

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

28 MAY 2021

DAY 405



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Recording & Transcriptions

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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 28 MAY 2021

CHAIRPERSON: Good morning Mr Seleka, good morning everybody.

ADV SELEKA SC: Morning Chairperson.

CHAIRPERSON: Yes. I am dealing with the Eskom application for leave to cross-examine Mr Koko first. Who appears for Eskom?

ADV SELEKA SC: Yes they are here Chair.

CHAIRPERSON: Yes put on your – switch on your mic.
10 Yes. Somebody will assist you. Yes if it is – you can address me seated if that is more convenient there because of the mic.

ADV McCONNACHIE: Chair Chris McConnachie appearing for Eskom.

CHAIRPERSON: Yes.

ADV McCONNACHIE: My leader Mr Ngcukaitobi is currently acting in the Eastern Cape.

CHAIRPERSON: Yes.

ADV McCONNACHIE: That is why I have been – I have
20 been assigned to do his application.

CHAIRPERSON: No that is fine. Thank you.

ADV McCONNACHIE: Thank you Chair.

CHAIRPERSON: Mr Barrie you appear for Mr Koko.

ADV BARRIE SC: Yes Sir.

CHAIRPERSON: I must – I must say that I did not – I did

not come across any opposing papers for Mr Koko and I do not see them here. What is the position Mr Barrie?

ADV BARRIE SC: Those papers were filed long ago. They were made available to the commission again today – this week rather and I received a document this morning from Ms Van Vuuren which purported to be the repaginated bundle but I did not check that to see whether all the – and whether the – all the papers are in there.

CHAIRPERSON: Yes.

10 **ADV BARRIE SC:** Including the –

CHAIRPERSON: Well I was...

ADV BARRIE SC: It is because opposing affidavit and Eskom's reply.

CHAIRPERSON: I was – I was given the impression maybe a day or two ago that Mr Koko was opposing and that there may have been papers but I see that they are not here. What is the (talking over one another).

ADV BARRIE SC: The bundle that I received should be ...

CHAIRPERSON: Has got them. And – Mr Seleka.

20 **ADV BARRIE SC:** The only bundle that I received this morning has Mr Koko's affidavit from page 110.

CHAIRPERSON: Mr Koko – Mr Seleka.

ADV SELEKA SC: Thank you Chair.

CHAIRPERSON: What is the story?

ADV SELEKA SC: The – there is a bundle prepared Chair

on page...

CHAIRPERSON: The one I have got here does not have opposing papers.

ADV SELEKA SC: Chair please check page 110 – 110. I see they did red pagination.

CHAIRPERSON: Oh okay. But there is – oh okay no, I see there is in this file but I have not had a chance to read it but I think let us see how it goes. Let me hear the legal representative for Eskom first.

10 **ADV SELEKA SC:** Thank you Chair.

CHAIRPERSON: Let him go to the podium. Please just repeat your name so I can make sure I have got it right.

ADV McCONNACHIE: Thank you Chairperson. It is Chris McConnachie of the Johannesburg Bar for Eskom and...

CHAIRPERSON: M-c – that is – how do you spell McConnachie.

ADV McCONNACHIE: It is M-c-C

CHAIRPERSON: Capital letters c the second one.

ADV McCONNACHIE: Capital letter C that is correct Chair.

20 **CHAIRPERSON:** Yes.

ADV McCONNACHIE: O-n-n

CHAIRPERSON: I am sorry.

ADV McCONNACHIE: O-n-n

CHAIRPERSON: O-n-n

ADV McCONNACHIE: A-c-h

CHAIRPERSON: S-c-h

ADV McCONNACHIE: Sorry Chair a for apple – a-c-h-i-e.

CHAIRPERSON: McConnachie that is correct Chair.

CHAIRPERSON: Is it Shie or Chie

ADV McCONNACHIE: Chie.

CHAIRPERSON: Chie. Okay alright.

ADV McCONNACHIE: Yes there is a long history Chair.

CHAIRPERSON: Okay.

ADV McCONNACHIE: Chair 00:05:48 we have prepared a
10 short note for argument which apart from setting out the
correct spelling of the surnames also includes a brief
synopsis of the case which one needs to 00:05:56.

CHAIRPERSON: Okay let me have that.

ADV McCONNACHIE: If I can beg leave to hand it up.

CHAIRPERSON: Ja. I am sure you – you – everybody was
given an indication that I did not think we should take too
long on the matter.

ADV McCONNACHIE: Indeed Chair.

CHAIRPERSON: Thank you.

20 **ADV McCONNACHIE:** And we hope the note for argument
will expedite things. I certainly do not intend to read or to
take you through it in any detail but – but it is designed to
simply capture this – the key crisp points.

CHAIRPERSON: Yes.

ADV McCONNACHIE: And also to summarise the essence

of the application.

CHAIRPERSON: Ja. I will tell you what my concerns are because if you persuade me on those concerns then I will hear what Mr Barrie has to say. I do not know whether Mr Seleka intends saying anything and then we will take it from there.

As I understand Mr – I mean Eskom's application basically they are concerned that Mr Koko has given the impression or given evidence to the effect or that suggests
10 that they had no proper grounds for taking disciplinary action against him.

That seems to be the main thing. Am I correct?

ADV McCONNACHIE: Chairperson the – it might assist if I – if I start by dealing with those accusations that implicated Eskom and there are two parts to that. There is the..

CHAIRPERSON: Ja but I want to characterise the basis first. Is that correct that that is the main basis.

ADV McCONNACHIE: That is the first basis Chair.

CHAIRPERSON: Ja what is the other one.

20 **ADV McCONNACHIE:** Because there is a second basis.

CHAIRPERSON: Ja. What is the second one?

ADV McCONNACHIE: There is the second and then perhaps - perhaps even more critical.

CHAIRPERSON: Ja which one is that?

ADV McCONNACHIE: Is the allegation that repeatedly

made by Mr Koko in his affidavit and in all the nine hearings.

