nobody else to take this position. And then this person was dismissed at the end of the disciplinary process for extremely serious acts of misconduct.

And when the settlement agreement was reached, reinstating him, he was admitting that he had committed these six serious acts of misconduct. He was no longer disputing, Mr Gama. There is a very comprehensive judgment that was done by the chairperson of the disciplinary hearing, a senior counsel at the Bar in Joburg.

So at the time he was reinstated, he was not disputing that he was properly found guilty of those act of
 10 misconduct anymore and yet here is this board which takes him back. Not only that. I mean, gives him full reinstatement, full back pay for the period that he had been dismissed. Not only that. It looks at litigation which he had brought in the high court where he was challenging his suspension by Transnet before he went through the disciplinary process which he lost.

And the judge in the high court said he must pay Transnet's costs for that litigation. Not only do they say- and they do not say: Okay, do not pay the costs. For
 20 whatever reason, maybe. Do not pay the costs. They say, instead: We, Transnet, who won the case against you, we are going to pay you 75% of your costs.

And then they say in regard to the case that was pending at the time, which have got the unfair dismissal case, which was pending in the Bargaining Council, they

say: We will pay... [I think] ..75% of your legal costs. And that is somebody who is admitting that he was properly found guilty of these very serious acts of misconduct.

And apart from that, they say: Okay, we will give you a final warning but this final warning is not going to be operational when you arrive back. It would be deemed to have been given more than a year ago and it would be deemed to have been for six months. So, therefore, when you come in – when you come back, you will have a clean
10 disciplinary slate.

It is just something unheard of. So, if we had spent time trying to asking Mr Mkwanaazi about this and we ask Mr Gama and - but not as much as we asked Mr Mkwanaazi because Mr Gama did not reinstate himself, you know. He was within his right to ask for as much as he may have asked for. The people who had the responsibility was the board.

So if we spend time on this, it is because it is such an unusual situation. It calls for an explanation to
20 say: Why would a board that is properly looking after the interest of an SOE enter into this kind of settlement? It makes you want an explanation that there must be something else. It cannot be. That is what goes on in your mind because it is just something very difficult to understand.

And of course, Mr Myburgh draws to your attention what Langa Attorneys wrote, talking about the Minister of Public Enterprises having – or they having reached an agreement with the Minister of Public Enterprises. Simply because, even that is a strange feature to say what was going on. So, but I thought I must raise this issue again because it happened after you were brought in as Minister of Public Enterprises.

And the settlement agreement, certainly, seems
 10 indefensible. You might wish to say something but it is something that I thought you would be quite concerned about by virtue of you having been Minister of Public Enterprises when this board entered into it, even if it was not shown to you before they entered into and they signed it.

MR GIGABA: Well, let me state, Mr Chairman, that the Chairman is an authority on labour law.

CHAIRPERSON: [laughs]

MR GIGABA: [laughs] Of which I am not.

20 **CHAIRPERSON:** [laughs]

MR GIGABA: I can be an authority on a few other things but I will not contest the Chairman's authority on labour law.

CHAIRPERSON: H'm.

MR GIGABA: I am not privy, sir, to the full contents and

context of the board's discussion on this issue. Perhaps, as the Chairperson explained it, the board could have handled it differently and leave that to the Commission's discretion to make that determination, whether the settlement was defensible or not.

I think you will be in a position to look at the processes of the disciplinary process and the full discussions of the settlement agreement and its content and to decide on that basis. I think the Chairperson seems
10 to be already of the view on that matter. The letter by Langa Attorneys was a total fabrication. It had no basis.

In fact, as puzzling to the Chairperson as it is, it is also to me because I entered into no such agreement. The department would certainly have said to me: No, do not do this. If I had done it, the department would have ensured that we write another letter. But it should have been impossible for me to write a letter that has not emanated from the department. I would not have done that myself.

20 And so, I leave it to the Commission to make that determination but given the explanation that the Chairperson is applying and given that the Chairperson, probably, already has had sight of the full discussions of the board at the time, I think that perhaps the board could have handled the matter differently and ensured that they

protect the interest of the company.

CHAIRPERSON: Ja. Okay. Mr Myburgh.

ADV MYBURGH SC: Yes, thank you. Mr Gigaba, could you please go to page – Transnet Bundle 7(a), page 996?

MR GIGABA: Sorry, Transnet ...[intervenes]

ADV MYBURGH SC: The same bundle.

MR GIGABA: Oh, page 996?

ADV MYBURGH SC: 996.32. Towards the end of that.

CHAIRPERSON: What is the page number?

10 **ADV MYBURGH SC:** 996.32, Chairperson.

CHAIRPERSON: H'm?

MR GIGABA: Yes, I am there.

ADV MYBURGH SC: Sorry, I am not sure you are. If you go to 996 ...[intervenes]

MR GIGABA: Yes.

ADV MYBURGH SC: ...there are a whole lot of pages after that.

MR GIGABA: Yes.

20 **ADV MYBURGH SC:** Okay. You can go – you can trace your way. So I think you had 996.3.

MR GIGABA: Yes.

ADV MYBURGH SC: You need to go all the way to 996.32. Thirty-two.

MR GIGABA: Oh. Yes, I am there.

ADV MYBURGH SC: So this is a transcript, an extract of

a transcript of the evidence of Mr Riaz Saloojee, the then CEO of Denel. And what Mr Saloojee says – and I am going to just take you to what is the core part of this and ask you to comment. Page 996.32 at line 40, he says:

“And then he picked me up...”

Now he is talking about Mr Essa. He is talking about being picked up at a coffee shop.

MR GIGABA: Yes.

ADV MYBURGH SC: Yes.

10 “...and we drove. And then he drove me to the Gupta residence in Saxonwold.

I was not aware that that was the residence at that point in time but he informed me that it was and said: Do not worry. Again he said: This is the support of the very top...”

Counsel asks:

“And this is after you had gotten into his car and you were driving towards Saxonwold?”

Mr Saloojee:

20 “Yes. So then we get to the place and we go inside and I am taken into a room and I am introduced to Tony Gupta. Tony Rajesh Gupta.”

Counsel:

“Yes?”

Mr Saloojee:

“It was the first time that I met Tony Gupta.”

Counsel asks:

“Had you met any of the Gupta family prior to this or not?”

Mr Saloojee:

“Yes.”

And then the key paragraph that I want to ask you to comment on.

10

Mr Saloojee:

“So we engaged in pleasantries. And he, obviously, says: How are you? And whatever else.?”

Counsel:

“And then shortly after that he escorts?”

Mr Saloojee:

“Tony escorts me into another room.

In that room, he introduces me to his – and now he says: This is my brother.

20

And he does not say who the brother is.

He just says: This is my brother.

And the brother greets me.

He says: Hello, Riaz. How are you?

And I said: I am fine.

And then he turns around and in the room was

also Minister Malusi Gigaba.

And then he says to Minister Gigaba: Minister Gigaba, this is the new CEO of Denel. This is the new guy, Riaz.

And all Minister Gigaba says was: Hello, how are you, Riaz?

And that was it and there was no further exchange.

10 And I mean, there was no discussion about Denel or anything of that sort.

It was just an introduction.

And if I recall, Minister Gigaba said: These are my friends. He hopes that at some point if there is anything you can do with them, it would be good. And that was it.

Chairperson:

“Please just repeat that. He said what?”

Mr Saloojee:

20 “He said: If at some point in time there is anything that you can assist them with, that is fine. That would be good.”

Chairperson:

“That is the one that I am missing, the earlier one. Did he say these are his friends or something like that?”

Mr Saloojee:

“These are his friends. And if at some point there is something you can do together with them in Denel it would be good. Something to that effect.”

Chairperson:

“Okay.”

Mr Saloojee:

“The meeting was very short.

10 And this person who I later found out was Athol was talking – asked me: How is Denel? How is it going? And whatever else.

And I said it is fine. I am stepping in and whatever else and we shook hands and we left and Essa took me back in his car to the coffee shop.”

Do you want to comment on that?

MR GIGABA: Yes, thank you very much, Mr Chairman. In the first instance, Mr Chairman, I deny emphatically that I
20 was ever in such a meeting. It is implausible to me that someone who would agree to be picked up from a coffee shop, driven to a destination they do not know about but still felt comfortable to come to that destination and meet the people he did not know about. That he can then say: I did not have a pre-existing relationship with these people.

It is implausible.

Secondly, it is implausible to imagine that the person who submitted the Cabinet memorandum for your appointment who would then have to be introduced to you when they would have considered the Cabinet memorandum because when you submit a Cabinet memorandum you also read the CV, because Cabinet is quite rigorous in its scrutiny of the people who are being brought before it.

10 Of course, Mr Saloojee, when he was appointed, came with a high reputation, having been in the industry and in the military industry and the military itself prior to his appointment as CEO of Denel. It, therefore, seems – sounds strange to me that this course of events would happen which result in him being introduced to me by – or, and or, me being introduced to him by someone else other than the board of Denel which had the responsibility to do that.

20 Now when you move on with his testimony, he then comes to a point, further, where he says that he had a subsequent meeting at which meeting I was not there. There were other people who were there. They discussed a number of things. It seems also bizarre that if he felt uncomfortable to return, to talk to the same people and at this meeting at which I was not present, they then

discussed whatever else what was discussed.

I think what is important to bear in mind is that Mr Saloojee does not say that there is anything else that I ever said to him. Besides the meeting, that I refute as never having taken place, there is nothing else which I came to Mr Saloojee to say do this, do that for the following people. But I think, as he says, they were open to meeting various businesspeople, various stakeholders.

And at one meeting with the chairpersons and
 10 CEO's or CEO of SOE's, I made it very clear that in my view, even to the extent that I myself may say to you that so and so would like to talk to you, it is never take that as an indication on my part because there is a lot of such – they either come – they come to ministers and claim that the President has said this, that and the other. They come to Chairs and CEOs of SOEs and claim that the ministers – the minister has said this that or the other but when that happens, please keep it in mind that you are under no obligation whatsoever to do anything. If somebody says
 20 something to you please verify it with me first so that I am able to indicate whether I did say that thing.

Now namedropping, including by the Gupta family or especially by them was quite prevalent at the time and I think that is why, even on my part, I subsequently became very uncomfortable especially when I was now minister of

such important assets. I became quite unhappy and uncomfortable with my name being dropped at various places which led to the cooling of relations at some point.

ADV MYBURGH SC: You see, perhaps I could just point out one or two things to you, Mr Gigaba, and get your comment.

MR GIGABA: Yes.

ADV MYBURGH SC: There is other evidence before the Commission that this is really how Mr Essa operated, it
 10 was his *modus operandi*. He would find senior people, sometimes CEOs of big parastatals and he would take them to meetings at the Guptas. I mean, I will give you an example of Mr Gama. Mr Essa arranged what Mr Gama thought was a business meeting with him and gave him the address and he drove there only to find out that it was the Gupta compound and that the purpose of the interaction was not to meet with Mr Essa but was to meet with the Guptas not to meet with Mr Essa but was to meet with the Guptas but this is what Mr Essa did and the other thing I
 20 want to put to you, is I do not quite understand when you say there would be no need for you to meet and be introduced to Mr Saloojee because that is not what he says happens here. He says what happened here is that you said that these are my friends and he hopes that at some point if there is anything you can do with them, it would be

good. That was the purpose of the meeting, so he says.

MR GIGABA: Oh, am I expected to comment now?

ADV MYBURGH SC: Please do.

MR GIGABA: Oh, thank you. Firstly with regard to the *modus operandi* of Mr Essa, I cannot speak for him, again. I do not know whether he acted this way or I do not know whether he also acted the same way prior to my appointment and whether he continued to act this way after I had left the Department of Public Enterprises and I
10 certainly do not know if he acted the same way with regards to other SOEs or entities. If this is how he used to behave, he obviously was abusing – he was abusing his position to project himself as influential, powerful, connected in order to advance his business interest but that certainly was never sanctioned by me and, as I have responded, in a related prior matter that had the person brought to a meeting brought it to my attention, I would have said to them do not go but I think it was quite prevalent and it probably still is that people would be
20 brought to meetings under pretext that the political principal approves of such a meeting taking place or such issues being discussed but that certainly was never approved by me and that is why, as I said earlier, in one of the meetings with the Chairs and CEOs of SOEs under my reporting line, I made it clear to them that please, do not

do things that I have not said you must do. If anybody comes to you please verify with me because my discussions with you are confined to policy issues.

Secondly, with regard to what Mr Saloojee says, I dispute the meeting itself. So it is not for me to respond to whether I said these are my friends, help them in any way, I am saying the meeting did not take place, therefore I did not say these are my friends and help them in any possible way. It would have been bizarre of me to say that given
 10 that I had not formally – I would not have formally met Mr Saloojee. He says himself in this memo that he had not met me until then and therefore, for me to say prior to me meeting him now, you cannot meet a stranger that you do not know and just suddenly start saying things that they may go out and talk about or report to the police or elsewhere. I would have been stupid to do that. So the meeting did not take place.

ADV MYBURGH SC: Alright and do you then still maintain that the only time that you ever met Mr Essa is when the
 20 board of Broadband Infracore was introduced to you?

MR GIGABA: Yes, I still maintain that.

ADV MYBURGH SC: And do you still maintain that the only time that you ever went to the Guptas was for social and cultural functions?

MR GIGABA: Yes.

CHAIRPERSON: Well, you are not suggesting, are you, that Mr Saloojee just fabricated this story? Are you saying maybe genuinely mistaken? Would he have a reason to fabricate it, as such? Is there not a possibility that you might not remember that you did meet with him at the residence but maybe him being a new CEO of Denel, which would have fallen under you, you remember - you just happen not to remember? Because when you look at what he says about you, there is not much other than he says

10 you said these are my friends, help them if there is a need to help them and that does not necessarily you – even if you said that, it does not necessarily meant you meant he should help them about illegal things, you know? So I am wondering whether it is possible that you may have met with him under the circumstances he mentions but you cannot remember, maybe he has a reason to remember because if it is not that situation, it seems to me it would have to be that he is fabricating the whole story that he met you at the Gupta residence and if one says he is

20 fabricating that story one would have to look for what reason would he be wanting to do that whereas maybe if – it is a question of maybe he has a better a better memory or maybe he has a good reason to remember and you cannot remember. Maybe it did happen, it might be – what is your position about it?

MR GIGABA: Chairperson, 2012 is a bit of a long period of time from now and it has happened that some people have presented versions of events that were not actually accurate. For example, a suggestion that I had a meeting about Transnet on the 30 October or the 31 October, I presented here that on those dates I was not in Johannesburg. Actually, when I came back on the 31st I went straight to Pretoria from the airport and remained in Pretoria until the 1 November. So it is possible that for

10 one reason or the other – and I am quite cognisant of what the Chairperson is saying that Mr Saloojee is not suggesting that I said he needs to do anything illegal because certainly I never asked him to do anything illegal subsequently and I continued to hold him in high esteem throughout my tenure as Minister of Public Enterprises because I left before he did but the meeting, according to my version, did not happen because, as I say, leaving out the first part of going to a meeting that he was not aware of – there was no need for anybody to say Mr Gigaba, this

20 is the new CEO of Denel. I certainly would have taken the memorandum to cabinet, I would have looked at the CV and seen the identity – the identity, the copy of the identity document of the person whose CV I was taking to cabinet and therefore nobody would have – I think it should have been quite adventurous for anyone to say to me this is the

new CE of Denel and then I turn around and say, hi, these are my friends, do something for them.

CHAIRPERSON: Well, Mr Myburgh mentioned something about what appears to have been Mr Salim Essa's *modus operandi*.

MR GIGABA: Yes.