CHAIRPERSON: Yes.

ADV McCONNACHIE: That Eskom misled the High Court

CHAIRPERSON: Yes.

ADV McCONNACHIE: Regarding Mr Koko's role in the McKinsey MSA translation.

CHAIRPERSON: Yes.

ADV McCONNACHIE: And the various imputations that he
10 has made of dishonesty against Eskom.

CHAIRPERSON: Yes.

ADV McCONNACHIE: And also we Chair very serious accusations made against the three judges of the full court.

CHAIRPERSON: Ja.

ADV McCONNACHIE: In Pretoria.

CHAIRPERSON: Ja.

ADV McCONNACHIE: Who Mr Koko suggests were part of what he has colourfully terms the Koko hunt.

CHAIRPERSON: Ja. Okay no that is fine. To a very large
20 extent that does not disturb the concern I want to put to you. And that concern is this that you know when your – when your – when the person who is applying for leave to cross-examine as complains that a witness has implicated them in corruption or state capture that is an easier application to grant. This one does not appear to fall within

that as I see within that category as I see it. The – this one seems to revolve around saying in effect what this witness has said about us is factually not true or is just not justified by the evidence. You know.

Now my inclination with regard to matters such as that is to say this is an inquiry. You have got evidence leaders who lead the evidence and who act or perform their duties in terms of among others rules that say they need to question witnesses with a view to establishing the truth.

10 In those circumstances and most of course with where we are now in terms of trying to wrap up the evidence there may be difficulty in seeing why it is in the interest of the work of the commission and of course that is what the rules say why it is in the interest of the work of the commission to grant leave to cross-examine.

Mr Koko is one of those witnesses who has appeared here many times and has been questioned many – for a long time by the evidence leader of the relevant work – work stream.

20 Of course the inquiry is – functions on the basis that if for example an employee of Eskom – official of Eskom or former official of Eskom is before the commission and gives certain evidence Eskom is entitled if it thinks that the evidence is not correct to place or give the commission evidence that will give the correct picture so that the

witness can be questioned on the strength of all the evidence.

But also Eskom could say well or could have said well if this witness of ours has not been led we suggest that this witness be led because he or she will then be able to put the correct picture.

So my inclination with this category is – is that I will struggle to conclude that it is in the interest of – of the work of the commission to grant leave. So that is what I wanted
10 to put to you but you can address me.

ADV McCONNACHIE: Thank you Chairperson I appreciate that sphere on your concerns.

CHAIRPERSON: Yes.

ADV McCONNACHIE: And I intend to address those concerns directly in three parts with your leave Chair.

CHAIRPERSON: Yes. Yes.

ADV McCONNACHIE: The first is that very important concern about the allegations that Mr Koko has made and whether Eskom could truly be categorised as an implicated
20 party in terms of the rules.

CHAIRPERSON: Yes.

ADV McCONNACHIE: Which I believe would be your first concern Chair.

CHAIRPERSON: Yes, yes.

ADV McCONNACHIE: The second concerns then relates to

the proposed line of cross-examination that Eskom proposes to address those allegations. And the third link to that is why that line of cross examination would be assisting the commission in wrapping up its work and be in the best interests of the commission.

So Chair ..

CHAIRPERSON: Yes. Ja.

ADV McCONNACHIE: So Chair in the course of that I hope I would address the concerns.

10 **CHAIRPERSON:** Ja. Yes.

ADV McCONNACHIE: If I may start then Chair with that very first point that you raised with me.

CHAIRPERSON: Ja.

ADV McCONNACHIE: And that is the question of the allegations and the implications. Chair we have summarised those allegations again for your reference at page 4 of the notes that I handed up and onwards.

CHAIRPERSON: Yes.

20 **ADV McCONNACHIE:** And I do not intend to take you through in any detail through the various allegations that Mr Koko made in his affidavits and before in this hearing.

CHAIRPERSON: Yes. Yes.

ADV McCONNACHIE: But I think the pertinent point you put to me Chair is how does that implicate Eskom?

CHAIRPERSON: That is right yes.

ADV McCONNACHIE: And if I may start with the first allegation that Mr Koko makes.

CHAIRPERSON: And – and – and the implication might not just be implication but implications in the kinds of allegations that the commissions is investigating.

ADV McCONNACHIE: Indeed Chair.

CHAIRPERSON: You know.

ADV McCONNACHIE: Indeed.

CHAIRPERSON: Because otherwise if it is just some
10 implication that does not fall within what we are investigating there might be a problem to.

ADV McCONNACHIE: Indeed Chair.

CHAIRPERSON: Yes okay.

ADV McCONNACHIE: If I may start with that first allegation. Chair you will recall that Mr Koko in his evidence on 3 December suggested that Eskom had fabricated the disciplinary charges that he had faced in January of 2018 and he made the pertinent allegation that they fabricated these on the instructions of the then Deputy
20 President and the suggestion was in essence Chair one of almost reversed state capture a form of interference in Eskom's functions which resulted in – in Mr Koko's words abased the set of disciplinary charges put to him in January of 2018.

Those are the disciplinary charges Chair that Mr

Koko in the course of his disciplinary hearing in February of 2018 he resigned thirty minutes into that hearing rather than answering to those charges.

But nevertheless he has used these proceedings to perpetuate this narrative that those charges were baseless and had no substance even though he in essence ran away from those charges Chair.

CHAIRPERSON: Of course – of course it is not unreasonable to think that a bystander could well think that
10 he was running away from facing those charges which – which would not be consistent with any allegation that those charges were without foundation.

ADV McCONNACHIE: Indeed Chair but he has used these proceedings of course to present a different narrative that he...

CHAIRPERSON: No, no I understand that but all what I am saying is that mere point could well send a message to the public that does not support any allegation that the – that Eskom had brought baseless charges against him because
20 if they were baseless why did he not meet them head on?

ADV McCONNACHIE: Indeed Chair we would hope that that would be the reasonable inference that someone would draw but the implication that Mr Koko and the allegations he has continued to make is to say that..

CHAIRPERSON: Oh of course you – you may appreciate

why it is relevant for me to raise that.

ADV McCONNACHIE: Indeed Chair.

CHAIRPERSON: That is simply because it may dilute the strength of your case insofar as you say this person says we brought baseless charges against him insofar as it goes to that. You have a situation where by his conduct the public might not or at least some of the public might – part of the public might not believe that.

ADV McCONNACHIE: Chair that is the inference we hope
10 would be drawn.

CHAIRPERSON: Yes.

ADV McCONNACHIE: But of course Mr Koko has presented a very different version in front of this commission.

CHAIRPERSON: Ja. Yes.

ADV McCONNACHIE: And it goes to the point of implication because Mr Koko has in essence inferred that the board of Eskom breached its fiduciary duties by putting together trumped up charges based on external interference which of course Chair is a very serious criminal offence that
20 goes to PFMA obligations of the board, its fiduciary obligations which are backed up by criminal sanctions. We suggest the Chair that certainly is a – an allegation which is very much at the heart of the commission's work and indeed part of – of course the commission's role is not only to address that maladministration that has occurred but also to

support efforts to uncover maladministration and indeed Mr Koko's allegations calling to question those efforts.

But Chair the second and more important allegation which Mr Koko has made is as I mentioned initially the persistent allegation that Eskom misled the High Court that the High Court itself was misled regarding Mr Koko's role in the Master Services Agreement.

That is the thread that runs between the first and second allegations. Mr Koko of course tells the commission
10 repeatedly that he had nothing to do with the Master Services Agreement in his own words he said he had zero role – zero role whatsoever and he also denies any involvement in facilitating that agreement, settlement for the R1.6 billion that was ultimately paid out unlawfully to McKinsey and Trillian.

But Chair Mr Koko has in his affidavit initially told the court to quote and this is his original affidavit to the commission paragraph 230 he says quote:

20 "Eskom clearly did not make proper honest disclosure to the court."

But in his submissions to the court – to the commission rather on 3 December he went further to then make very serious allegations against the court itself where Chair on 3 December Mr Koko it is a long passage which I will not give to the court but we summarise it at page 6 of

the notes.

In essence again to quote says?

“The members of the court the full bench was caught in the state capture theory”

It was his quote. In subsequent proceedings he has doubled down of those allegations Chair. He has gone on to – and this is a quote taken from his proceedings on the 4th of May this year which we quote at page 7 paragraph 12.7. He suggests and I again quote

10 “And I think the gossipers and the people that are on the Koko hunt missed it the various allegations including your colleagues at the Pretoria High Court which is one the very painful things to me because they concluded there was a corrupt relationship and I am saying to you if they had regard to the evidence that you now have they would have reached a different conclusion.”

20 So Chairperson there are two very serious allegations combined in there. The first is one that says Eskom in its efforts to address maladministration and corruption has in effect committed grave breaches of its duties; it has lied to the courts and Mr Koko seeks to exonerate himself but he also then makes very serious

attacks on the integrity of the judicial process and the courts itself.

CHAIRPERSON: You see insofar as the basis for Eskom's application is this man has said we have behaved badly. You know. I do not see why it is not enough to leave it to the evidence leaders to put the correct picture to the public. You see. Whatever bad conduct it is if it is not corruption, state capture, fraud you know.

10 So – so – because imagine if over the past three years I was granting applications where that is the complaint how many – how many people would have been – would have occupied the time of the commission you know. So that is my difficulty where you are not implicated in acts of state capture, corruption and fraud because I think primarily the rules seek to afford those – that category of people you know this opportunity of cross-examination.

20 It may be that technically it is not like that but in the end when one considers the interests of the function of the commission – the work of the commission it seems to me that it is reasonable to say look as far as possible if your complaint is simply that somebody has said you have lied about them that kind of thing that should be sufficiently taken care of by the fact that there are evidence leaders of the commission who in terms of the rules I directed fashion witnesses with a view to establishing the truth you know.

So – so that – those – that would be my inclination.

Okay.

ADV McCONNACHIE: If I could give two responses Chair?

CHAIRPERSON: Ja. Ja.

ADV McCONNACHIE: The first response is that these allegations we would submit do amount to a form of allegations to state capture. The first allegation is that Eskom put together trumped up charges on the basis of purely external, political interference.

10 And the second is that Mr Koko is the victim of a grand conspiracy – a conspiracy hunt where he is being maligned and in fact Eskom has misled the courts about his role in state capture.

 So Chair we would submit that both of those are again accusations levelled at the Eskom board and the Eskom directors which suggests grave breaches of fiduciary duties which of course go the very core of this commission's function around the proper functioning of state – organs of state, parastatals and ensuring that maladministration,
20 corruption is adequately addressed and nipped in the bud.

 But Chair the second point and the question you have put to me – a very important question is – is it not enough that the evidence leaders have led the evidence and that brings me to the second topic which I intended to address and that is the line of cross-examination Eskom

proposes.

Because of course Chair we do not for one moment seek to undermine or criticize the evidence leaders for the manner in which they presented the evidence before the commission. Eskom's line of cross-examination is instead aimed to build upon and to compliment the line of examination that Mr Seleka and others have already presented.

10 But what we suggest Chair is that there are two important gaps which would be important for the commission to thaw and to at least have the proper version in front of the commission.

The first of course Chair is that none of those very serious allegations that I have addressed have encountered a – any response – forthright response thus far.

Mr Koko has had nine separate occasions in front of the commission where he has voiced these allegations. They have all been left in the air which of course leaves a significant taint both on Eskom and on the integrity of the
20 judicial process that Eskom pursued.

But Chairperson the – the second part we would suggest is that what is underlying all of Mr Koko's allegations against Eskom is his persistent allegation that he had no role to play in the Master Services Agreement and the unlawful payments that flowed from that.