CHAIRPERSON: But let me say this to you. I have an impression based on evidence that I have heard over the past two and half to three years here, I have an impression
10 that certainly Mr Tony Gupta, maybe the other Gupta brothers but at least him because there has been a lot of evidence about him, that his *modus operandi* might have included bringing Mr Duduzane Zuma to a lot of meetings where he wanted to get certain deals from government officials or SOE officials because the overwhelming evidence so far is that he would have a meeting with somebody from a government department or SOE to discuss whatever he wanted to discuss and he would make sure Duduzane Zuma was there but almost all the people
20 who have testified who have ever been in meetings with Tony Gupta in the presence of Duduzane Zuma say Duduzane Zuma would not say anything really other than be pleasantries, greeting and so forth, Tony Gupta was the one talking and it may well be that part of bringing him was to send a subtle message to the people he was talking

about that look, you see, this is the President's son. So, in a way, send some - you know, influence them or try to influence them because one does not understand why Duduzane Zuma would always be there but make no contribution to the meetings.

Mr Jonas said the same thing, his evidence was to that effect in regard to his meeting at the Gupta residence.

Mr Dukwana, Mxolisi Dukwana, one of the meetings he testified about where he met with Tony Gupta, he said
10 Duduzane Zuma was there but he hardly said anything, Tony Gupta was the one doing the talking all the time.

General Booysen I think said the same thing, he was taken by Duduzane Zuma to a meeting with Tony Gupta but during the meeting Duduzane was present but hardly said anything.

I think Mr Kona – I think Mr Kona, if I am not mistaken, who used to be ...[intervenes]

MR GIGABA: SAA.

CHAIRPERSON: SAA, you know, also gave evidence
20 along the same lines in a meeting relating to a meeting he had with Mr Tony Gupta with Mr Duduzane present. There may have been others, I am just mentioning a few.

So it may well be that let us say maybe without your knowledge, you know, Mr Tony Gupta decided that the new CEO of Denel should know that you go as far

as coming to their residence, you know, they are close to you, you might not have known, you might have come there for a different reason and he took this opportunity to send a message to the new CEO of Denel that you see the Minister comes to our residence, we are close to him. I am just mentioning those things. It might not mean that you were party to the scheme but it might mean, if the meeting did take place, if you are mistaken in terms of your memory and Mr Saloojee is mistaken, it might mean that they took
 10 advantage of your presence.

So I mention all of these things to go back to the question whether you do not think you might be mistaken about the meeting having been there because Mr Saloojee does not say much about what you said, it is just that – one or two lines.

MR GIGABA: Yes, Mr Chairman, or Chairperson, your outline of the *modus operandi* related incidents is quite comprehensive. I want to start by saying I had no reason for anybody to introduce a CEO of my entity to me or me to
 20 them. I was not party to a meeting where such happened even just incidentally. I did mention that there was a lot of namedropping which tends to be prevalent in the environment of business and I think part of what the Commission must – or part of what the Commission would probably address itself to is how to address – because on

the one hand, as a minister, you do not want to be viewed as so inaccessible to the business and other social partners that you turn down meetings with them but, on the other hand, you have the dilemma that your accessibility could either be misconstrued or even abused with or without your knowledge, particularly without your knowledge and how do you manage that terrain? I do not think that even the Commission has got a foolproof solution with regards to that because it is a fact that there

10 are various social partners and from time to time they want different access to ministers either as a collective or as individuals. But here the issue is I had no reason to be introduced to somebody whom I had – whose appointment I had taken to cabinet and the meeting, in my opinion, did not happen. I think Mr Saloojee was mistaken in locating me at the meeting. Perhaps they did say to him that we are close to Mr Gigaba, blah, blah, blah, but the meeting did not happen and I did not say to him that he needs to help them in any way because it would have been bizarre

20 for a first meeting. If I was meeting him for the first time or if he was meeting me for the first time it would have been bizarre for me to say these are my friends, help them in any way. I think I would have rather confined myself to saying hi, Mr Saloojee, how are you, best of luck with what you have to do.

CHAIRPERSON: Mr Myburgh?

ADV MYBURGH SC: Yes, thank you. Mr Gigaba, can I just hand up to you a page – Chairperson, you will recall last time we put forward a bundle of eight affidavits that I took Mr Gigaba through.

CHAIRPERSON: Yes.

ADV MYBURGH SC: We do not unfortunately tonight have that bundle here.

CHAIRPERSON: Okay.

10 **ADV MYBURGH SC:** But we have managed to make a copy of what was page 10 of that bundle.

CHAIRPERSON: Yes.

ADV MYBURGH SC: And this is annexure SMA1 to Mr Mahlangu's affidavit. Do you have the bundle?

CHAIRPERSON: Well, it looks like I do have.

ADV MYBURGH SC: Alright. Well then if you could go to page 10?

CHAIRPERSON: Ja, but I will look at the page you are...

20 **ADV MYBURGH SC:** Alright. Mr Gigaba, so you are familiar with this email, SMA1, it was attached to Mr Mahlangu's affidavit. Remember he sent you two emails that we went through?

MR GIGABA: Yes.

ADV MYBURGH SC: I just want to – I know the Chairperson might have asked a question in relation to the

first bullet point. I just wanted to pick up on that. Mr Mahlangu said to you:

“I have been invited on a trip to India on 24 January to 1 February 2010. Although this is a private excursion it promises to be of great political value. I therefore suggest that we take full advantage of it. I therefore request leave to undertake this sojourn.”

Did you give Mr Mahlangu leave to undertake this sojourn?

MR GIGABA: I did not and with hindsight, I think I should
10 have been firm in saying no. I did not respond to this request, Mr Chairperson and I did not give him leave to undertake the sojourn.

ADV MYBURGH SC: Because perhaps you could confirm, I mean, he had only been an adviser to you for a month or so before this.

MR GIGABA: You will remember that part of what I had – he says, to his memory, I had indicated to him is that there is a number of people who seemed to be close to the ANC, he has managed them for meeting because as far as I am
20 concerned, I did not want to do the management of those relations, I wanted him as a legal adviser to manage them so that – especially because of his understanding of the legal framework so that if there any things which are comprising he would be able to deal with that. So it would seem to me that this was the context in which he thought

that he needs to do this. The family has been reported some of the previous witnesses were donors to the ANC for election campaigns, conferences and so on and therefore they were quite prominent within the ranks of the African National Congress and I think this is the context in which he thought that participating in this excursion would be of great political value to the extent that it would benefit the African National Congress. With hindsight, I should have very firmly said to him just do not go.

10 **ADV MYBURGH SC:** Yes, I think the question that I asked you is when did he start working for you?

MR GIGABA: Yes.

ADV MYBURGH SC: When was that?

MR GIGABA: Oh, he started in – I think in late 2010.

ADV MYBURGH SC: Yes.

MR GIGABA: Yes.

ADV MYBURGH SC: And did you notice his absence from the 24 January to the 1 February?

MR GIGABA: Yes, I did notice his absence and became
20 aware that he had gone on this trip.

ADV MYBURGH SC: I see. So let us turn to the trip. Could I ask you to go to bundle 7A and turn to page ...[intervenes]

CHAIRPERSON: I am sorry, Mr Myburgh, before you move away from this page. There is that bullet – second

bullet point in the same page of his email.

MR GIGABA: Yes.

CHAIRPERSON: Either I or Mr Myburgh probably may have asked you previously about this, I am not sure.

ADV MYBURGH SC: Yes, we did.

CHAIRPERSON: He says:

“I understand that Transnet may be nearing a settlement with Gama. I will obtain the details of the settlement and brief you accordingly.”

10 And then he suggests that you socialise the President. Would you agree that he seems to be somebody who thinks you would be interested in the settlement details?

MR GIGABA: In my response previously, Mr Chairperson, I indicated that he was new to the job.

CHAIRPERSON: Ja.

MR GIGABA: He was actually new to government. So – and was new to the job of special adviser and was still trying to grapple with the parameters of his mandate.

CHAIRPERSON: Of his job, okay.

20 **MR GIGABA:** And that is why the email he raises a whole range of things, money, may be nominated by certain quarters in the board meetings with senior editors, I mean those are sanctions of the communications department, division in the department, the issue of the nominations of people to the position of Transnet GCE was not our

business, we did not have to know who is being nominated and so on and so on, I mean, you can see in the email that he raises quite broad ranging issues, some of which belonged to other divisions and some of which were just completely independent of us.

CHAIRPERSON: Ja, okay. Mr Myburgh?

ADV MYBURGH SC: Thank you. Just going back to the India trip, do I understand then from what you say is that having asked you for permission to go on the trip and you
10 not having given it, he just went in any case?

MR GIGABA: Well, he did go, I became aware of it and then I discussed it with him upon his return.

ADV MYBURGH SC: Could we then go please to ...[intervenes]

CHAIRPERSON: I assume you would have been the only person who could give approval for his leave?

MR GIGABA: Especially, yes.

CHAIRPERSON: Ja.

ADV MYBURGH SC: Could we go to page 996.54 please?

20 **CHAIRPERSON:** 996.54?

ADV MYBURGH SC: Yes, Chairperson.

MR GIGABA: Yes.

ADV MYBURGH SC: What we see here is at the bottom of the page is an email from Jet Airways dated the 19 January 2011, a day after Mr Mahlangu wrote to you and it is

addressed to Ashu at Sahara. That we know is Mr Chawla.
Says:

“Dear Ashu, please find attached your Jet Airways
air ticket an invoice for short payment of ZAR 13142
on the BATA agreement.”

Could you then go to the attachments over the page at
196.56? This is the first eTicket and you will see the
passenger name there, Mahlangu Siyabonga and you will
see that what it reflects is a premier class ticket to Mumbai
10 Delhi, Mumbai, Johannesburg. It left on the 24 January
...[intervenes]

CHAIRPERSON: I am sorry, Mr Myburgh, I am trying to
look for the name Mahlangu.

ADV MYBURGH SC: It is on the left hand side,
Chairperson, there is a few headings, eTicket heading,
booking heading and then passenger detail heading, under
that, passenger name, Mahlangu.

CHAIRPERSON: We are still at 996.54?

ADV MYBURGH SC: 56.

20 **CHAIRPERSON:** Oh.

ADV MYBURGH SC: Do you have it, Chairperson?

CHAIRPERSON: I do not know why my eyes do not see it.

ADV MYBURGH SC: Do you have a Jet Airways ticket
there?

CHAIRPERSON: I have a got a Jet Airways ticket, yes.

ADV MYBURGH SC: Alright, so at the top left hand side in bold you see air ticket.

CHAIRPERSON: Oh, now I see it, now I see it.

ADV MYBURGH SC: And the booking details and passenger details.

CHAIRPERSON: Yes, yes, now I see it.

ADV MYBURGH SC: So this is flight really from Johannesburg to India and back leaving on the 24 January and returning on the 2 February. Do you see that? Mr
10 Gigaba?

MR GIGABA: Yes, oh sorry, I thought you were still talking to the Chairperson. Yes, I do, I do.

ADV MYBURGH SC: Alright. Now if you go over the page you will see another – an identical eTicket and this is at page 996.58, Chairperson.

CHAIRPERSON: Yes, I can see it.

ADV MYBURGH SC: It is an identical ticket but this one is issued in the name of Zuma, Duduzane. Do you see that?

20 **MR GIGABA:** Yes, I see it.

ADV MYBURGH SC: So did you come to learn that your special adviser, that this sojourn involved a trip to India together with Mr Duduzane Zuma and on the face of it funded by Sahara Computers?

MR GIGABA: I did not know who else was on the trip, so

it is the first time I see that Mr Duduzane Zuma was also on that trip.

ADV MYBURGH SC: Mr Mhlangu on his return, what did he relay to you?

MR GIGABA: Well, I reprimanded him, I reprimanded him for undertaking the trip. I said to him that I think he should not have gone, he should have informed me of actually the arrangements that were being made and I said to him that there are governance regulations with regard to employees
10 of government undertaking trips abroad without permission and that especially when they are funded by people with business interest in the SOEs it would be much better that we do not participate in such trips. I did not ask him any further details as to who was there, what did you discuss, who did you, all of those details, I did not discuss them with him.

CHAIRPERSON: Of course the Regulations you are talking about, would they apply if it was a personal trip or do they only apply if it is an official trip?

20 **MR GIGABA:** If it is a personal trip, Chairperson, you need to still apply for leave, at least let it be recorded officially that you are on leave for personal reasons, but the issue of the sponsorship of the trips becomes important because we need to know who is sponsoring so that we can be able to determine whether there is no conflict of interest

along the way.

CHAIRPERSON: Yes.

ADV MYBURGH SC: Yes, thank you. So did you enquire what he was doing in India?

MR GIGABA: As I have indicated, I did not ask him what did you do, I just reprimanded him and said that you should not do this again.

CHAIRPERSON: Did you not find it strange that somebody who had just started in a new job would take
10 leave without approval from somebody who is supposed to approve it? It just seems, I mean I do not know, maybe he was still on probation if there was probation, for somebody to take such a trip without satisfying himself that the principal or whoever is supposed to approve the leave has approved it.

MR GIGABA: You know, I would have expected him to have spoken to the Chief of Staff, who is the Administrator of the Office of the Minister and when I had a discussion with him it became apparent that he had not spoken to the
20 Chief of Staff, because the Chief of Staff at the time also did not know that Mr Mhlangu had gone abroad.

I think where I say I take responsibility in not being firm was in the fact that the e-mail was sent to me and I did not respond. I should have responded and I should have said to him no, excuse yourself from that trip, do not

be part of it and that is what I reprimanded him about afterwards and had a discussion with him about.

CHAIRPERSON: But would you accept, or did you not find it strange that somebody who has just started this new job thinks they can just go without, being away for a week without the approval of the Minister when they are working so closely to the Minister?

MR GIGABA: Yes.

CHAIRPERSON: Do you accept that?

10 **MR GIGABA:** Sorry Chairperson, for interjecting, my apologies.

CHAIRPERSON: Yes?

MR GIGABA: Yes, it was strange and that is the issue that I addressed with him.

CHAIRPERSON: Yes, okay. Mr Myburgh?

ADV MYBURGH SC: Thank you. I want to go to a different topic and that relates to Mr Shama and in particular the attempt to have him appointed as the Chairperson of the Board of Transnet. Mr Gigaba, you
20 have dealt with this in your affidavit.

MR GIGABA: Yes.

ADV MYBURGH SC: I am just going to go to what I think are the key passages. Just to begin with, you as I understand it appoint Mr Shama as a Director originally, that would have been in December 2010.

MR GIGABA: 2010, Yes.

ADV MYBURGH SC: Is that correct?

MR GIGABA: Yes.

ADV MYBURGH SC: And Magik Mkhwanazi?

MR GIGABA: At the same time.

ADV MYBURGH SC: At the same time.

MR GIGABA: Yes.

ADV MYBURGH SC: And we know that he then became the Chairperson.

10 **MR GIGABA:** Yes.

ADV MYBURGH SC: We have dealt with that. That by way of background, perhaps just to speed things up could I ask you please to turn to page 355 of the bundle? And at 355 at paragraph 23 you addressed the topic of the alleged attempt removal of Mr Mkhwanazi as Chairperson of the Transnet Board in May or June 2011.

MR GIGABA: Yes.

ADV MYBURGH SC: In order to appoint Mr Shama as the Chairperson.

20 **MR GIGABA:** Yes.

ADV MYBURGH SC: Let us then fast forward to paragraph 23.3 at page 356. You say that:

“In May 2011 I received a decision memorandum NG31 from the acting Deputy Director General Transport, Ms Mapule.”

MR GIGABA: Yes.

ADV MYBURGH SC: You say:

“The decision memorandum advised me and recommended the proposed appointment of four new non Executive Directors and that Mr Shama become the Chairperson of the Board.”

Is that correct?

MR GIGABA: Yes.

10 **ADV MYBURGH SC:** And then if you go to page 358 at paragraph 23.6 you say:

“The reason for the proposed appointment of Mr Shama as the Chairperson of the Transnet Board was related solely due to his skill and profile which served before me at the time of his proposed appointment.”

Is that right?

MR GIGABA: Yes.

ADV MYBURGH SC: And then what we do know is that
20 that proposal was unsuccessful.

MR GIGABA: Yes.

ADV MYBURGH SC: At paragraph 23.8 at paragraph 359
you say:

“I might add that at the time of the proposed appointment of Mr Iqbal Surve as the

Chairperson of the Board there were no facts before or known to me to the effect that the proposed appointment of Iqbal Surve 1) would weaken the Board, 2) give rise to unlawful activities occurring at Transnet as a result thereof, including inter alia fraud, corruption and State Capture, and 3) was connected to the Guptas.”

MR GIGABA: Yes.

10 **ADV MYBURGH SC:** Do you see that?

MR GIGABA: Yes.

ADV MYBURGH SC: Now I really only have one thing I want to ask you in this regard. Could you please turn to page 996.17?

CHAIRPERSON: 996.17.

ADV MYBURGH SC: I had last time more legible copies of this.

CHAIRPERSON: Yes.

20 **ADV MYBURGH SC:** Business Day article, do you have it?

MR GIGABA: Yes, I am there.

ADV MYBURGH SC: Chairperson, could I hand these up please?

CHAIRPERSON: Ja.

ADV MYBURGH SC: Thank you. Now could I ask you

please at the first page of this article you see the Chairman of Transnet, Eskom and Denel to go.

MR GIGABA: Yes.

ADV MYBURGH SC: Then right at the foot of that piece where it, just before it says ‘continued on page 2’ it reads:

“It is understood, nevertheless, that Mr Gigaba did not have it all his own way at the Cabinet meeting yesterday.”

Now this newspaper was the newspaper of Thursday,
10 9 June 2011.

“It is understood, nevertheless, that Mr Gigaba did not have it all his own way at the Cabinet meeting yesterday.”

It then goes to the second page.

“His proposal to replace...”

Can you then go in sort of the middle, towards the bottom there is, the article continues; change at Transnet, Eskom. So it continues.

20 “His proposal to replace Mr Mkhwanazi with Iqbal Surve was shot down and a new candidate will have to be found. Mr Shama, a former senior official in the Department of Trade and Industry, was appointed to the Transnet Board last December, shortly after Mr Gigaba took up a new job. Colleagues

are thought to have been uncomfortable with appointing someone relatively inexperienced and unknown to the capital markets. He also fears that he may be closely identified with the wealthy Gupta Family, friends of President Jacob Zuma.”

Do you see that?

MR GIGABA: Yes, I see it.

ADV MYBURGH SC: Now is that an accurate or
10 inaccurate report of what transpired at Cabinet?

MR GIGABA: It is a fabrication, it is inaccurate. The reason the Cabinet presented for not agreeing to our proposal was that we had only appointed the new Board of Transnet in December the previous year, that it would undermine our very intentions, because when we said, when we appointed the new Board in December 2010 we said the, we wanted to establish leadership certainty in the company at both Board level as well as Executive level and so Cabinet felt that the change to the Chairperson would
20 undermine that leadership certainty.

Secondly, Cabinet felt that the reasons we presented for the proposed changes to the Board, I mean to the position of Chairperson, which included the facts, we were saying two things; one that Mr Mkhwanazi was too close to the administration, that there seems to be a

difficulty in separating his role as an Executive Director, which was his previous experience from his role as the Chairperson of the Board, particularly when circumstances had coerced us in December to also appointing an Executive Chairperson when there was no CEO.

Cabinet felt that could be addressed and that we were in haste and impatient in seeking to resolve that dilemma by removing Mr Mkhwanazi as Chairperson. Cabinet further felt that Mr Mkhwanazi, because we wanted
 10 to also appoint him on the Board of Eskom in order to ensure that there is alignment, because if you read the report of the Presidential Review Committee on SOEs which was published in 2012, among the many observations it makes Chairperson, about the SOEs, is the absence of collaboration among SOEs, especially on mutual projects.

Now what we were trying to do, without the existence of a legal framework, was to ensure this alignment and collaboration between Transnet and Eskom,
 20 particularly with regard to the Road to Rail Migration, which was viewed as an important step to improve the conditions of our roads, but to also improve the mutual support between two major SOEs, because Eskom relies on coal supply, much of which is supplied by Road, especially for those coal mines that are far away from power stations

and the result of that, if you go to areas like Ermelo, has been drastic devastation to the roads.

So we were trying to ensure that there is collaboration between the two companies to implement the Road to Rail Migration and Cabinet felt that no, but you can appoint Mr Mkhwanazi even as he remains Chairperson of the Board of Transnet, into the Board of Eskom, which is what we then subsequently did.

10 So what is written here on Business Day was the opinion of the sources of Business Day, not the decisions of Cabinet and if you understand how sources function, I think the Commission has been a subject of such sources, they do not report the truth. They will tell, they will inform their journalists what is going to happen and provide reasons which are not the genuine, accurate reasons for a particular decision to be taken.

ADV MYBURGH SC: So I take it there must then be a record of the actual reasons.

20 **MR GIGABA:** Well, the Cabinet members would, I mean the Cabinet decision of that day would say, would have the record.

ADV MYBURGH SC: You would not, you did not put that up in your affidavit.

MR GIGABA: The Cabinet decision?

ADV MYBURGH SC: Yes.

MR GIGABA: Unfortunately Ministers do not keep Cabinet decisions with them. As soon as you resign from Cabinet you leave all Cabinet, because they are confidential documents. They do not belong to you privately.

ADV MYBURGH SC: And what would you say to the proposition that it was quite obviously inappropriate, as Cabinet you say found to seek to make a newcomer to the Board the Chairperson?

MR GIGABA: I beg your pardon?

10 **ADV MYBURGH SC:** Was it not quite obvious, as Cabinet found, that it was inappropriate to make a newcomer to the Board the Chairperson?

MR GIGABA: Mr Mkhwanazi was also a newcomer to the Board of Transnet when we made him the Chairperson, he had only been a Board member previously in his capacity as an ex official member, but you can go to many SOEs, there are many instances where Chairpersons of Boards are newcomers to those Boards.

ADV MYBURGH SC: Mr Mkhwanazi had a track record,
20 did he not, at Transnet, a preceding track record?

MR GIGABA: Yes, he had a track record, preceding track record.

ADV MYBURGH SC: Now I think I might have mentioned to you before, but as it turned out there is evidence before the Commission, and there is more to come, that Mr Shama

had a matrix of business relationships with Mr Essa. Do you want to comment on that?

MR GIGABA: Chairperson, as I have indicated previously, I have never been a business person, I am not a business person, I do not know what business people do or how they operate. I think the issues which are being brought before the Commission are of interest to all of us and to that extent my knowledge of Mr Shama's business operations or dealings with Transnet and other SOEs were not known at
10 this time and we are only, I am only getting familiar to them on the basis of the evidence which is being brought before the Commission.

CHAIRPERSON: Well, before you proposed to Cabinet that he be appointed as Chairperson of the Board of such an important SOE, one would have thought that some checking would have been done to say who is this person, where has he been, what is, who is he associated with? Are we not going to appoint as Chairperson of such an important Board somebody who really should not occupy
20 such a position in an SOE? Had that not been done, which may have revealed his business connections?

MR GIGABA: The department does do such a vetting of people and verification of their CVs, but the department focuses on the CVs of the people and what they present their experiences. Remember, the same person that we

are talking about had been Head of the Trade and Investment South Africa, so he came and had been a DDG in the Department of Trade and Industry, so he came with good credentials in terms of both government and state entities, because as Head of TISA he would have had some extensive experience in international trade and market issues.

Now that was done and many of the people who are appointed on the Boards of SOEs have business
 10 connections of one sort or the other. You are aware of that and you make them take an oath that they are not going to use their Board membership of SOEs to benefit their private interests and so it is done with all of them. All of them you would find they serve in various company Boards, not only Gupta related Boards, but very many Boards, some of which companies are listed on the JSE, and so you appoint them.

At the time of appointment you do not have any prior knowledge that they will or might do anything that is
 20 wrong in the future.

CHAIRPERSON: Well, maybe... I was just looking at the date of the Business Day, I see it is 9 June 2011, it may well be... Is my date correct, Mr Myburgh?

ADV MYBURGH SC: Yes, I also, without wanting to interrupt you I wanted to make the point.

CHAIRPERSON: Okay.

ADV MYBURGH SC: Because I think it is important.

CHAIRPERSON: Yes, ja, make that point.

ADV MYBURGH SC: Is that the evidence that we have, I do not want to be seen to have misstated the facts, the evidence that we have is that it does not go as far as to establish that there were connections between Mr Shama and Mr Essa in 2011.

CHAIRPERSON: Okay.

10 **ADV MYBURGH SC:** The evidence is that there were business connections between them at the time that Mr Shama was the Chairperson of the BIDC in 2013 and 2014.

CHAIRPERSON: Okay ja, no that is fine. Of course another point, which is what I was thinking of, may be this, that maybe even if somebody became aware of his connections with Salim Essa or the Guptas at that time, May 2011, it may well be that that would not have caused people to be so concerned about it, as they may, as they
20 would have been a few years late, so that might be something that one might have to factor in.

ADV MYBURGH SC: Sorry, do you want to comment on that?

MR GIGABA: No, no, no. I think the Chairperson has a valid point. I think it s very important to understand the

context, because it changes over time, knowledge of individuals in instances develops over a course of time.

ADV MYBURGH SC: I then want to turn to the appointment of Mr Molefe as the Group Chief Executive. This is also something that you have dealt with in your affidavit and I think that we can deal with it relatively quickly. Could I ask you please to go to page 352 of bundle 7A?

MR GIGABA: Yes, I am there.

10 **ADV MYBURGH SC:** And what you say, you deal with this at paragraph 22.

MR GIGABA: Yes.

ADV MYBURGH SC: And at 22.3 you say that:

“I have the benefit of the Cabinet
Memorandum dated the 14th of February.”

And then essentially what you go on to do is to state what is recorded in the Cabinet Memo.

MR GIGABA: Yes.

ADV MYBURGH SC: Perhaps we could go to that memo,
20 and that you find at page 928.

MR GIGABA: I am there.

ADV MYBURGH SC: So this is the memo of the 14th of February 2011 and the purpose is recorded as ‘for Cabinet to note the appointment to Mr Brian Molefe as the Group Chief Executive of Transnet and as an ex *efficio* member of

the Transnet Board of Directors.

MR GIGABA: Yes.

ADV MYBURGH SC: And then in your summary you say:

10 “The Transnet Board undertook a process to
fill the Cabinet vacancy of Transnet Group
Chief Executive, consequence Doctor
Gunsho, Mr Molefe and Mr Salinga were
identified as suitable candidates for the
position. The Board recommended any of
the three candidates for appointment.
Cabinet is requested to note the appointment
of Brian Molefe as the most suitable
candidate for the position of Group Chief
Executive of Transnet. Mr Molefe has
extensive senior management experience
and extensive asset management...”

20 And then over the page dealing, or under the heading
‘discussion’ at 5.3 you say a comprehensive interview
process was undertaken and you repeat that the Board
recommended three candidates. They are then named and
you go on to record that the Board indicated that any of the
three candidates are highly suitable for the appointment. Do
you see that?

MR GIGABA: Yes.

ADV MYBURGH SC: And we see at page 932 that you

signed that memorandum on the 14th of February.

MR GIGABA: Yes.

ADV MYBURGH SC: 2011.

MR GIGABA: Yes.

ADV MYBURGH SC: Now Mr Gigaba, we have put up some documents in relation to this. Can I ask you to turn please to page 992?

MR GIGABA: Yes, I am there.

ADV MYBURGH SC: In fact, let me start by asking you to
10 go to page 982. This is a letter that was addressed to you.

MR GIGABA: Yes, I am there.

ADV MYBURGH SC: I beg your pardon?

MR GIGABA: I was saying I am there.

ADV MYBURGH SC: Let me summarise what it reflects. No doubt you have looked at it, but if you want to look at it further I will take you there, but water tankers it shows, and you probably have seen this, is that what we see from the documents is that Mr Molefe was nominated for appointment by Mr Shama that we have just been speaking about and
20 Mr Shama also sat on the Selection Panel and there was a view that that caused a conflict of interest which resulted in the scores that he had given the various candidates being removed. Are you familiar with that?

MR GIGABA: I am not aware of who nominated him, I am only aware of the concerns that were raised by other board

members with regard to the process.

ADV MYBURGH SC: Alright, so let us have a look at page 987. So 4.5, if not gone into all the detail, because it is captured here, consolidated summary of ratings and ranking of all candidates interviewed for GC of Transnet after withdrawal of scores of one panellist, that was Mr Shama.

Now what you will see is that after his withdrawal and his scores Mr Gunsho, in fact Doctor Gunsho was the, 10 had the best overall ranking. Do you see that?

MR GIGABA: Yes.

ADV MYBURGH SC: Followed then by Mr Molefe and followed then by Mr Salinga.

MR GIGABA: Yes.

ADV MYBURGH SC: And then if you go to 989 the recommendation, as you recorded in your Cabinet Memo, was that you approve appointment of any three of the recommended candidates.

MR GIGABA: Yes.

20 **ADV MYBURGH SC:** Now what I just want to ask you about is you will see at 990 there you addressed Mr Mkhwanazi and you provided him with guidelines for the appointment of Chief Executive Officers, do you see that?

MR GIGABA: Yes.

ADV MYBURGH SC: And those guidelines were attached

and you will find them at page 992 and perhaps I can direct your attention then please to page 993 at paragraph 2.5.

MR GIGABA: Yes.

ADV MYBURGH SC: It says there that:

“The Board shall, through its Governance and Nomination Committee, submit a minimum of three shortlisted candidates and their preferred candidate to the shareholder.”

10 Do you see that?

ADV MYBURGH SC: Yes. So the Board did not comply with these guidelines, correct?

MR GIGABA: Yes.

ADV MYBURGH SC: Why did you not go back to the Board and say well, you have given me a shortlist of three, but I want to know who is your preferred candidate?

MR GIGABA: Well, I do not recall why we did not do that, but what we understood the Board to have complied with was the submission of three shortlisted candidates. The
20 Minister would not have done any further assessment or interview with the preferred candidate.

I think probably had the Board submitted to us who their preferred candidate was, maybe we would have done this, but we thought that we would not want to go over what the Board would have done, because they were best

suited to undertake the nominations process.

ADV MYBURGH SC: Yes, but they did not complete it. The process involves providing you with a shortlist of three and telling you who they believed was the preferred candidate. I mean it is quite a, it seems an important part of the process, not so?

MR GIGABA: Well, it is an important part of the process, Chairperson, but it is also, it also remains a fact that the Minister would still have the discretion upon assessment
10 through departmental processes to either review the process or to forward to Cabinet the recommendation that they would think or deem necessary.

ADV MYBURGH SC: Yes, absolutely. You would have had the discretion, but they did not provide you with the information that they were obliged to. I am not suggesting to you that if they said our preferred candidate is Mr Gunsho or Doctor Gunsho that you had to appoint him, but you did not have all the material facts before you.

MR GIGABA: The material facts, Chairperson, were
20 there. The Board submitted to us how they were doing the process. The only thing they did not do was to say this is who we prefer.

CHAIRPERSON: No, I think you and Mr Myburgh are on the same page, because I think at this stage he is talking about the failure of the Board to tell you who their

preferred candidate was and what he has not, or well, it is implied in what he is saying that they did not comply with the guidelines and as I understand it those were guidelines that were issued under you.

MR GIGABA: Yes.

CHAIRPERSON: And obviously a need had been identified to give guidance to the Boards of SOEs to say if you are going to, if there is a vacancy in these senior positions, these are the guidelines, it is what you must
10 follow. So here is the Board now which is supposed to comply with these guidelines and say this is our preferred candidate.

They do not do that. You go ahead and you appoint somebody. You also do not say but hang on, we have issued guidelines, these guidelines are still fresh in our minds, this is what you are supposed to do, go back, do, comply.

MR GIGABA: Chairperson, probably with hindsight we did not think this to be of such materiality that it would prevent
20 the process to move on. When we submitted the memorandum to Cabinet you will note that I say on the first page, the summary, let me go to it ...[intervenes]

CHAIRPERSON: The Board said any of the three would be suitable.

MR GIGABA: The summary of the memo where I say to

Cabinet, therefore Cabinet is requested to note the appointment of... Cabinet corrected me and said we do not note, the Cabinet must approve, so you have not appointed anyone, you are actually recommending to Cabinet the appointment of Mr Molefe and Cabinet can still exercise its mind.