And that is what we propose would be the crisp focus of Eskom's line intended and proposed cross-examination.

CHAIRPERSON: Of course that is – that is one of the things that are at the heart of what the – one of the features of what the commission is looking into in relation to Eskom and of course he has been questioned quite extensively on that.

ADV McCONNACHIE: Indeed Chairperson.

10 **CHAIRPERSON:** It might not be to your liking or your client's liking but he has been questioned and the questioning as I understand it there may still be – he may still be required to file – he might still be sent written questions and file a written answers under affidavit but that has received quite some – quite some time has been devoted to that is it not?

ADV McCONNACHIE: Chair we address that point at page 8 and 9 of the notes and indeed we could not suggest that Mr Seleka has not addressed Mr Koko's role and has – he
20 has indeed put questions to Mr Koko related to that role but what we suggest Chair is we have listened very carefully to the questions and Mr Koko's answers. We have studied the transcripts but we submit that there are additional lines of questioning which would be important to pursue to ensure that Mr Koko is put the sword in essence and to commit to a

version. Because Mr Seleka has of course elicited some very telling responses from Mr Koko but there are a number of loose threads connected to three main topics Chair.

That is Mr Koko's initial role in the negotiations, his role in the settlement process and his role in the payments. And we have outlined Chair a couple of illustrative points where we submit that there are – there is need for focusses cross-examination of Mr Koko.

CHAIRPERSON: Yes.

10 **ADV McCONNACHIE:** In a way which of course Mr Seleka as an evidence leaders would not be able to delve into that in (talking over one another)

CHAIRPERSON: Ja I do not want to duplicate that. I do not want to duplicate that.

ADV McCONNACHIE: I certainly will not but...

CHAIRPERSON: Ja.

ADV McCONNACHIE: But if I could give you one example Chair as an illustration?

CHAIRPERSON: Ja.

20 **ADV McCONNACHIE:** Of where we believe that Mr Koko needs to be...

CHAIRPERSON: Well maybe do not give it to me but I – I can tell you that you are most welcome to approach Mr Seleka and make suggestions of areas where you – you think as Eskom – as Eskom would like him to consider to

say we would like to consider the following but that will not – I do not think that would be good enough to grant leave as such because that is something that falls squarely within what – what the evidence leader is dealing with and it is something that the commission is dealing with.

ADV McCONNACHIE: Chairperson certainly Eskom has provided assistance to the evidence leader's team and we...

CHAIRPERSON: Ja.

ADV McCONNACHIE: But we understand at least from the
10 19th of May the final closing portion of the hearing of Mr Koko that was the very last time that he will called to the commission unless the application for cross-examination should be granted.

CHAIRPERSON: Well certainly I think that in terms of him appearing I think what was said was that subject to cross-examination he would not be called back but not only he but there are a few other witnesses in respect of whom arrangements have been made that they would be sent written questions and they would be obliged to provide
20 responses by way of affidavits.

So – so that could be taken care of. Obviously it is not the same as questioning and when a witness is on the witness stand but this is a commission of inquiry – it is not litigation so some of the things – one has got to balance a lot of factors.

But I have given you I think...

ADV McCONNACHIE: Indeed Chair.

CHAIRPERSON: More than enough time.

ADV McCONNACHIE: And if I may just conclude by briefly addressing that last point Chair.

CHAIRPERSON: Ja.

ADV McCONNACHIE: Why it would be in the commission's best interests. And that comes to the nub of it that Eskom proposes a crisp focussed set of cross-examination of no
10 more than three hours which would be led by Mr Ngcukaitobi ...[audio cut] stick to the facts. He was briefed for Mr Koko's disciplinary inquiry. He was also the lead counsel in Eskom's review application to set aside the MSA and various other contracts. And the proposal is that because Mr Nguckaitobi is so deeply steeped in the matter, he could render great assistance to the Commission by focussing on those final lose threads, putting it to Mr Koko and for once and for all getting rid of the incredible negative aspersions that Mr Koko has cast, not only on
20 Eskom, but also on the judiciary.

And we had hoped, Chairperson, that after Mr Koko's nine separate appearances, three hours would certainly be enough and it will be more than just in the circumstances to allow Eskom to assist the Commission to finally put to bed Mr Koko's very serious allegations.

Chair, we have also suggested - of course, we understand that there will be opportunity for further written questions to be put to Mr Koko, but we would submit, Chair, that a witness cannot come and both seek to exonerate himself, which goes to the core of the function of the Commission, but in doing so, issue very serious allegations of state capture and unlawfulness and indeed criminal offences against those who have sought to bring him to book and to ensure that he is held accountable for his actions.

10 So, Chair, in those circumstances, we submit that it would be of great assistance to the Commission to make those focussed submissions and of course it would be a compliment to written questions that might be put to Mr Koko but three hours, we would submit, presented by senior counsel, who has for years been up close to these matters, would be of great assistance in the Commission in concluding its work.

 So, Chair, I have – those are our submissions. I will listen carefully to Mr Barrie and if needs be, I will ask
20 leave for a very brief reply, if that would be in order.

CHAIRPERSON: Well, you might not get a chance to reply. [laughs]

ADV McCONNACHIE: It is in your hands, Chairperson.

CHAIRPERSON: Yes, we have got to use the time that we have properly. I had hoped that we would finish at about

quarter past, twenty past. We have gone beyond that but because I am clear in my mind, I will not hear any further argument. The application is dismissed. I will not give reasons but if they are asked for, I will grant them. I will give them. Thank you.

ADV McCONNACHIE: Thank you, DCJ.

CHAIRPERSON: Thank you, Mr McConnachie Thank you.

ADV SELEKA SC: Thank you, Chair. I will then be excused ...[intervenes]

10 **CHAIRPERSON**: You are excused.

ADV SELEKA SC: Thank you.