It was the first time I was a Minister and it was the first time I presented the memorandum appointing or recommending the appointment of a CEO and so Cabinet
 10 said to me no, no Minister, the department should have informed you that you do not appoint and let us note, you recommend that we approve the appointment of, and even then it is, we can say to you that the recommended candidate is not suitable, that we prefer the others and that is why when you submit to Cabinet a memorandum you submit it with the annexures so that Ministers can apply their minds informed by the annexures that are presented there.

I k now it was the question about the Board not
 20 expressing their preferred candidate, but we did not take that to be so significant that it could stop the process, because they had submitted to us the document of the report of the Board nominations and of the, the Board Nominations Committee, Governance and Nominations Committee, entailing all the three candidates and how they

have performed.

CHAIRPERSON: Mr Myburgh?

ADV MYBURGH SC: Ja, just one last thing. Did you know that Doctor Gunsho had scored the best?

MR GIGABA: Yes, I was aware. We noted that, we discussed it and we arrived at the decision that we need to recommend Mr Molefe based on his recent experience at the PIC and what qualities we thought he would bring to the Board of, I mean to the Transnet SOE Limited.

10 **CHAIRPERSON:** Well, but the one thing which it appears you did not tell Cabinet in your memo about is exactly that, that although the Board said any of the three is suitable, there was someone who scored the highest points in the interviews and he was not the one you were recommending and then comparing it to, and justifying why you did not go for number one, that part I think you did not do in your memo.

MR GIGABA: Yes Chairperson, we did not do it in our memo for two reasons. The first one, and perhaps the
20 smaller one, is that the supporting affidavits, I mean supporting annexures... Sorry, I have been submitting a lot of affidavits to the Commission.

CHAIRPERSON: Yes.

MR GIGABA: The supporting annexures to the Cabinet Memo would have entailed that report, but secondary

perhaps the most important one which needs to be borne in mind at a broader level is a strategic issue of the ownership and governance of our state owned companies.

I think I would like to draw the attention of the Commission to the PRC report, the Presidential Review Committee on SOEs, because it raises these issues. There has been, and I think I note in some of my submissions that there has been, there has not been standard practice with regard to the appointment of Boards.

10 I made some reference to this in my last week's appearance, there is no standard practice, the absence of a Shareholder Governance Model, Governance Framework in South Africa for SOEs ensures that there is no standard practice with regard to the appointment of Boards, the appointment of CEOs, the establishment of Board Committees and the various roles of Ministers, the ownership role of Ministers over the SOEs and that creates a problem that Government grapples with on an ongoing basis. Now that is an issue which needs to be attended to.

20 Insofar as we undertook this process we did not do anything wrong. We followed the procedures which we had outlined, we presented to Cabinet and as I say, the Cabinet said to us do not submit a memo to us, submit it for us to approve and that is why I think the Cabinet minutes of that date would indicate that Cabinet therefore approves the

appointment of Mr Brian Molefe, but Ministers would have had sight of the annexures of the reports, of Transnet as well as the CVs of the candidates.

CHAIRPERSON: But do you not accept, or would you not accept that this was such an important issue of the whole process that it should have been placed in the memorandum rather than rely on Ministers going through all the annexures to say look, here I something important here, there was an interview in terms of, or during which
 10 the candidates were scored, the candidate we are recommending did not get the highest points, it is somebody else who got the highest points, this is the person, but nevertheless here are our reasons why we are going for number 2 and not number 1, do you not think it should have deserved a place in the memorandum?

MR GIGABA: It probably, Chairperson, with hindsight would have been an important thing to mention, but it workstation not even from Cabinet, because the annexures were there to provide that background.

20 **CHAIRPERSON:** Yes.

MR GIGABA: But to the extent that, and I think part of what this process is doing is to assist Government to establish that Shareholder Governance Framework so that going forward such issues are dealt with as we suggest in a manner that will strengthen the shareholder governance

and in a manner that will ensure greater transparency going forward so that nobody thinks that there is anything which has been concealed in the documents submitted, but certainly there was no intention on our part to conceal anything from Cabinet, because Cabinet reserved the right to ask for all documents and we did submit some of the critical documents, which included the report from Transnet.

CHAIRPERSON: You see, part of the difficulty is this, that
 10 you have a situation where the Group CEO of Transnet is not appointed for two years in the position. At this stage we have only Ms Barbara Hogan's explanation, we do not have anybody else's explanation as to why that happened.

Then after she has left the department the new age says Mr Brian Molefe is going to be the new boss of Transnet. He gets nominated by Mr Shama, whom we now know had connections with the Guptas or Gupta associates. He does not get the highest points in the interview, he is number two, but nevertheless he gets
 20 appointed to this position. So I am just saying that this is part of what one is looking at.

You might not be able to say anything, I am not forcing you to say anything, but I am just enlightening you what one is looking at to say what was going on here.

MR GIGABA: Chairperson, we separate between the

suspensions of what might have happened and the actual reality of what we were doing. I was not privy to an instruction. You know, I was not privy to an instruction that do not appoint the CE, the Group CE of Transnet until you have resolved the Gama issue, nobody told me that.

Secondly, I was not privy to the nomination of Mr Molefe, I was not privy to that, so I did not know who appointed him. I think what we dealt with, what the reality of the process that sat before us and weighing up the
10 scales as to who to appoint, I think over time Transnet, you know, turns around, posted positive results, was able to announce a market demand strategy which drastically expanded its capital expenditure program, as directed by the shareholder and was able to implement a number of improvements on Rail, Port Operations and even to announce port rebates to assist the exporters of manufactured goods.

So to that extent, honourable Chairperson, there have been commendable progress in how the company
20 operated. Now as a result of a decision we took it could very well be that there were these other factors that we were not aware of that are now coming into the light, but certainly nobody said to me do not go ahead until the Gama issue is resolved. Nobody said to me that I only want Gama as the CE, as the Group CE of Transnet.

CHAIRPERSON: Ja okay, alright.

ADV MYBURGH SC: Perhaps I could just start by asking you, why do your guidelines provide that the Board must advise you as Minister of their preferred candidate?

MR GIGABA: As I say, Chairperson, there has not been a standard practice insofar as the appointment of CEOs of SOEs, including most importantly that provides directive as to the governance responsibility of the owner and or shareholder of an SOE.

10 The CEOs of SOEs or the SOEs play dual roles, which are not played by public entities. A public entity has only one mandate; to maximise value for its shareholder, to deliver value for its shareholders. The state owned enterprise has a dual mandate, on the one hand to fulfil its business mandate of generating revenue so that it can either support the National Fiscus or undertake other functions, but on the other hand it has to execute developmental responsibilities and you need a leadership at Board and Executive Director level that can understand

20 that responsibility and that is why you, it is not only peculiar to South Africa, but it pertains to a number of SOEs across the world that the Government as the owner or shareholder of these entities would want to have a say, even if it is not direct and overbearing, over the appointment of the CEOs so that it ensures that they are

aligned with the National Developmental Strategy.

In other countries that is undertaken not by shareholder ministries, but it is undertaken by agencies, central agencies which are created for that purpose and there are regular sort of seminars or lectures or something like that for these CEOs of entities which helps them on an ongoing basis, at least at a conceptual level to be aligned with the thinking of Government in regard to economic and development priorities. So that is the only reason.

10 **ADV MYBURGH SC:** Ja, I think we are missing one another, Mr Gigaba. Why is it that you in terms of the guideline, as Minister, want to know who the preferred candidate is?

MR GIGABA: Because the Minister has to submit this to Cabinet.

ADV MYBURGH SC: Yes, but you were not able to do that, because you did not know the preferred candidate, that is simply the point.

MR GIGABA: We were able to submit because
20 Chairperson, we were given a list of three people and we knew that these are the three people that the SOE is recommending. With hindsight, it was not only the responsibility, yes let me say it was the responsibility of the shareholder to go back to say so tell us who your preferred candidate is, but we thought that the SOE had

complied overall with the guidelines which we had presented.

CHAIRPERSON: Well, let me put the question this way, there must have been a good reason why you thought the guidelines should include saying to the SOE Boards it is not good enough for you not to give me your preferred candidate, you must give me a preferred candidate IF there was a good reason for that, what is that good reason?

10 **MR GIGABA:** It was only to know, Chairperson, because as we say here that once we knew the preferred candidate we would undertake further assessment of that candidate and we say in the next paragraph 2.6 that the shareholder reserves the right to disagree with the Board and to actually forward to Cabinet a different candidate.

I think we can discuss the question whether the preferred candidate was submitted or not, but I think in the end we undertook the process that was presented to us, minus obtaining from the Board who their preferred
20 candidate was so that we could further assess them.

CHAIRPERSON: Well, I would have thought that the reason why you had put in that requirement would be that as far as possible you want the Board to be the one that identifies a candidate that they think must be appointed, not because you are going to, the shareholder is going to

be completely bound by that, but because they, the Board will be accountable for a lot of things about running the SOE.

You do not want the Board to turn around and say well, do not blame us if there is no performance, because you chose the Group CEO, we did not choose the Group CEO. You want to be able to say as a general rule we give you the Group CEO that you preferred, unless I have put reasons to depart from that, you know, then obviously if
 10 you have good reasons then you would differ. I would imagine that that would have been the rationale to say that these people are accountable for the performance of the SOE, let them indicate their preference, I am not going to say I must be bound completely, but I will depart from their preference if there are really good reasons.

MR GIGABA: I think Chairperson, you are absolutely correct and I think this process therefore, you are exposing the witness of this process in that it does not provide sufficient space between the recommendation of the Board
 20 and the forwarding of a Cabinet Memorandum for decision by Cabinet, because that in itself between 2.5 and 2.6 would require rigorous engagement between the department, I mean between the company and the shareholder department, not unless the shareholder department is in agreement with the Board in regard to the

preferred and recommended candidate.

So I take the point that you are saying. I think as a process point it is a witness that hopefully, if it has not been corrected by now, would need to be corrected, but the fear is always there Chairperson, that once the Board undertakes... You know, the leakages in South Africa are enormous, everything leaks, even Cabinet decisions leak.

CHAIRPERSON: Yes.

MR GIGABA: Every entity would say we are battling with
 10 leakages and you could see from some of the media reports that already in 2010 as I had arrived and going into 2011 I was grappling with these leaks and we tried to take a decision as speedily as possible so that you do not create unnecessary public discourse, uncertainty in the market, uncertainty in the group about which decisions are being made.

So whatever decision you have to make, you have to try to make it with speed so that the announcement is made officially by the responsible authorities, otherwise it
 20 is going to leak, but that notwithstanding, I think a mechanism must be found for the resolution of this process so that it is, it complies with its letter.

CHAIRPERSON: Well, one last comment I want to make is I noted in the memo that was sent to you, which is here, that recommended that you pick Mr Molefe rather than the

candidate that got higher marks, my recollection is that although points were given, were stated, which sought to emphasise Mr Brian Molefe's strong points, why he should be preferred, that memo, if I recall correctly, did not do the same exercise in regard to the candidate who got more points than Mr Molefe, because if I am number one and you are number two and somebody says you know, number two must be taken because he has or she has one, two, three points, they must also look at the other one, whether he
 10 does not have that and my recollection is that that memo did not do that.

It just said you know, we recommend that Mr Molefe be chosen because of this and that and that and for all one knows that other candidate may well have had comparable experience or even more, but there was silence about what about the other candidate. So I do not know whether you noted that when the memo was, when you considered the matter on that.

MR GIGABA: I did not take note of it, Chairperson, but as
 20 you are presenting it, it is a valid point. I think it goes back to saying how do you reconcile 2.5 and 2.6 to make the process rigorous, not to disadvantage, especially should the preferred candidate by the shareholder not be the one preferred by the Board.

CHAIRPERSON: Ja.

MR GIGABA: So how do you reconcile that process so that the Board is also taken onboard and you are able to engage with it and as you move to Cabinet you move as one, without creating any lag for leakages? Because it tends to ruin the reputations, the corporate, professional reputations of the people of individuals involved.

CHAIRPERSON: Ja. Mr Myburgh?

ADV MYBURGH SC: Yes, thank you. I would like to turn now to the evidence of Ms Ngoma. Now you still, I have
10 provided you with another copy of a schedule that I produced, Mr Gigaba. Do you have it?

MR GIGABA: Yes.

CHAIRPERSON: I wonder Mr Myburgh, whether this might be a convenient time for a 10 minute break, because you are moving on to something else.

ADV MYBURGH SC: Certainly, thank you Chair.

CHAIRPERSON: Let us take a 10 minute break. We adjourn.

INQUIRY ADJOURNS

20 **INQUIRY RESUMES**

CHAIRPERSON: Let us continue.

ADV MYBURGH SC: Thank you.

CHAIRPERSON: But before we continue I just want to mention this for what it is worth, Mr Gigaba, and you might not wish to comment on it, particularly because it is

something that happened after you have left Public Enterprises, that the question that arises with some of these matters is whether decisions that were taken within Government departments, within Government were not being controlled or unduly influenced by people outside of those Government departments and outside of Government.

Apart from what I have said to you about some issues of Mr Molefe's appointment, I would have mentioned to you previously, I mention again that in 2014 the
 10 evidence I have heard is that Mr Salim Essa told Mr Hennie Bester that Mr Molefe was going to be the next boss of Eskom.

Of course in 2014 Mr Molefe was at Transnet, but indeed he did become the Group CEO of Eskom the following year and not only that, the guidelines for the appointment of Group CEOs that you had issued were not followed in appointing him as Group CEO of Eskom in that, as I understand it from the evidence that has been conceded, I think Doctor Gubane was Chairperson of the
 20 Eskom Board, there was no complicated process.

MR GIGABA: Yes.

CHAIRPERSON: They just said as far as that was concerned, he said we had found our man, so there was no need for us to look elsewhere, we had found our man, we had confidence in him, but I think your guidelines

contemplated that there should be some competitive process leading to the appointment of the Group CEO of an SOE.

So of course in the context of Eskom and SOEs I can also tell you that with respect to the suspension of executives at Eskom in 2015, and again you were not the Minister of Public Enterprises at the time, Board members, some Board members of Eskom at the time have conceded, to say the least, that it looks like decisions that were
 10 supposed to be taken by the Board have been taken from outside of Eskom and then been given effect to [indistinct].

As I say, you might not want to say anything, but I am just saying these are some of the things that one is looking at to say what was happening.

MR GIGABA: Yes Chairperson, indeed the, excuse me, one has heard those allegations and one would not be able to comment I think for the period when one was not there and to the extent that one can comment I would say during my time, and I am not passing as light on my former
 20 colleagues, but during my time we did not allow, we would not allow anyone outside the Board.

I think that is why whenever I met the Board I made it very clear to them that you take the decision, if anybody comes to you and says I spoke to the Minister, the Minister said I must come and do this, and I think in some of my

affidavits, because there have been allegations with regard to some of the policies that we adopted in two of our entities, I have made it very clear what informed those policies and what the intentions of those policies were as compared to the allegations that were being made, that we were being influenced by things which then subsequently happened two years or even three years after we had left Public Enterprises.

CHAIRPERSON: Thank you. Mr Myburgh?

10 **ADV MYBURGH SC:** Thank you. Mr Gigaba, I want now to deal with the evidence of Ms Ngoma and your response to that. We have the benefit of your affidavit and I understand you have the schedule that I prepared. I am going to take you through the aspects of your affidavit and allow you to comment on key aspects of Ms Ngoma's version, but perhaps I could ask you if you would like to broadly summarise your version, and you need not go into each of the various topics now, we will address them, but broadly what do you say in response to Ms Ngoma's
20 version?

MR GIGABA: Chairperson, I think this was the part of this process that I found most difficult, difficult because in the first instance it involves a person with whom I have been married for seven years, for six years if you exclude the fact, if you want to be pedantic, you know. The

anniversary is in August, so that will only be in August when we complete seven years, but it is almost seven years now. So it is a person who would at the face of it sound more believable than all other witnesses who have come before the Commission.

Secondly, you are dealing with a person with whom we are undergoing a divorce, the details of which she has misrepresented before the Commission under oath. She claims in her affidavit that she is the one who initiated the
 10 processes of the divorce and I prove in my, in one of the annexures I attached to my response to her initial affidavit that in actual fact that is not true.

The process of that divorce involves, in my opinion, great [indistinct] about the settlement that is probable, given the contract under which we are married and I through the Commission was in some instances and to a great extent turned into a forum to solicit settlement, to canvass issues which should be canvassed during the divorce process.

20 Thirdly, you are dealing with a case of extensive lies, very extensive lies that characterise the personality of the person who presented the affidavit and the dilemmas in which they are going, not only at the present moment, but dilemmas that have been going through several times. I think my wish would be to the greatest extent possible, to

be able to respond to this affidavit without being dragged into personal, into attacking the personal character of the witness of the Commission in an environment where my own character has been so severely attacked, demeaned, degraded, that ordinarily I would be justified to be so angry as to want to go pound for pound, but I hope that in our engagement we will try to separate fact from fiction and not go into issues of a personalised nature that are going to rather detract from the business of the Commission
10 rather than the issues that the Commission has to deal with.

All the affidavits is based on I heard, I overheard, I saw, but I have no evidence, which is quite difficult to engage with, but nonetheless I think tonight is my opportunity to respond to those issues and to deal with them and to the extent that I may on occasion sound like I am attacking the personality and the character of the person, I wish the Commission to excuse me. It will not be with malicious intent, it will only be to make my point in
20 response to the issues which have been tabled here and so I am very happy for this opportunity tonight to have to respond to this, because I think it has been very damaging to me and my family.

It has gone to the extent of demeaning my late father and my late brother-in-law. I think in any, in any

setting, in any household one is expected to be able to distinguish between the dead and the living and when somebody has no respect for the dead and the living alike it creates such emotional strain and sometimes anger that it becomes difficult to deal dispassionately with the issues which have been raised.

But further to that, Chairperson, the whole say attack on my family is a reflection not of the claims made, but of a relationship gone sour over the years and that is
 10 unfortunate. I think we should have tried to keep our families out of this and not come to portray them in negative light and perhaps finally, because I am still going to respond to specific issues, the Commission would be well advised to bear it in mind that I still am intent on protecting my children, I am very intent on protecting my children. I do not believe my children should be dragged through public degrading and spoken about in any manner that is going to undermine and demean their integrity and their dignity.

20 They are too young and I would like to still plead for my children to be protected even by the Commission, even though the Commission did say earlier that it is not a court of law, but nonetheless the Constitution in Chapter 2 does say that the interests of the child are superseding on any matter relating to the rights and interests of the child and I

want to plead for the observance of that constitutional principle. Thank you. I am willing now to get into the nitty-gritty of these issues.

ADV MYBURGH SC: Thank you. So Mr Gigaba, it seems to me that Ms Ngoma's affidavit has a series of headings in it, I have got 10. Now she deals with meeting the Guptas and visits to the residence, she deals with meetings at our home, she deals with prior knowledge of appointments, she deals with tensions rising in your final days at DPE
10 Minister, she deals with your return to the Department of Home Affairs, she deals with Guptas naturalisation, your appointment as Minister of Finance.

She deals in some detail with cash and benefits. There she deals with wedding gifts and cash, cash collected from the Guptas, she deals with Nzipo Gigaba, she deals with renovations, she deals with the ATM machine that she says she saw. Then she deals with the confiscation of devices and a loss of passports.

Now I mean, having read your affidavit and read
20 hers carefully many times, it seems to me that there is almost nothing that you agree upon. Would that be a fair summary?

MR GIGABA: Absolutely correct. There is nothing I agree with insofar as her affidavit. Ms Gigaba approached me in January this year, I think she, it must have been the first

week just after the New Year. She had come back from her home and she, from holidays, having spent two weeks at her home and she put to me that she would like us to finalise our, to find agreement on our divorce settlement.

I said I am listening, it has always been my willingness that we should find an amicable divorce. She then made several propositions to me, Chairperson. The first proposition was that Mr Gigaba, I would like you to offer me something, she said we married in terms of the
 10 ante nuptial contract with no accruals and I cannot just walk away without anything, I would like you to offer something financially.

I said yes, she said proposal number two, I would like you to withdraw the case at the Pretoria High Court or wherever it was in Pretoria which involved her damaging a vehicle which had been lent to me by a friend. I said to her I am listening. She said thirdly, I want in return through my attorneys stay of the attempt by the Commission on State Capture to come and to invite me to
 20 make evidence, to submit evidence, to submit an affidavit about you.

She said then I suggest that you talk to your attorneys to talk to mine for such an agreement to be arrived at. We had a conversation there. I said to her I cannot, I cannot, what is this, withdraw the case against

her, because I am not the one who laid the charge, I only reported the vehicle to be damaged and made a statement so that we can be able to claim if the insurance would accept that, but it was important for me to take that step in order to demonstrate to the owner of the vehicle that the vehicle, that I did not condone the damaging of his vehicle.

I then said the Hawks are the ones that have laid a charge against her, not me. She made me speak to a lady who is a public prosecutor who is her friend, who has been
 10 advising her on legal issues and this lady said to me no, Mr Gigaba, you can withdraw the charge. I then said I will talk t my attorneys and seek their advice.

I said on what to give you I will talk to my financial advisor so that we can find something. I said to her I am willing to settle. Then I said to her insofar as the Commission is concerned it is not the Commission that just picked on you, you are the one who went to an interview on ENCA and City Press and offered yourself to the Commission, so the Commission is responding to your
 20 invitation. You said you want to go, so it is not for me to advise you to go or not.

She said to me, she showed me some SMS exchanges with I think some of the representatives of the Commission and said you see, this is all what they are saying, but I can talk to my attorneys so that this is stayed

off and it does not go ahead. I said that is your business, but insofar as an amicable divorce settlement I am all for it.

So I then was to talk to my attorneys. The following day... And I spoke to my attorneys. The following day she came to me again agitated and asked me but why did you say to your attorney that I had approached you, because you should have said to your attorney that we both had agreed on this settlement which I was proposing.

10 I then said to her no, it makes no difference, because the outcome would be the same anyway. We discussed some details as to what she wanted and she spoke about this when she was here, which was again an untruth, a falsification.

We then, I said to her it is okay, let them talk, let the attorneys talk and we will come back to this. Subsequent to that she then went on City Press and made an interview there, did an interview there where she claimed that I had offered money and so on in order for her
20 not to come to the Commission, I am trying to bribe her not to come to the Commission and I called my attorneys and said to them you see, this thing was a trap in the first instance, this is what she wanted to do and so all talks with her attorneys on this offer, we thought we were discussing based on her proposal are now off, we are no

longer talking to them, we will use the normal procedure.

The Commission then finds itself in a position where it is being used to solicit a divorce settlement that unfortunately will obviously have to be engaged with through the Divorce Court and the divorce processes. I thought that background was necessary, as we then begin to get into these issues, the 10 broad topics, Chairperson, that have been identified and I obviously still am going to say a little bit more on these issues.

- 10 **ADV MYBURGH SC:** So if you could then turn to the first topic, if you could go to page 4 of the schedule dealing with intent, the Guptas and visits to the Gupta residence. Mr Gigaba, I am not going to obviously take you to every single paragraph, the Chairperson has your affidavit, it will all be considered in evidence and when the time comes to analyse everything, but I wanted to start off at paragraph 13 and deal with what I think are the more material issues.

- 20 Ms Ngoma said that about two or three months before you were appointed to the position of Minister of DPE you arrived home to tell her that AJ Gupta had said that you would be moving from the Department of Home Affairs to the DPE and you were very excited about that.

Now we have seen and we know what your response is in a nutshell, it is that you were advised by the former

President on the 31st of October 2010 that you were going to be appointed and then you were sworn in the next day as I understand it, is that correct?

MR GIGABA: It is correct, Chairperson, even though I think that the preceding paragraph 12 is also important, because it gives context to the falsifications of the witness. The witness is an extensive liar, she is quite, she is an accomplished liar and tries to fabricate issues and put dates together in order to make a point, which
 10 unfortunately she cannot substantiate, but the fact of the matter is that I was never advised, I was never told by Mr AJ that I would be Minister of Public Enterprises and I certainly never came home excited on the basis of that.

The fact remains, as I state, that the first time I heard of this was on the 31st. In actual fact it came as a complete shock to me, because not even in my wildest imagination, I think there have been two appointments which surprised me completely, the first was Public Enterprises, the second was National Treasury, those two
 20 appointments surprised me completely, because I had not considered myself a candidate for such appointments.

ADV MYBURGH SC: So you are right, I mean that goes hand in hand with what Ms Ngoma says about the Guptas and that you considered them to be your advisors. If you look at paragraph 14 she goes on to say that your visits to

your advisors became more regular when you were the Minister of the DPE.

Now do I understand from your evidence, because this is an issue that she deals with quite thoroughly, as I understand your evidence Mr Gigaba, you did not consider the Guptas in any way to be your advisors and you have told the Chairperson previously and thus far in your evidence that you only went to the Guptas on a few occasions and that was for the purposes of cultural and
 10 social events, you never had occasion to otherwise have a meeting with the Guptas at all. Is that correct?

MR GIGABA: Yes, it is true and I certainly never on a single occasion even jokingly referred to them as my advisors and Mr Msomi was also not my advisor, nor was he my Chief of Staff. He was only the Head of my office as the Deputy Minister at the Department of Home Affairs. He only became an advisor, I mean he only became my Chief of Staff in November 2010 when I now assumed the role of full Minister. So all of this is a fabrication just to make, to
 20 try and make a point which is otherwise a lie.

CHAIRPERSON: Mr Myburgh, you mentioned that Mr Gigaba had said he had been to the Guptas' residence a few times. Maybe he did say that, and I have not checked in his affidavit now, but I do recall that when it was put to him what Ms Ngoma had said, namely that it had

been more than 20 times, he was reluctant to, that is Mr Gigaba, he was reluctant to say how many times, but he did say it was not more than 20 times, so I am just saying, and I say he agrees, but I do not know whether he noted that part about few. Maybe - I just want to make sure that we get it right.

ADV MYBURGH SC: Yes, I think that your recollection is correct. You will remember that when I started questioning and leading Mr Gigaba's evidence I asked him about his
10 relationship with the Guptas and how many time he had gone to Saxonwold. That was outside of the context of the affidavit.

CHAIRPERSON: Yes.

ADV MYBURGH SC: But perhaps I could deal with that, Mr Gigaba, perhaps you can just refresh our memory. I mean, I have notes of what you said and that is what I recall is that you say you went there on social and cultural events. You mention, for example, Diwali and said well, after all, the food was good and, as I had it, you visited
20 there ...[intervenes]

CHAIRPERSON: I am sorry to disturb you, Mr Myburgh, Mr Gigaba is from KZN. So I suspect that the food that he says was good may have been curry. Please continue, Mr Myburgh.

ADV MYBURGH SC: But I do not – I think I might have

been pressing you unfairly for an actual number but I mean perhaps you can refresh our memory. Have you got a sense of how – I think I asked you how often you would go there each year, etcetera, and you were not able to give us an exact or even approximate number, I do not think.

MR GIGABA: Yes, Chair, I was not able to give you an exact number of times and I do not know this 20 times at least ...[intervenes]

CHAIRPERSON: Or an estimate.

10 **MR GIGABA:** The estimate, yes. I am still not able to give you the estimate, I would need to think hard and try to recollect year to year for me to arrive at that estimate, estimated number but, you know, the number of 20 times disputes that 200. The trip to India in 2010 to discuss issues about SAA which only became topical for me in 2011 or 2012 and then the sudden change of the dates to 2015 based on my affidavit and yet the agenda of the trip in 2015 remains the same, to discuss SAA even when I had moved to Home Affairs. These are all – this should all be
20 considered as part of somebody who is fabricating. I mean take – think about this, she does not say this 20 times stretched between what time and what time and does not say that owing 200 suits basically makes you a department store, even if those suits are 100. I took a bit of time to look at some of the shops that sell suits and stuff and they

do not have 100 suits in their shops, but I am supposed to have between 100 and 200 and I do not run a department store.

So I think the Commission has to take into consideration that these are lies and the Commission was being taken for a ride by somebody how had a sole intention to come here and lie. So I am saying really concretely on the issue of the visits, I still reiterate what I had said. They were social and cultural visits, I do not
 10 have reason to discuss business with any family and – well, especially not with the Guptas, I did not, and if any business person had sought to discuss business with me while I was minister I would have referred to the department or a relevant entity and said to them do not discuss this with me, go discuss it with those because they probably know what is going on with regards to that because I was not in business and I still am not in business right now.

CHAIRPERSON: Well, what do you say to the proposition
 20 that the number of visits could not have been too few because if they had been too few it would be easy to remember or at least to make an estimate whether one is talking about five or six as opposed to 20 – actually she said more than 20 and that it must mean that there more than a few if you cannot remember.

MR GIGABA: They were more than a few, Chairperson, because you are talking about a period stretching between the first time I knew them when I was President of the ANC Youth League to probably around 2013/2014 when I cooled down because I was concerned about namedropping and other such issues. They were not too few but I do not think we also need to exaggerate them.

CHAIRPERSON: Well, of course, the other – you have just repeated something you said earlier on which I think at
10 least seems to coincide with part of what she says, namely, as I recall, she said from a certain time and I think she may have talked about 2014, your relationship with them started cooling off and you were no longer so close to them and I think she went further to say you would not take Ajay Guptas calls sometimes but I want to confine myself to the cooling off of the relationships because I think two times you have also said the same thing so I guess at least that part of what she said maybe you are not disputing that from a certain stage in 2014 whatever relationship you may
20 have had with them, started cooling off.

MR GIGABA: That is true, Chairperson, and I did say last week that it happens with all acquaintances and friendships that at a certain point, you know, their nature changes, their form changes and this happened too though it would strike me as surprising that if somebody calls me

then somebody would know that it is so and so who is calling and you are not picking up their call but I think that is a subject for another day.

CHAIRPERSON: Yes, okay. And talking about 20 times of course I think she may have spoken on the basis of starting from 2011, I am not sure, 2011, I am not sure, maybe I am connecting that – I do not know when the two of you started living together but I have an impression that whatever visits she was talking about were not earlier than
 10 2011 but maybe they were. But if one is talking about starting from 2011 going to 2014, that is what, three years? Three years depending on whether you start in the middle of 2011 or whatever, so that might be an average of five times a year. Does that sound too many to you? So when one says 20 it looks high but if you look at how many times a year on average, maybe it might not look that high. What is your sense?

MR GIGABA: Look, it could be possible, Chairperson, it could be possible if you look at it that way but I think it is
 20 an unnecessary and perhaps pedantic discussion, so to say, because what I have not disputed is that I knew them, that I did visit them and they never visited me at home and that I met them not only at their residence but also at various other functions be it state functions, state dinners or maybe attending New Age SABC breakfast programmes

where I was either presenting or I was supporting the person or people that were presenting. In this case, there would have been one or two instances where the President was invited. I think there was one time he was doing the SABC New Age Breakfast Programme. We were in Port Elizabeth to open something in PE. It was quite a major project for Transnet and the President came to talk about that, outline it, I was there to support him and to outline because some of the questions that the audience would

10 ask, the President would not be aware of them and there would be instances where in 2014 I supported the top six officials of the ANC in Nelspruit after the January 8th rally of the ANC and we were launching the manifesto of the ANC for the 2014 general elections and as someone who was heading the election campaign at the time I was there with various other members of the National Executive Committee to support the officials as they were leading a presentation and my recollection serves me well, there was a question which was asked to which I responded but they

20 were there also, so I would have met them at various functions. If you talk about those various other activities, as shown, you would talk about a number exceeding 20, like many other people.

CHAIRPERSON: Mr Myburgh.

ADV MYBURGH SC: Yes, perhaps I could just clarify

something. Ms Mngoma's evidence was that she went with Mr Gigaba approximately 20 times herself to the Saxonwold compound. She did not suggest that Mr Gigaba only went there 20 times and that is the topic that I want to come to know and perhaps you can go to paragraph 16, Mr Gigaba, because ...[intervenes]

MR GIGABA: And perhaps, Chairperson, if we may say, she says that that started in 2009.