CHAIRPERSON: Ja, you are excused.

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: Okay. Mr Barrie, you are excused as well.

ADV BARRIE SC: Thank you, Mr Chair. I will not ...[intervenes]

CHAIRPERSON: Thank you.

20 **ADV BARRIE SC**: We will... [microphone not working] ...in due course not be written responses to what has been put to us by Mr Seleka, I think also during the past week.

CHAIRPERSON: Okay. No, that is fine.

ADV BARRIE SC: I think... [microphone not working – unclear] ...we committed ourselves for the 10th of June for that purpose and we will do our best to comply with that.

Thank you, sir.

CHAIRPERSON: Okay, thank you, thank you.

Mr Myburgh, do you need me to adjourn a bit, for five minutes?

ADV MYBURGH SC: Yes, please, Chairperson.

CHAIRPERSON: Yes. Okay. I will adjourn for ten minutes so that we can start with the day's witness. We adjourn.

INQUIRY ADJOURNS

10 **INQUIRY RESUMES**

CHAIRPERSON: Good morning, Mr Myburgh. Good morning, everybody.

ADV VAN DEN HEEVER: Good morning, Chairperson.

CHAIRPERSON: Good morning. I had hoped we were going to start earlier. I am sorry that it did not happen. Thank you. Mr Singh.

MR SINGH: Good morning, Chair.

CHAIRPERSON: Good morning to you. The oath which you took yesterday will continue to apply today.

20 **MR SINGH:** That is fine, sir.

CHAIRPERSON: Okay, thank you.

ANOJ SINGH: (s.u.o)

ADV MYBURGH SC: Thank you, Chairperson.

CHAIRPERSON: Let us continue. Yes.

EXAMINATION BY ADV MYBURGH SC (CONTINUES):

Mr Singh, could I ask you, please, to go to Bundle 5(b), your exhibit, and to turn up page 1039?

MR SINGH: Yes.

ADV MYBURGH SC: You will recall that you asked yesterday for an opportunity to reflect on this memorandum ...[intervenes]

MR SINGH: Yes, sir.

ADV MYBURGH SC: ...overnight?

MR SINGH: That is correct.

10 **ADV MYBURGH SC**: And did you have an opportunity to do that?

MR SINGH: Yes, sir.

ADV MYBURGH SC: Alright. Please go ahead.

MR SINGH: Sorry?

ADV MYBURGH SC: Please go ahead.

MR SINGH: With?

ADV MYBURGH SC: I had asked you specific questions ...[intervenes]

MR SINGH: Oh, yes.

20 **ADV MYBURGH SC**: It was held over.

MR SINGH: Okay. In terms of, if I recall correctly, you wanted me to respond to the fact that this was a new procurement event. Is that correct?

ADV MYBURGH SC: I wanted you – yes, that was amongst the questions but you can address that.

CHAIRPERSON: I do not know whether it is all of us but it seems that there is nobody is audible as they ought to be. At least to me. Maybe you are saying the same about me. [laughs] I do not know, maybe ...[intervenes]

MR SINGH: No ...[intervenes]

CHAIRPERSON: ...go closer to the mic. I do not know but it just not as audible as should be. Maybe the technicians can attend to it. Okay. Mr Myburgh.

ADV MYBURGH SC: Thank you. Yes, Mr Singh, it is
10 amongst one of the things I wanted you to consider.

MR SINGH: So, Mr Chair, in terms of me bringing a new procurement event. Mr Chair, as you would see, this has been contemplated as a contract extension to the previous contract that – to the contract that we had with Regiments. So in that then, Mr Chair, it seems not to be a new procurement event. As I have explained yesterday, it was – there were two streams.

There was an advisory stream that provided advice on the cross currency swops and then there was an
20 advisory stream that provided advice on the actual raising of the funding with China Development Bank in terms of reducing the cost of funding and reducing the cost of the cross currency as well. So it was advisory in nature.

ADV MYBURGH SC: So, as I understand it, they executed this fund raising task. Is that right?

MR SINGH: Look, as I said yesterday, Mr Chair, it was not executed by them. The counterparties to the actual transactions would have been JP Morgan and it would have been the China Development Bank but what they did do was, was to provide advisory services in terms of reducing the cost of funding relating to the cost associated with the China Development Bank loan and the cross currency swops that were eventually executed to JP Morgan. And that is outlined in the document, Mr Chair. If you would
10 like me to take you to that.

ADV MYBURGH SC: Well, let us go, if we may. But now you have told us they provided advisory services in reducing costs. Could you – you can keep that page open, but could I ask you, please, to go to BB-3(a)?

MR SINGH: [No audible reply]

ADV MYBURGH SC: And you remember earlier in your evidence from... you referred to MSM 177. That is the letter of the 20th of January where you made – or handwritten notes were reflected on it. Correct?

20 **MR SINGH**: Yes.

ADV MYBURGH SC: Do you remember?

MR SINGH: Yes.

ADV MYBURGH SC: Please, would you turn up 177, MSM?

MR SINGH: 177?

ADV MYBURGH SC: 177. You indicated to us yesterday that the effect of the handwritten annotations at – was that fundraise was excluded from this contract. Is that correct?

MR SINGH: That is correct, sir.

ADV MYBURGH SC: So let us just see what it is that Regiments were to do, having taken over from Nedbank. Could you go to 179 at paragraph 235?

MR SINGH: [No audible reply]

ADV MYBURGH SC: Amongst the deliverables was at
10 235:

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

Is that correct?

MR SINGH: Where is it?

ADV MYBURGH SC: 235. So their job, as an advisor who had been taken over from Nedbank, was:

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

MR SINGH: That is correct, sir. Evaluation would probably have been where they would look at what was available and select.

ADV MYBURGH SC: And 236:

“Assisting the preparation and management of

capital raising related tenders, RFI...”

Is that correct?

MR SINGH: That is correct, sir.

ADV MYBURGH SC: And its:

“...participate in the negotiation of commercial terms of funding from the shortlisted funder...”

MR SINGH: That is...

ADV MYBURGH SC: Is that correct?

MR SINGH: That is...

10 **ADV MYBURGH SC**: You seem that you are fading away.

MR SINGH: I said that is correct, sir.

ADV MYBURGH SC: Alright. Now, what we do know is that they were allowed to work on this project for about 12-months without a contract...

MR SINGH: Sorry, sir?

ADV MYBURGH SC: They were allowed to work on the task for 12-months without a contract ...[intervenes]

MR SINGH: No ...[intervenes]

20 **ADV MYBURGH SC**: ...and one was put in place or an extension was put in place *ex post facto*. Correct?

MR SINGH: Yes, sir.

ADV MYBURGH SC: And can we deal with the question of whether you were under any legal obligation to pay them this excess(?)?

MR SINGH: Mr Chair, in terms of the document that the –

well, in terms of the arrangement that we had with Regiments at the time, this was part of the original scope of work. As I said, it was this scope during this period of time as – when this LOI was fine(?) due to the fact that it was no appropriate for them to engage in this type of activity at the time but there was always an understanding that they were going to be able assisting the execution of the funding. So from that perspective, there was an understanding.

10 **ADV MYBURGH SC**: Yes, but I mean, were you obliged to pay them this amount?

MR SINGH: In terms of the work that was executed, yes.

ADV MYBURGH SC: The work had already been done.

MR SINGH: Yes.

ADV MYBURGH SC: Then they came to you and they proposed that you pay them R 166 million.

MR SINGH: No, no. It was on the basis that the work was being done at risk.

ADV MYBURGH SC: Yes. I see. And when it was agreed
20 that – who agreed that the work would be done at risk?
You?

MR SINGH: Well, in terms of the understanding out of this LOI, Mr Chair, it was this scope at this time. At this point in time, it was the scope but it was not under the – it was not on the basis that the work would never be done.

ADV MYBURGH SC: Because re-scope, so it did not provide for it.

MR SINGH: Sorry, sir?

ADV MYBURGH SC: It was re-scoped in the sense that it did not provide for it. It gave a fixed fee.

MR SINGH: No, I do not think the fixed fee included the issue of actual fundraising in terms of the mandate that was then concluded.

ADV MYBURGH SC: Yes, well, that is really what I am
10 getting at, was this fundraising.

MR SINGH: Look ...[intervenes]

ADV MYBURGH SC: Just now you said it was not fundraising. You said it was advisory services.

MR SINGH: In terms of the advisory services that was preformed Regiments relating to the cross currency swop to JP Morgan but the cross currency swop to JP Morgan and the China Development Bank loan.

ADV MYBURGH SC: Mr Singh, did it involve some fundraising or not?

20 **MR SINGH:** Look, Mr Chair, this relates to advisory.

ADV MYBURGH SC: Advisory services?

MR SINGH: Yes.

ADV MYBURGH SC: And you say it fell outside of the 20 January document?

MR SINGH: Yes, sir.

ADV MYBURGH SC: Alright. Alright, you have any other comments you want to make on the memorandum at 1039?

MR SINGH: Other than the fact that the memorandum covers the value that was added to the process. I think you also raised a question yesterday, relating to the ...[intervenes]

CHAIRPERSON: I am sorry, Mr Myburgh. Are you going back to Bundle 5?

ADV MYBURGH SC: Yes. The memorandum at 1039.

10 **CHAIRPERSON:** 1029 or 1039?

ADV MYBURGH SC: 1039.

CHAIRPERSON: 39, ja. Okay.

MR SINGH: I think there was one additional question that you had, relating to a query by a certain Mr Bluhm, I think it was.

ADV MYBURGH SC: Yes.

20 **MR SINGH:** I did not have the opportunity to reflect on that. I did not – I have not seen Mr Bluhm's comment. I just take it on face value in terms of my(?) name(?) which you proposed to me. You would have regard to the fact that I did say there were two streams of work that was performed. One was advisory, relating to the cross currency swops and one was advisory relating to the production of the costs, relating to the China Development Bank funding facility.

So from that perspective there are two different streams of work that was performed by Regiments and that may account for the difference in the expected fee that Dr Bluhm was referring to versus to what we had actually paid.

ADV MYBURGH SC: Alright. Now, can I take you to the related evidence of Ms Makgatho? And that you will find in Exhibit BB-10.

MR SINGH: [No audible reply]

10 **ADV MYBURGH SC:** Ja perhaps I could – oh, sorry. If you could turn on page to pick up from page 29?

MR SINGH: [No audible reply]

ADV MYBURGH SC: Now, Mr Singh, perhaps I could just summarise aspects of Ms Makgatho's evidence. You dealt with it in your affidavit and then we can go through it in more detail. But, I mean, essentially, the point that she makes, is that in her view there really was not a need for Regiments.

20 She gave evidence about a trip to Beijing with you in July 2014 to meet China Development Bank. She testified about the fact that when she returned from Europe, after further international travel at the end of July, she was shocked to find out that Regiments was on the scene and negotiating with CDB.

And then she talks about various emails and

memos that she sent to you and Mr Molefe about her concerns regarding Regiments. And it is – that exchange where you put in a memo, she put in a memo. It was noted by Mr Molefe. And then she ends off by referring to the conclusion of the CDB agreement. You have studied her evidence, I take it?

MR SINGH: The relevant paragraph that was referred to in the 10(6).

ADV MYBURGH SC: Alright. Well, let us go to – at page
10 29. She talks about at paragraph 113 a trip and that takes us to 115. She says”

“On 1 July 2014, Anoj Singh and I attended the planned meeting with CBD in Beijing.

The discussion started with normal greetings and introductions.

As we were busy with introductions, a young Chinese official handed out a page dated 29 October 2013 to everybody in attendance with a list of names on it...”