CHAIRPERSON: Oh, okay, okay.

10 **MR GIGABA:** She says it started in 2009.

CHAIRPERSON: Yes.

MR GIGABA: When I still only knew her and we were not in a relationship.

CHAIRPERSON: Oh, okay. Mr Myburgh?

ADV MYBURGH SC: So I just wanted to get your comment on this because I think this is the sort of high water mark of her evidence, Mr Gigaba. It paints the picture of what she says and I know you have a different view but I need to get your comment on this, she would say

20 that:

“During the time of sittings of parliament Mr Gigaba would usually fly down to Cape Town on the Monday evening or Tuesday morning to attend parliament, return home on Thursday evening or Friday morning. During this time he would inform me of

his visits to the Guptas on the Mondays preceding his trip to parliament and on the Friday evenings or sometimes Saturday following his return from parliament. When parliament was in recess the meetings took place on any day of the week following receipt of the telephone call. I understand that it was usually Mr Ajay Gupta who would phone him.”

10 So the picture that she paints or the version that she advances, which I would ask you to comment on, is that you literally frequented the Gupta residence on an ongoing basis regularly.

MR GIGABA: Let us go into this logic before Chairman ...[intervenes]

CHAIRPERSON: Maybe before you proceed please do not forget your answer – do not forget your question. I see, Mr Myburgh in paragraph 17 on page 8 of the same memo that she says:

20 “I first met his advisers and learnt of their identity during 2011.”

ADV MYBURGH SC: Yes.

CHAIRPERSON: Yes, I am going back to 2009. I thought you said she said 2009.

ADV MYBURGH SC: Well, I think my colleague has pointed out to me that Ms Gigaba’s evidence was that she

started frequenting the Gupta residence from 2011 onwards, as I understand the testimony and that there was then this cooling off in 2014.

CHAIRPERSON: I think somebody must just double-check because in this paragraph 17 says:

“I first met his advisers...”

ADV MYBURGH SC: Yes.

CHAIRPERSON: “...in 2011 or during 2011.”

ADV MYBURGH SC: Yes.

10 **CHAIRPERSON:** Ja, so somebody can check
...[intervenes]

ADV MYBURGH SC: I am actually going to come to that paragraph in a moment.

CHAIRPERSON: Ja, but we can continue.

ADV MYBURGH SC: Mr Gigaba, I just wanted to give you an opportunity to look at this from sort of an overall perspective and comment on the degree to which she says you went there, leaving aside the alleged visits where you accompanied here.

20 **MR GIGABA:** Yes. Yes, thank you, Chairperson, I was still responding to that. If you consider that a year has 52 weeks and I were to go to the Guptas every Monday, so it means that each year I went there 52 times but it was not only the Mondays, there would also be, as she suggests, Friday evenings or sometimes Saturdays and when

parliament was in recess the meetings took place on any day. Already in one year she has exceeded her own 20 that she outline in her previous statement. This cannot be correct, it is absolutely ridiculous. Just mathematically it does not make sense.

Mr Chairperson, between 2012 and 2017 I was a member of the National Working Committee of the ANC and every fortnight we would have meetings of the National Working Committee, they usually would last until six,
10 seven, eight or even at night.

Now, from there I would come home. At 6 a.m. on Tuesday I would fly to Cape Town if parliament was in session because there would have been – there would be meetings of the government ad administration cabinet committee which started at half past eight. So you would fly, take a six o'clock flight to land at eight and hurry through traffic to get to Cape Town.

On the Mondays when we were not in the NWC, every Monday is considered by the ANC as an ANC day but
20 of course sometimes ministers because of the pressure of work, do government work, finish late and that is when on those Mondays we would be holding meetings of the – what do you call it, the ministers' management committee meetings but that is when the minister - I would meet with the top officials of the department and the deputy minister.

Those meetings usually take place the whole day.

By the time they are finished in the evenings, you are tired, you would look at a whole range of things, you would go home, you prepare to go to Cape Town and depending on what is happening in Cape Town the following day you try to squeeze in the late flight to Cape Town so that you arrive in Cape Town the night before, you sleep over and you are early in parliament the following day for your activities.

10 The Presidents, all of them, do not take kindly to ministers either arriving late to cabinet and cabinet committee meetings or being absent without a reason so already this is irrational because 52 times, 52 visits, a visit to one family every Monday is irrational and cannot be justified by anything imaginably in terms of your programme.

 Could it be that you went there on Friday evenings or even sometimes on Saturdays but these – by Friday, these are weekends that are reserved for – these are days
20 reserved for political work, with deployment in provinces and I always have argued that I have got a young family and when I have been away from my children from home, I would want to squeeze in every little time I have to spend with my kids, play with them, be there for them and participate in their lives.

On Saturdays I would be out doing ANC work and so this paragraph, paragraph 16 is absurd and is not true, it is not true at all.

ADV MYBURGH SC: Could I ask you then, let us deal with ...[intervenes]

MR GIGABA: And sorry, Chair, as I say in my response, it beggars belief that every time I had to go to parliament I would first rush to meet the Guptas and report back to them on my return. For what? Who does that?

10 You know, just even at a logical level, you know, nobody does that. Now because I am going to Cape Town let me rush to report to the Guptas that I am going to Cape Town. When I return from Cape Town I rush back to report to them that I am back from Cape Town and this is what happened. If this happens every Monday, it is already 52 – it is 52 times a year. If it happens on Thursdays and Fridays as well, it is now 104 times. It is ridiculous.

ADV MYBURGH SC: So, Mr Gigaba, what is dealt with in paragraph 17 is the allegation that you took your son
20 together with Ms Mngoma to be introduced to the Guptas and also that he was gifted a gold jewellery necklace. As I understand your version, do we accept that your son was gifted a gold jewellery necklace but you say you did not take him there to meet the Guptas together with Ms Mngoma, is that correct?

MR GIGABA: Yes, that is correct.

CHAIRPERSON: Can I take you back to the number of visits just to get – to see if this would do. Although you are not able to indicate about how many times you have been to the Gupta residence, are you able to say I have nevertheless been there several times, I just do not know how many times. Is that – would it be fair to say several times or would it not be fair?

MR GIGABA: Several times, Chairperson, to the extent
10 that it means more than once, yes.

CHAIRPERSON: Ja, well twice cannot be several times, I think.

MR GIGABA: What does that mean? What does several mean?

CHAIRPERSON: I do not think I have an exact number but I do not think once is several times, twice is several times but I would imagine that several times should not be less than four and may well be much more than that but maybe not 20 and maybe not 15, maybe that is too much
20 but I just got the maybe a way of giving a picture that you would be comfortable with to say look, I cannot – I am saying not more than 20 times but I am not saying it was three times but maybe it was – if one says several times then there might be disputes about how many times but I would not quarrel if somebody says I have been there

several times.

MR GIGABA: I think, Chairperson, I have already somewhat agreed with the Chairperson's earlier version that no, it could be five times a year, then you add it up over a period, it amounted to...

CHAIRPERSON: Yes.

MR GIGABA: So several times, yes.

CHAIRPERSON: Ja.

MR GIGABA: Because what I do not dispute is that I
10 knew them.

CHAIRPERSON: Is that you went there.

MR GIGABA: And I went there.

CHAIRPERSON: Ja.

MR GIGABA: That I do not dispute, that is a fact.

CHAIRPERSON: Ja. No, no, that is fine.

ADV MYBURGH SC: No, I think the fundamental difference, apart from the numbers is also the characterisation of the meetings.

MR GIGABA: Yes.

20 **ADV MYBURGH SC:** Mr Gigaba's version is that when you went there it would be for social and cultural events, you did not go there to have so-called "business meetings".

MR GIGABA: Yes.

ADV MYBURGH SC: You never had any such meeting.

MR GIGABA: No, Chair.

CHAIRPERSON: Well, the social part, I wanted to ask about that, to me it gave me the impression that you were going to socialise. Is that a correct meaning, the social part?

MR GIGABA: Yes.

CHAIRPERSON: It is a correct meaning?

MR GIGABA: Yes.

CHAIRPERSON: Okay, alright. Mr Myburgh?

ADV MYBURGH SC: Then at paragraph 18 the allegation
10 is also made by Ms Mngoma that your second son, you also visited the Guptas together with him. That I understand you also deny.

MR GIGABA: Yes, no, I did not visit the residence with the second son. No, I did not visit the child with them – I did not visit them with the child.

ADV MYBURGH SC: But you accept that your first son was gifted with a gold jewellery necklace?

MR GIGABA: When a child is born, Chairperson, I do not know about other cultures, when a child is born, if a friend
20 of my says hey, I have got a child, I would bring a gift. Could be a washing basin with bath towels for the baby, bath oils for the baby, a number of things, and so when our child was born, they gave him a gift of a necklace and as part of many other gifts that the child received and I took it in that light, I did not think it was on their part any act to

solicit anything.

ADV MYBURGH SC: And your second child was not given any gift by the Guptas?

MR GIGABA: Yes, he was not and I did not ask them why because naturally it is rude to ask a person why are you not giving my other child a gift? If they want to give a gift, they give a gift, if they do not want to, they do not.

CHAIRPERSON: Well, I wanted to say that - talking about newly born baby or child being given gifts, I know
10 that certainly among amaZulu there is even particular term for it, you cannot – traditionally you cannot see newly born child or baby without given him or her something. There is a specific for it and it is only in the Zulu language, you only use it for the child, for giving the child the present.

MR GIGABA: *Ukukhunga.*

CHAIRPERSON: *Ukukhunga.* Yes, yes, yes, now you know it, so there is that.

ADV MYBURGH SC: So, Mr Gigaba, how did it come about that they gave you this gift?

20 **MR GIGABA:** I do not understand the question.

ADV MYBURGH SC: Well, did you go to Saxonwold to receive it, did they come to your office? I mean, you have mentioned to us, as you say, that if a friend of yours has a child, it could be a range of gifts that you might give that person. Can you recall how this gift was handed over?

Where it was handed over?

MR GIGABA: It was handed over to me at their residence. It is just a gold necklace, nothing fancy about it.

ADV MYBURGH SC: So was this on occasion where you went to their residence for a social of cultural function?

MR GIGABA: Yes, one of those occasions.

ADV MYBURGH SC: I see. And what became of that gold necklace?

MR GIGABA: I do not actually know, Chairperson, what
10 happened – what became of the gold necklace. I last saw it a couple of years ago. I have not seen it since then and the difficulty with the necklace is that it is also very easy to lose especially because I do not wear necklaces – I do not like gold artefacts on me, so I did not use it, so I do not exactly know what happened of the necklace.

ADV MYBURGH SC: Now Ms Mngoma then goes on to deal with the Sun City wedding. You, as I understand it, accept that you attended that wedding?

MR GIGABA: Yes.

20 **ADV MYBURGH SC:** She gives a version about the fact that there were some sort of media hype and that had caused you to leave the wedding and not stay there overnight. Do I understand your version correctly that your intention was never to stay overnight at Sun City?

MR GIGABA: Yes, Chairperson, and the Commission

must bear in mind, Chairperson, that Ms Mngoma's version of this wedding changed significantly over time from me taking her – she claims that I – she met persons that I identified as members of the Gupta family from India one or two days before the wedding and then she says I told her that I needed to assist him by welcoming and fetching some of their guests at the Waterkloof Air Force base who were arriving from India which I don't know when it says here which I did, but I did not and then she says I left her
 10 to sit inside the building while she met with the Gupta's. This is a very confusing statement so – but I presume she is suggesting that she – I left her I do not know where, to go inside the building, this is two or three or one or two days before the wedding at Sun City, this is a lie. It is a complete lie. There was no such meeting.

I was never at Waterkloof eight days to receive the aircraft. I saw the aircraft landing on TV as everybody else I was as a guest as everybody was when we saw this and no report from government, or anybody who was involved in
 20 this incident places me at the scene of the arrival of this aircraft on the date that it arrived. Why does she make such lies?

Or put differently, who made her to make such lies, is to try to implicate me in something in which I was obviously not involved. As I say in my response, I only left

here we left - I think in the afternoon to go to the wedding. The wedding had started earlier I was busy in the morning. I went there to the wedding, I arrived when there were now performances and I think it was the reception.

We sat for the reception. The reception finished, there was dinner and I said let us leave and we left. There were other Ministers that were there I think one or two slept over there but insofar as I Malusi and concerned, I did not sleep there, I only arrived in the afternoon in time
10 for the reception and left immediately after the reception so that we were back in time in Pretoria because I think, if I am not mistaken, I was travelling the following morning.

ADV MYBURGH SC: I just wanted to ask you to have a look at paragraph 51, so that is on the right hand side this is I think on page 11 of the schedule. Where you say:

“I do not believe that...[intervene]

MR GIGABA: Paragraph 51?

ADV MYBURGH SC: 51 of your response. So it is just the next page.

20 **MR GIGABA:** Okay oh, sorry, sorry.

ADV MYBURGH SC: Page 11.

MR GIGABA: Yes.

MR GIGABA: I thought this is quite an important statement by you. You say:

“I did not believe that Nomachule met the Gupta’s

more than - on more than four occasions when we attended social functions such as the Sun City wedding, Diwali celebrations, and a cultural luncheon at their invitation.”

Is that as you have it, you stand by that statement?

MR GIGABA: I stand by this statement; it is my recollection.

ADV MYBURGH SC: So, the Sun City wedding you have spoken about. You say that she accompanied you only to
10 one Diwali celebration, maybe one or two and then a cultural lunching.

MR GIGABA: Yes, the one Diwali celebration, I think, ended up at Lenasia with some fireworks and there would probably be one more and there was a cultural luncheon that we attended together with her.

ADV MYBURGH SC: So that is as you have it, four occasions.

MR GIGABA: Yes, it could be more Chairperson but these are the incidents which I recall.

20 **ADV MYBURGH SC:** Then, as you know, from paragraph 22 onwards.

MR GIGABA: Paragraph 22?

ADV MYBURGH SC: Yes.

MR GIGABA: Okay, it gets a bit confusing Chair, because we move from paragraph 21 to paragraph - when I try to

find paragraph 51 on page 29 only to find that it is my paragraph.

CHAIRPERSON: Ja.

ADV MYBURGH SC: It is a lot less confusing though if we had - if we went from one file to the other, but let me try and be as clear as I can. So from paragraph 22 onwards, Ms Mngoma deals with the procedure that would be followed when she attended the Gupta residence together with you and she deals with the fact and perhaps I just
10 wanted you to comment on this, that she or all people were made to turn in their cell phones, what do you say to that?

MR GIGABA: Mr Chairperson again, you know, so just look at the sequence of events. So you must submit your cell phone because the meeting is – there is going to be a sensitive meeting and then somebody comes and outlines the agenda of this sensitive meeting, for which you had to leave your phone outside, because the meeting is sensitive and then she gets left out of that meeting.

That the agenda of which she now knows, and then
20 she can then go fetch her cell phone because she is bored, and come back to sit with it and play with it. Again, it is absurd. If the meeting was sensitive, she would not even be told, she would not even be there for the outlining of the agenda of the meeting.

If she was told to leave her phone outside, she

would not be allowed to go fetch it but where did she leave the phone, who kept it? Who advised – who wrote this? Because clearly, it is not her, somebody wrote this thing and coached her on how to try and put this thing in such a manner that it makes sense but unfortunately it does not make sense because she claims a sequence that is irrational.

Leave your phone the meeting is sensitive but you get briefed about the agenda of the sensitive meeting in
 10 which you will not participate and then you are allowed to fetch your phone again subsequently, because you are now bored. But if you were told to leave the phone outside, why are you allowed to fetch it? If you are not coming - if you are not part of the sensitive meeting, why do you leave your phone outside and where is outside and who is keeping your phone? I am saying Chairperson this thing is irrational, it is not true.

CHAIRPERSON: Well, two things to be fair to her. One, I did not understand her to be saying that the briefing that
 20 happens in her presence was part of that pattern, I may have misunderstood. I got the impression that she said maybe on some occasions or on one occasion, that is what happened.