20 Do you confirm that you had this meeting on the 1st of July 2014?

MR SINGH: Mr Chair, I do not off hand recall the meeting, the July 2014 meeting I do not have any need to doubt Ms Makgatho’s version.

ADV MYBURGH SC: Yes, but you do, presumable, recall

going to Beijing in July together with Ms Makgatho?

MR SINGH: Look, the reason why I do not recall it specifically, Mr Chair, is that I quite a few occasions to visit Beijing, not only for CBD but other investor meetings as well.

ADV MYBURGH SC: But do you not remember the meeting you had?

MR SINGH: I remember having meetings with CBD but this particular one, I cannot confirm that it did or did not
10 happen.

ADV MYBURGH SC: So had you had other meetings before this with CBD?

MR SINGH: I may have, sir. I do not recall.

ADV MYBURGH SC: Alright. And if you go to 116, she says:

“I may be speculating ...[intervenes]

CHAIRPERSON: I am sorry. I think, Mr Singh, Mr Myburgh was also asking whether you do not remember a meeting where you went there with her, with
20 Ms Makgatho.

MR SINGH: No, Mr Chair, I – there would have been occasion for me to have a meeting with CBD meeting with Ms Makgatho.

CHAIRPERSON: Oh, there would have ...[intervenes]

MR SINGH: There would have been, yes.

CHAIRPERSON: ...be more than one or just one as you recall?

MR SINGH: I do not recall. I would assume ...[intervenes]

CHAIRPERSON: Assume that there would have been one?

MR SINGH: That there would have been at least one.

CHAIRPERSON: Okay alright.

MR SINGH: Yes.

CHAIRPERSON: Okay.

10 **ADV MYBURGH SC:** Alright. She says at 116:

“I may be speculating but given the demeanour of everyone who received the 29 October 2013 list, I expected that a meeting might have been held on that day and that discussions and possible agreements might have been reached...”

What do you say to that?

MR SINGH: Mr Chair, as she says, she is – she may be speculating. Mr Chair, I do not recall this,
20 29 October 2013 list of the nature of the meeting that would probably potentially occurred on the day.

ADV MYBURGH SC: Had you gone to Beijing and had you attended a meeting with CDB before the 1st of July 2014?

MR SINGH: Mr Chair, as I say, I will be really speculating. I – as I said, I been to Beijing on a number of occasions

for CBD meetings, particularly, and other meetings relating to investors as well. So it could possibly be true but I cannot completely confirm that if I was there on the 29th of October.

ADV MYBURGH SC: And then at paragraph 121, she says:

“We continued with the discussions.

Although we had to start from a zero base, the discussions lasted the whole day.

10 We finished between 04:30 and 05:00.

As we were making our way out, Anoj Singh requested to have a private discussion with the executive in charge of the CDB inner(?) branch together with an interpreter who was fluent in English.

The meeting lasted approximately 30-minutes...”

Do you want to comment on that?

MR SINGH: Mr Chair, there is nothing unusual around the
20 CFO having a discussion with the counterpart of the bank and the discussions, I would assume, would have been around the fact that we were discussing the, let us call it the most strategic relationship between China and South African and Transnet and the impact of the – how can I say – the – or the impact that the loan would have in terms of

the South African environment and the country. So it would have been discussions around a more strategic nature of the relationship between CBD and China.

ADV MYBURGH SC: Alright. Then at paragraph 122:

“After the meeting, Anoj Singh told me that his travel plans had suddenly changed and he was no longer travelling back home with me the following day.

10 He indicated that he will be travelling via London to South Africa that same afternoon.

He then requested me to collect his suitcase which he had left in his hotel room before I leave for South Africa.

The following day, before I booked out of the hotel, I picked up Anoj Singh’s red suitcase from his home.

I travelled back home with my luggage and his red suitcase.

I do not know what was in the suitcase...”

20 Oh, sorry.

“I do not know what his suitcase contained as I did not open it...”

Do you want to comment on that?

MR SINGH: Mr Chair, I deny this ever took place. I do not recall ever giving any of my luggage to anybody and it

is a highly strange thing for her to say but as I said, I deny it. I do not recall it.

ADV MYBURGH SC: She says at 123:

“When I landed at O.R. Tambo Airport, I thought I would take the suitcase with me when I go back to work.

However, when I switched my cell phone on, I received a message from Anoj Singh that his driver will collect his suitcase from me at the airport.

10

When I entered the arrival hall, I met Anoj Singh’s driver who collected the red suitcase from me...”

MR SINGH: Well, Mr Chair, I do not have any recollection.

CHAIRPERSON: You have now – what did you have then?
A red suitcase?

MR SINGH: Not that I recall, sir.

CHAIRPERSON: H’m. But when I heard this or when I heard her give evidence, the thought that crossed my mind is, why you would have asked her to take the suitcase with her instead of travelling with your own suitcase. It seems strange to me.

20

MR SINGH: Well, that – hence me saying it seems strange to me too, Mr Chair. As – if I was going to London, what did I go to London with?

CHAIRPERSON: H'm.

ADV VAN DEN HEEVER: Chairperson, sorry. We cannot hear you.

CHAIRPERSON: And even me?

ADV VAN DEN HEEVER: We could not hear you - the question that you posed.

CHAIRPERSON: Oh, okay.

ADV VAN DEN HEEVER: If you can just please just repeat it so that we can hear it.

10 **CHAIRPERSON:** Oh, okay. Well, I just said to him. When I – when this witness gave evidence and when I read the affidavit, it seems a strange thing that he would ask – he would have asked somebody to take his suitcase and come back to South Africa with his suitcase and he went via another route. So he – his response was it is strange to him as well, because why – what would he have taken with him to London. That is what you said, right/

MR SINGH: That is correct, sir.