But also, I need to say to you, my recollection is that a number of witnesses who say they have been to the

Gupta residence, gave evidence to the fact that upon arrival there, they were asked to handover their cell phones. So I have not checked who and who but I - in my mind, I think Mr Jonas may have said so, I do not know how many but I think there are a number who may have given that evidence as well. So I just mentioned that for what it is worth.

MR GIGABA: I would like to say Chairperson in the light of that the – it is therefore possible that she was rehashing
 10 something she had heard from other witnesses because in my recollection you know to go and celebrate Diwali partake in the prayers and go watch fireworks. You certainly do not have to leave your phone because your phone is not dangerous to the fireworks. The fireworks happen out there and you sitting here, even if they were near by the phone is not dangerous insofar as the fireworks unless I am advised otherwise.

But in all fairness, the sequence of these events, even if she would say it was on a few occasions that she
 20 was asked to leave the phone. If she was not part of a sensitive meeting, why would she be asked to leave her phone outside?

CHAIRPERSON: Mr Myburgh.

ADV MYBURGH SC: Thanks, I think perhaps in fairness to Mr Gigaba what she is describing here at paragraph 22

and further is not what happened when she attended the Diwali function. It is what she says happened when she attended meetings that you held with the Gupta's.

MR GIGABA: The problem, Mr Chairperson would be with that version that she was never a part of any meetings. She was never a part of any meetings and I think somebody - if I had not come to attend any meeting, unless she is now arguing that she came on her own to attend meetings, but if she says I was there I never came there to
10 attend any meetings.

ADV MYBURGH SC: I think you understand that, thank you. then you have already touched on...[intervene]

CHAIRPERSON: I am sorry, Mr Myburgh, of course you have a situation based on your evidence, you would have gone there, as well, just to socialise. So I do not know whether her evidence is that each time you went there it was for meetings, formal meetings or whether it was sometimes the trust just visits.

MR GIGABA: I think Chairperson, she says, and she does
20 not say on some occasions. So I think we should, we should remove the notion that she said on some occasions and because she leaves this open...[intervene]

CHAIRPERSON: Let me say this, some occasions that I was referring to earlier, is was when she was saying on some occasions or on one occasion, I cannot remember

which one Ajay Gupta briefed you about a meeting in her presence. That that was the one it was not about the cell phone, it was about, I think about the cell phones.

My understanding was that she was saying each time the two of you went to the Gupta residence that was - it was required that phones be – they would keep them.

MR GIGABA: Perhaps then Chair she might have said that in one of her three oral testimonies.

CHAIRPERSON: Yes.

10 **MR GIGABA:** Because in the affidavit she does not make reference to or some occasions.

CHAIRPERSON: Okay.

MR GIGABA: She says Mr Gupta would arrive to greet me and after some small talk he would brief Mr Gigaba on the meeting that they were about to hold in an adjacent private meeting room. We would then often find, we often find either Mr Mahlangu or Mr Metsoni, and all of this is a lie.

CHAIRPERSON: Okay, ja.

ADV MYBURGH SC: So, Mr Gigaba from paragraph 25
20 onwards, she deals with these briefings and I think you have already addressed it, she lists various topics that she says you were briefed on and you make the point at paragraph 65, where you say:

“A lot of what is described here are matters that had been in the media for a number of years, and would

account for Nomachule knowledge thereof. I deny that during my tenure at DPE I have ever intended nor intended etcetera.”

It is really the first sentence that is important, is that what you say in response to her saying that you were briefed on a variety of issues?

MR GIGABA: I never had meetings to discuss these issues with Mr Ajay Gupta and in my paragraph 63 I emphatically denied it and I say that she picked these
 10 things up from the media and I say in my capacity, you are correct. I had no authority to deal with tenders, I think I have said this earlier even when I was referring to the so called routine commitment to settle the Langa Attorneys bill that, I have always insisted that, as a Minister, I must be confined to my executive function and I have never tried to extend my responsibility to the responsibilities of the accounting officer, either of the department or of the entities and so I would not seek to discuss any of these thing.

20 And, you know, when I was Minister of Home Affairs, and the department wanted to brief me about a tenders coming up in the department, I told them that no, do not even start, this topic must be taken back to the department. It must be handled by the accounting officer, it does not belong to me and I have said earlier that, if

somebody came to me to sat but Minister, I would like to discuss the following things relating to that, SOE or your department, I would refer them to the relevant person, whom I would have told that whoever I referred to you, I do not do so for the purpose of instructing you to do anything wrong.

I am saying to you, you can outline to them or even advise them, what processes to follow in terms of what they are raising, but you can even refer them to junior
10 officials, if you think so. But insofar as I am concerned, I am not going to be discussing tenders relating to departments and especially SOE's they are far removed from me.

CHAIRPERSON: Well you said you did not discuss business with the Gupta's, did they ever try to get to discuss business with you, or tenders and so on, or departmental issues? Did they ever try and maybe you resisted or did they never try?

MR GIGABA: You know, it would be I think the instances I
20 would remember would be when we are having those TNA SABC breakfast forums because then I would be - I would usually be the main centre of attraction and there would have been specific programs that I had spoken about and so, they would raise those issues.

Not to solicit a tender from me, I am also quite a

step on testing when it comes to certain things, and if anybody would try to raise things of that nature, I will tell them that this does not belong in my - within my purview. So any discussion about SOE's would really arise there because in the other events there were many other people and the discussions would range from cricket to various other things, politics, generally in the country, politics generally in India, and we talking about that.

CHAIRPERSON: Okay, Mr Myburgh.

10 **ADV MYBURGH SC:** And then at paragraph 26, perhaps I could just ask you to comment. I think Mr Gigaba you can accept that – unless I tell you otherwise I am referring to Ms Mngoma's we picking our way through this.

MR GIGABA: Okay.

ADV MYBURGH SC: So paragraph 26, she says that Mr Gigaba told me that AJ Gupta wanted him to get rid of Mr Dames. Now you say that is a total fabrication, is that correct?

20 **MR GIGABA:** And then she goes on to embellish her own importance by claiming that having met Mr Dames, she asked me why - this is irrational. It is just completely, irrational. When she met Mr Dames, what was she meeting Mr Dames for? What was she discussing with him which led her to arrive at the conclusion that she could advise me?

That - no, no Mr Dames is a good guy and then I responded by saying that the Gupta's do not like him, because there are things he was supposed to do, but he did not do. I have made it very clear Chairperson that this is a lie and I am on record, I think in one of my submissions relating to the affidavit, to the evidence led by Mr Tsotsi on how I managed or handled the resignation of Mr Dames and that Mr Dames resignation was based purely on his differences with the Board.

10 I held a different view, I held Mr Dames in high regard and I still do. I believed that given the variety of challenges, the delay in the build program [speaking in vernacular], the need - the large government guarantee framework that Eskom had and the need for Eskom to raise money in the market to fund the completion of this project. I believe that Mr Dames being highly regarded in the industry, and in the market, it was untimely and unwise of him to resign. I tried to resist it, I even facilitated meetings between the Chairperson of the Board and Mr

20 Dames and Mr Tsotsi and Mr Dames at my residence in Pretoria to try and resolve this and it was only I think, very late or very early, no, no very late in 2013 that Mr Dames is called me to say, Minister, I think with all your best intentions, and I do not intend to disappoint you, but I would like to resign.

And I said to him, I accept it with a heavy heart and then instructed the Board to start the process. All of these things that Ms Mngoma is saying here are honestly fabrications based on nothing but an intention to lie.

CHAIRPERSON: Well, of course, to the extent that she maybe saying because I think she does say somewhere that when Mr Dames left, your preference was for him to stay or you wanted him to stay, that might be true.

MR GIGABA: That is true, that is true, Mr Chairman.

10 **CHAIRPERSON:** Okay, Mr Myburgh.

ADV MYBURGH SC: At paragraphs 28 and 29, Ms Mngoma deals with two occasions where she says Mr Ajay Gupta, visited you at your home, what do you say to that? You did not?

MR GIGABA: He did not, that is not true.

ADV MYBURGH SC: And then she talks about the fact that two of you held meetings at your home, what do you say to that?

MR GIGABA: When I have already denied it, Chairperson
20 there were no such meetings, as I have said and I want to reiterate it, I do not and did not discuss SOE tenders with anyone. It was not my business and therefore, if anybody had intentions to discuss tenders, they needed to go to the entity involved because I was far removed from the supply chain process and the procurement process - not let alone

in the SOE's but in the department itself.

And so there was no such a meeting, Mr Gupta never came to my residence, never came to discuss any tenders with me that related to Transnet or Eskom and I also do not know what was this Eskom project that was giving me a headache. The biggest headache that I had, relating to Eskom was about Medupi and Kusile, the delays in the construction of those projects.

I spent the rest of 2013, well not the rest, great
 10 parts of 2013 trying to resolve that problem because the country was experiencing electricity shortages. The – Medupi and Kusile had been awarded prior to my appointment as Minister of Public Enterprises, the primary contractors of those two projects were the ones responsible for the delays.

I had tried to resolve the labour disputes at Medupi, I had tried to resolve the delays by meeting with the primary contractors and I summoned them to Pretoria where I met with them and so those were the main
 20 headaches I was having with regards to Eskom. I do which other headaches I was having at Eskom.

ADV MYBURGH SC: At paragraph 30, Ms Mngoma goes on to deal with a trip to India. She initially said it was in 2010 but you know, she has corrected that to 2015, you want to comment on that,

MR GIGABA: There was no such meeting at my residence to discuss the trip to Mumbai and Delhi and as I have said, I mean in the first instance she makes the claim that the meeting was in 2010, and which is not true. Then she turns around and says it was in 2015, but leaves the contents of the meeting, of the so called trip in 2015 the same as of the initially alleged trip in 2010.

Now in 2015, I would not have gone to Delhi and Mumbai, with the Department of Home Affairs, to discuss
10 the SAA route to Mumbai, we were discussing something else and the - all the planning sessions for such a trip with the department officials would have been in the office and they took place in the office, none of them took place at my residence.

ADV MYBURGH SC: And then you mentioned in your response that on your 2015 trip you conducted business in line with your portfolio as the Minister of Home Affairs, is that correct?

MR GIGABA: Yes, it was to deal with the - it was mainly
20 to resolve visa issues that were troubling business in India, those issues were raised with me by the South African High Commissioner to India, as well as by the Indian Minister of Home Affairs and so we went there, I met with a visa facilitation services, I met with the Minister of Home Affairs, we tried to resolve those issues. So those

were the issues that we were dealing with

ADV MYBURGH SC: Did the meeting on your version have anything to do with the South African Mumbai route?

MR GIGABA: Absolutely not, I was not Minister of Home Affairs. I mean, I was not Minister of Public Enterprises in 2015. The Minister of Public Enterprises would have been really offended if I undertook a trip to India to go deal with issues which belonged in their portfolio and the President would not have authorised the trip because for any
10 Minister to travel abroad, you first must obtain the permission of the President during which application for permission you state the purpose for you for your visit.

And the issues here that we were dealing with, had to do with visa facilitation, particularly between BRICS countries and South Africa in order to promote tourism, to increase the numbers of travellers from India, from China, Brazil and Russia and to ensure that we iron out the impediments to such visa facilitation given also that at the time South Africa was implementing visa reforms, and they
20 were creating problems. There was a shortage of staff, especially at the daily office that we needed to deal with. There were complaints by Indian business people in Mumbai that we needed to deal with and so these were the total package of the issues I was dealing with, all of those had nothing to do with the South Africa, Johannesburg

Mumbai route.

ADV MYBURGH SC: Did you during this trip meet Ajay Gupta in India?

MR GIGABA: In India?

ADV MYBURGH SC: Yes.

MR GIGABA: No.

ADV MYBURGH SC: Did he arrange any meetings for you to attend in India?

MR GIGABA: No, he did not, Chairperson.

10 **ADV MYBURGH SC:** Can we then move to the topic of prior knowledge of appointments in state owned enterprises, that is paragraph 31.1, Ms Mngoma says:

“After one of the New Age breakfast sessions Mr Gigaba told me that Brian Molefe was going to be moved from Transnet to Eskom.”

MR GIGABA: This is – this is not true. Chairperson when I was Minister of Public Enterprises the – the fact is Mr Molefe was CEO of Transnet and there was no plan to move him from Transnet at least not on my side.

20 I have heard the earlier version that was presented apparently by – was it Mr Essa talking to Mr Bester. I have heard about that but to my knowledge – because even as the board after I accepted Mr Gama’s resignation Mr Molefe was not one of the applicants the board were not considering him as the Chairperson – I mean as the CEO of

Eskom.

Mr Matona as facts stand would be appointed as the CEO of Eskom obviously after I had left the Department of Public Enterprises and he remained in that position for I do not know six months to a year.

CHAIRPERSON: A few months ja.

MR GIGABA: Yes.

CHAIRPERSON: Ja a few months ja.

MR GIGABA: He remained in that position for a few months
10 and – and so when – when I was there Mr Molefe was not in
the running for the position of Group CEO.

Where this comes from I do not know.

ADV MYBURGH SC: So you – you – your term as the Minister of Public Enterprises that run until the end of May 2014, is that correct?

MR GIGABA: Yes.

ADV MYBURGH SC: You correct in recounting the evidence of Mr Bester because it seems that he says in that month certainly it was – must have been after the end of April it
20 probably was in the month of May that he was told that by
Mr Essa that Mr Molefe would be moving.

MR GIGABA: Yes that is what I have heard here Chairperson and as I say in – in my understanding there was someone else that the board was recommending as the CEO of Eskom.

ADV MYBURGH SC: Then at paragraph 31.2

CHAIRPERSON: Maybe and I put it – this no higher than this that maybe there may have been an intention in certain quarters that Mr Molefe should be – go to Eskom earlier than he actually did and somebody else was appointed and that person maybe that might explain why that person was not allowed to stay too long.

He only stayed for about five months or so and then had to leave – was suspended and so on. I am not saying
10 that you had any knowledge of that but I am just saying when there had been on Mr Bester's version which has now been corroborated by somebody else who was in that meeting with Mr Salim Essa when there is – there was that evidence that Mr Salim Essa said in 2014 already that Mr – that the next boss of Eskom would be Brian Molefe and we know that the next boss was not him but Mr Matona – but he did not stay too long he left under certain circumstances and then Brian Molefe was appointed and he took over.

So it may well be that Mr Matona was not the
20 planned boss of Eskom and that is why he had to leave after a short stint.

MR GIGABA: I would not know this.

CHAIRPERSON: Ja you would not – you would not – you might not be able to say

MR GIGABA: I would not know.

CHAIRPERSON: But one is trying to make sense of some of these things.

MR GIGABA: Yes. I understand.

CHAIRPERSON: Okay All right.

ADV MYBURGH SC: At paragraph 41.2

MR GIGABA: Yes.

ADV MYBURGH SC: She goes on to say that:

10 “Mr Gigaba also told me that Mr Gama would
 be appointed as the Chief Executive Officer
 of Transnet.”

 In her evidence she corrected that to – to the effect
that you told her that Mr Gama would be reinstated as the
CEO of Transnet Freight Rail.

MR GIGABA: I said I told Ms Mngoma that Mr Gama would
be reinstated.

ADV MYBURGH SC: Yes.

MR GIGABA: No.

ADV MYBURGH SC: That is what she says.

20 **MR GIGABA:** No, no. No Chair that is not true – that is not
true. Ms Mngoma portrays a picture here of me reporting to
her everything. No this is the same person who has
claimed at one occasion to be responsible for the smart ID
card at Home Affairs.

 This is the same person who has claimed to – to
have an IT degree to hold a management advancement

program, to have a – an IT degree from Vaga and so on. She has the ability to embellish her CV and her own importance in events.

And it is quite clear to me that all of these issues that are stated here were deliberately constructed. That is why they took so long. Were deliberately constructed to portray a picture of – of believability when in actual fact they are not. There is absolutely no way that I would have you know reported to her all of these things. In the line of
10 my work I believed you know I am sworn to secrecy. I have to treat things as confidential until they are officially communicated.

And that swearing to secrecy applies even in the family environment because if you go and speak whether to your wife or your children you do not know how that information is going to be utilised especially in an environment where you already know that a person you might be briefing has no ability to hold secrets and could actually use this information to bolster their own
20 importance.

And so his is not true. I never told her about Gama being GCE of Transnet nor did I say to her he would be reinstated as the CEO of Transnet Freight Rail. In actual fact many of these corrections to the original – to her original affidavit happened because she had sight of my

affidavit and now she was trying to reassign [?] her original lies with my response so that she appears to be credible when in actual fact even in the attempt she failed dismally.

ADV MYBURGH SC: So can we then – do I understand your evidence correctly that you never discussed your work with Ms Mngoma at all.

MR GIGABA: No.

ADV MYBURGH SC: So whatever...

10 **MR GIGABA:** And to the extent Chair – sorry to jump into your mouth.

ADV MYBURGH SC: Sure.

MR GIGABA: To the extent that I would have told her anything it would be something that is already in the public domain that is already out there known by everyone. But to come and discuss confidential issues that is not true.

But I deny emphatically that I knew – let alone discuss with her that I even knew that Mr Gama would in 2015 act as CEO of Transnet or that Mr Molefe would be
20 appointed as CEO of Eskom.

Those things I did not know because at the time I left the Department of Public Enterprises the processes were going in a completely different direction.

ADV MYBURGH SC: She goes on to say at paragraph 31.3 that:

“Mr Gigaba also told me that he intended to speak to Mr Gama to appoint his sister Ms Gugu Gigaba to Transnet.”

She says:

“To the best of my knowledge Gugu Gigaba was appointed and remains employed there.”

MR GIGABA: This is a very prejudicial to my sister. My sister is a professional in her own right. She – she is qualified in what she does as an analytical chemist, in
10 project management and her extensive experience at SAPPI, Mkomaz [?] where she worked until she resigned because of health issues, moved to Johannesburg and spent a bit of time in Johannesburg looking for employment until there was an opportunity for which she applied at Transnet and due process was undertaken.

How do I feature? I feature only in assisting you know in assisting to forward her CV because she was experiencing technical problems so she asked me can you please assist me to forward my CV. Meanwhile – and then I
20 said to her eish I know someone Mr Mlambo Buthelezi I will forward it to him and this is 2016 when I have long left Public Enterprises.

I forwarded it to Mr Buthelezi and I say can you please forward this CV to wherever it needs to go. And he said to me yes I will but Minister I do not want to be seen

by my subordinates to be influencing them in any particular direction but I will forward it and they will take it from there. I will brief them as such and I took it in good faith and left it there with him. And then the process unfolded.

That is why there is that 00:11:32 between me forwarding the CV and the actual processes of the short listings, the interviews, the appointments taking place because there was no attempt on my part or Mr Gama. I never spoke to Mr Gama about it. For my sister to be
10 appointed.

Now why is this lie being made because of the bitterness. The anger, the bitterness, the vindictiveness, the attempt that if the marriage fails then everybody related to this guy must then be dragged through the mud, destroyed in order for me to get my revenge.

It is unfortunate but I want to put it emphatically that I never spoke to Mr Gama and I only forwarded the CV Mr Mlambo Buthelezi and said to him I think as the – as the email said (speaking in vernacular). As I had spoken to you.
20 **ADV MYBURGH SC:** So Mr Gigaba why – what makes you say that what Ms Mngoma says at paragraph 31.3 was on her version when you were at the DPE.

MR GIGABA: I beg your pardon.

ADV MYBURGH SC: You say that at your paragraph 83.

“Given that I am constraint to deal with

these allegations I must immediately deny that Nom – that I told Nomchule that I intended to speak to Mr Gama to appoint my sister to Transnet. My sister was appointed at Transnet long after I left DPE after following due process.”

Are you suggesting that Ms Gigaba is saying that this happened whilst you were at the DPE?

MR GIGABA: No I am not suggesting that. I am putting
10 context to the process of her application and the fact that it cannot be claimed that I used my position either at DPE or my knowledge of Mr Gama to ask him for a reward for – for having being reinstated as CE of TFR.

ADV MYBURGH SC: All right do you know that Mr Buthelezi was of course Mr Gama’s COO.

MR GIGABA: Yes I am aware.

ADV MYBURGH SC: All right. Can we just go to the documents. You have already...

MR GIGABA: But Mr Buthelezi is not Mr Gama. The two
20 people are two separate individuals and – and should be treated as such.

ADV MYBURGH SC: Can I ask you to...

CHAIRPERSON: You said – I am sorry. You said after you sent him this – the CV.

MR GIGABA: Yes.

CHAIRPERSON: He said he would forward it to his subordinates. He did not want to be seen to be influencing the – I think that is what you said.

MR GIGABA: Yes that is what he said to me.

CHAIRPERSON: Yes. But I think you also said he said he would brief them.

MR GIGABA: No, no.

CHAIRPERSON: I thought – I thought you said – you said he also said he would brief them.

10 **MR GIGABA:** No, no Chair.

CHAIRPERSON: Did I not hear properly?

MR GIGABA: I did not. He did not say he would brief them, he said I will forward it.

CHAIRPERSON: Hm. I think you also said he said he would brief them.

MR GIGABA: No, no.

CHAIRPERSON: Ja, I thought you said he also said he would brief them.

MR GIGABA: No, no Chair.

20 **CHAIRPERSON:** Did I not hear properly?

MR GIGABA: I did not. He did not say he would brief them. I said: I will forward it.

CHAIRPERSON: H'm?

MR GIGABA: Or, to the extent that he said: I will brief them. He was saying: I will brief them that there is no

pressure or expectation. They need to follow due process.

CHAIRPERSON: H'm?

MR GIGABA: So that was all.

CHAIRPERSON: H'm.

ADV MYBURGH SC: So if you go to page 996.2 of your bundle...

MR GIGABA: I am looking at the wrong file. Sorry. No, no. Sorry, I was looking at the right file.

CHAIRPERSON: Oh, okay.

10 **MR GIGABA:** Nine... Yes, 996.2. Yes.

ADV MYBURGH SC: So this is the email string, right?

MR GIGABA: Yes.

ADV MYBURGH SC: So the – Gugu sends you her CV.

MR GIGABA: Yes.

ADV MYBURGH SC: And you then sent it onto Mr Buthelezi.

MR GIGABA: Yes.

ADV MYBURGH SC: And here was the issue – we got an English translation just for the purpose of the record. You
20 will see at 996.3 ...[intervenes]

MR GIGABA: Yes.

ADV MYBURGH SC: The translation is: The matter I told you about.

MR GIGABA: Yes.

ADV MYBURGH SC: So here was the matter I told you

about or the issue I told you about?

MR GIGABA: Yes.

ADV MYBURGH SC: And then Mr Buthelezi forwarded the CV to Mr Ravi Nair.

MR GIGABA: Yes.

ADV MYBURGH SC: Who, as I understand it, was then the CEO of Transnet Freight Rail. And he says: Thanks, Chief. Is that correct?

MR GIGABA: Yes.

10 **ADV MYBURGH SC:** Alright. Now can we then go back to the schedule?

MR GIGABA: Yes.

ADV MYBURGH SC: And deal with this heading: Tensions Rising. Perhaps I can just summarise for you what is said by Ms Mngoma in paragraphs 32 and 33. She starts off by saying that:

“As your tenure as Minister DPE progressed, you often told her that the Guptas were putting pressure on you for various reasons...”

20 And then at 33, she says:

“During early 2014, the relationship became strained...”

She refers again to the fact that the Guptas wanted you to get rid of Mr Damas and she explains you, on her version, started avoiding telephone calls, et cetera.

And I suppose the sting at the tail and that is the ending where it is contended towards the end of paragraph 33, she says:

“Mr Gigaba also told me that AJ Gupta told him that if he wanted to run the DPE as he wished, he would move back to the Department of Home Affairs.

I understood that Mr AJ Gupta would often tell Mr Gigaba that he should remember why he
10 was appointed at the DPE...”

Now your answer or response to that is:

“This is, once again, a total fabrication...”

Do you have anything to add to that?

MR GIGABA: Yes, Chairperson. You see, I have already outlined this and the lie, the falsification that it is. Let me start by saying. Becoming Minister of Home Affairs is not punishment. In actual fact, to be a minister in any department is an honour. There is no department, you know, in the system of government in South Africa, there is
20 no department that is above all others.

The seniority of ministers in our government is determined by the year on which you were appointed minister. It is not determined by the portfolio that you hold. It is people’s perceptions that there is a ministry above others, senior to others. Minister of Finance or

Minister of this, Minister of International Relations.

No, no, no. Not in the South African system of government. So it is – everybody who does not understand or anybody who does not understand the system of government in South Africa, would then arrive at the conclusion that no if you are Minister of Home Affairs – I read even in the media. When I was appointed Minister of Home Affairs in 2014, some media was saying: Gigaba demoted.

10 So it was not only, you know, Ms Mngoma who thought I was demoted. The media, some in the media were saying: Gigaba demoted to the Department of Home Affairs. And provided all sorts of reason for why that would have happened. The fact of the matter is that becoming Minister of Home Affairs was not punishment. Secondly, there was never an instance where Mr AJ Gupta would say to me that I must remember that they appointed me at Public Enterprises or that if I do not do their bidding I would be send back to Home Affairs.

20 This things has been a well-trumped up allegation in the media often repeated as if it was true and that is where Ms Mngoma, most certainly, obtained this, so that, again, she can embellish her importance by claiming that I told her this, I told her that, I told her the other thing without any basis, in fact.

ADV MYBURGH SC: Can we then turn to the heading:
Mr Gigaba's relationship with Ms Myeni.

CHAIRPERSON: Before you do that, Mr Myburgh.
Mr Gigaba, we established earlier on that on your version
as well ...[intervenes]

MR GIGABA: Yes.

CHAIRPERSON: ...your relationship with the Guptas
cooled off in 2014.

MR GIGABA: Yes.

10 **CHAIRPERSON:** H'm. Now, as I understand what she
says here, that is something similar that she is saying. So
maybe it was not true that this is all – this part of it all is
total fabrication. Maybe there is something that is true but
maybe then, on your version, a lot of what is in the
paragraph is not true but there seems to be something in
terms of that, at least. Would you agree?

MR GIGABA: The only thing, Chairperson, that is true is
that the relations cooled off.

CHAIRPERSON: Ja.

20 **MR GIGABA:** That is the only thing. But the reasons for
the cooling off ...[intervenes]

CHAIRPERSON: Ja.

MR GIGABA: ...are a fabrication.

CHAIRPERSON: I cannot remember what you – I think
you did say what the reasons were earlier but I cannot

remember. What were the reasons that made the relationship to cool off on your version? Because she gives her own reasons but you say those are not true. What were – why do you think it cooled off?

MR GIGABA: They cooled off, Chairperson, I think largely because of name dropping and there were rising concerns about the family and so I decided that it is important for me to also just take a step back.

CHAIRPERSON: H'm.

10 **MR GIGABA:** But the reason for the cooling off, I think the Commission should rely more on my version as the person who had the relationship than her version unless she is talking about her relationship with them. Then I think she can have authority to talk about her relationship with them, rather than to talk about my relationship with them.

CHAIRPERSON: So, one, you say they were using your name in terms of name dropping, number one. Number two, the image have become tainted because of what was
20 being said about them in the media. Is that – that is what caused the relationship to cool off?

MR GIGABA: Not only my name, Chairperson, but the names of various other people. The President – they were using the name of the President. Will picking up. They are using the names of other ministers and other leaders,

either DP's or CEO's.

And you know, one thinks that your credibility could also be on the line and because you do not know where your name is being used and for what purposes. And giving all the concerns, the public concerns that were being raise, one thought that it is necessary to step back.

CHAIRPERSON: H'm. Okay. Mr Myburgh.

ADV MYBURGH SC: Thank you. From paragraph 34 onwards.

10 **MR GIGABA:** Yes.

ADV MYBURGH SC: Ms Mngoma deals with your relationship with Ms Myeni. I just want to ask you to comment on her allegation that: Ms Myeni facilitated your honeymoon trip to Mauritius..." And as I recall her evidence, it actually was a trip to Mauritius before your wedding. What do you say to the allegation that Ms Myeni facilitated this trip?

MR GIGABA: Chairperson, I would not be aware of this. You see, when I met Ms Mngoma, she projected to me an
20 image of the highflying individual who was from a very well-to-do family. She had told me that her father was a businessman living in New York City, that she herself regularly visited New York City or on occasion would win awards from Mark Shuttleworth that would require her to go to do some work in New York City.

She would come to see me in different vehicles that I – that she said were hers including an ML 320 vehicle, a BMW 120 Series vehicle and so on. A white vehicle that she claimed was – sorry, I am no longer sure whether it was white or another colour but she brought that vehicle. It was a 120 series. Now I knew her to be this highflying IT executive who had worked at IBM. Who had worked at various other top notch well-paying IT companies.

10 Around 2011 or '12, I think around 2011, she then told me that her father in New York City passed away and left her a very, very handsome inheritance that was held on her behalf by her uncle called Ntogo(?). I never met this Ntogo. And so, my understanding was that this was a very wealthy woman from a well-to-do family whose relatives were living in New York and various other places.

 She had lived with her father in Musgrave in Durban while she was a student at Natal Technikon or MSL Technikon, which turns out was also not true. So when –
20 after our wedding, I was in a meeting in Johannesburg when she came and said: We have a – we have to go on honeymoon. I did not question her. I do not think anybody questions – you know, you say you question your wife when they say – and you think they have the means.

 When they say to you: I have a surprise for you. I

am taking you on holiday. Remember that Mauritius is also not – it is a five hours trip away by SAA which should be quite affordable, even by somebody of a modest salary of a minister but in this case, this was my wealthy wife.

And so we – I went on holiday in Mauritius which was our honeymoon. We enjoyed ourselves. I cannot remember whether we spent two or three days and then we came back. So that, the trip was facilitated by Ms Myeni. I only heard it for the first time from Ms Mngoma because
 10 all along - her to be responsible for the trip and that she paid for it from her inheritance and wealth.

ADV MYBURGH SC: So do you accept that this trip was facilitated by Ms Myeni?

MR GIGABA: No I don't accept it, I have no reason to accept or not accept it because I was not aware that it was facilitated by Ms Myeni, as I have explained in my long response my understanding until I read it here was that it was facilitated by Ms Mngoma as part of her means because she had projected herself as a woman of means.

20 **CHAIRPERSON:** Mr Myburgh I see we are nine, now we were going not to have Monday and Tuesday available because the President was going to be testifying, I am wondering whether we should not explore the possibility of continuing if everybody is available, at some stage either on Monday, maybe not starting in the morning because I

think I have got an evening session, because what might be left might not be a lot, I am not sure, so maybe starting in the afternoon, subject obviously to Mr Gigaba's availability and his legal team, and your own situation.

ADV MYBURGH SC: I am available, I was – I thought we would be questioning the President so I am certainly available, I suppose I must just find out from Mr Solomon if he would be.

CHAIRPERSON: Yes, Mr Solomon what is your situation
10 about that?

ADV SOLOMON: Chair yes Monday afternoon would be fine.

CHAIRPERSON: Monday afternoon would be fine?

ADV SOLOMON: Yes.

CHAIRPERSON: Mr Gigaba what is your situation?

MR GIGABA: I am at your disposal Chairperson.

CHAIRPERSON: Okay, okay. What is your estimate Mr Myburgh.

ADV MYBURGH SC: I don't think we will take more than
20 another two hours, I suppose we must just bear in mind, as I have it, Ms Mngoma's cross-examination is set for four o'clock, so I think it probably work well if we started at two and then flowed into that.

CHAIRPERSON: Yes, ja. Mr Solomon we are thinking of two o'clock, is that fine?

ADV SOLOMON: That is in order Chair, thank you.

CHAIRPERSON: Yes okay no that is fine then, let us adjourn for today and then we will proceed on Monday at two pm.

ADV MYBURGH SC: Thank you Chairperson.

CHAIRPERSON: Okay.

ADV SOLOMON: Thank you Chair.

CHAIRPERSON: Thank you to everybody for all your cooperation for us to be able to sit until this time, thank
10 you very much. We are now adjourned.

INQUIRY ADJOURNS TO 28 MAY 2021