20 **CHAIRPERSON:** Ja. Of course, the other question is. It is would also be strange, would it not, for her to fabricate such a story? Is it not? If, say somebody asked me to take their suitcase with me while they travel somewhere and when I arrive at O.R. Tambo, I thought I would take it home and then come to work with it on Monday or whatever, the next working day but then there was a

message which said that somebody would pick it up and somebody picked it up and that is where it ends because that is where it ends. Nothing turns on the whole thing. But it is not the kind of thing one would expect somebody to fabricate.

MR SINGH: Well, equally, Mr Chair, it would not be something that I would request.

CHAIRPERSON: H'm.

MR SINGH: For someone to do.

10 **CHAIRPERSON**: H'm.

MR SINGH: And, Mr Chair, I mean, I am – miss – I am not too sure why she would do this, Mr Chair, but again, if you look at the procedures at the airport, Mr Chair, one of the things that they would ask you are you all your bags? Are you travelling all your bags? Did anyone pack your bags for him? So she would have had to make these declarations. How did she make those declarations at the airport?

20 **CHAIRPERSON**: But she – would she be somebody that you would have thought she would fabricate something against you in terms of your relationship?

MR SINGH: Well, as I characterised my relationship with her. It was cordial and professional. So...

CHAIRPERSON: Ja.

MR SINGH: Yes.

CHAIRPERSON: Okay. Mr Myburgh.

ADV MYBURGH SC: Thank you. And then to pick up at page 31. I will fast forward to paragraph 126 under the heading: Regiments taking over the CBD Negotiations:

“Upon my return from Europe, which was around end July 2014, I was shocked to find out that CBD was now communicating directly with Regiments and that Eric Wood was leading the negotiations.

10 This was in parallel to Transnet furthering negotiations with CBD...”

Do you want to comment on that?

MR SINGH: Yes, Mr Chair. I think at this point in time, I think we need to understand the context and I think, again not to – well, the context at this point in time was that – given the fact that we had signed the locomotive agreements in, I think it was March 2014.

20 The locomotive agreements that we have signed created the commitment for us to be in a position to pay against the locomotive agreements. Now one of the criteria that the rating agencies employed at Transnet, I think it was particularly the SNP, was a ratio called an AB ratio.

And the AB ratio, basically, looked at the committed funding facilities that any entity would have

versus the commitments that that organisation had in terms of being able to pay. So they would, basically, look at and say okay your cash operations is X, your committed facilities from banks is Y, your committed funding facilities is Z and all of that add up if it came to ten.

And then if you then had commitments or contractual commitments to pay, they would then add that up and if that came to, let us say five, then your AB ration was choice(?) one. And that is the ratio that they would –
10 that is one of the ratios that they actually was quite particular about in the case of Transnet because we were a significant – we were in a significant capital expenditure programme at the time.

And so we were under significant pressure to be able to demonstrate through SNP that we had a AB ratio that was acceptable... In terms of the treasury function at the time, Mr Chair, Ms Makgatho and the team had been reaching a point where there was no significant faction on the discussion that were, I think with China Development
20 Bank.

And this is where, at the point at which I then decided to get Mr Wood involved and Regiments involved to understand to what extent they can actually accelerate the process and the discussions with China Development Bank with the view to conclude its transaction with China

Development Bank.

ADV MYBURGH SC: So at 127, she says:

“I then complaint bitterly to both Anoj Singh and Brian Molefe as I believed that there was no need to use Regiments because of our internal treasury capacity...”

And then at 128 and further, she says:

“Anoj Singh and I continued to argue about the CBD pricing proposal and that then...”

10 If you look at 131:

“...gave rise to a meeting with Mr Molefe...”

Would you agree with that?

MR SINGH: Again, I do not recall this meeting, Mr Chair, but I have no reason to disbelieve Ms Makgatho’s version of...

ADV MYBURGH SC: So at 131:

“Brian Molefe organised a meeting between Transnet and Regiment to resolve the CBD pricing proposal impasse.

20 The meeting was held at the Melrose Arch Hotel.

Transnet was represented by Messrs Singh, Molefe and myself, Regiments by Eric Wood and Mervyn Pillay...”

Is that right?

MR SINGH: That is correct, sir.

ADV MYBURGH SC: And then she records that:

“Mr Molefe suggested that everyone seemed to think that my pricing indication is off the mark and that the one that Eric Wood received from Nedbank seemed reasonable.

I should agree with them as I was the only one who did not agree.

10 I told Brian Molefe that my position had not changed and will not change as the CBD facility is expensive and not worth it...”

Do you confirm that that was the stance that Ms Makgatho adopted at this meeting?

MR SINGH: Mr Chair, as I said, I do not recall this meeting. But again, if Ms Makgatho says the meeting happened, I would take it on face value.

ADV MYBURGH SC: Then at 133:

“I then decided to record my recommendation and concerns.

20 On 21 August 2014, I sent an email to both Brian Molefe and Anoj Singh, detailing my key concerns...”

Can we just go to that email, please? That you will find at page 241, MEN-241. So at 241 in this e-mail that she addresses to you and Mr Molefe, in the first paragraph

she says:

“This e-mail is a follow-up of various discussions I have had with yourself, and in some instances with Regiments included, where I had indicated my discomfort and disagreement on how the China Development Bank Facility negotiations are being handled, Regiments’ pricing methodology, as well as my disagreement of the appointment of Regiments as the transaction advisor for the facility. For the avoidance of any doubt, I would like to bring the following to your attention.”

Then the first point is:

“I respect of your executive authority and powers that go with it, but I also believe that it is my responsibility as the current Transnet Treasurer to advise you on matters relating to Treasury activity. As I indicated, I was not consulted, nor was I aware that Regiments was appointed as the transaction advisor and lead negotiator for the facility, as I believe that there is no need for them to be appointed, given the progress that we have made.”

Do you want to comment on that?

MR SINGH: Mr Chair, I think again here the reason that Regiments or Ms Makgatho refers to Regiments being the lead negotiator, when we had the discussion with China Development Bank in terms of Regiments, part of the team to be able to negotiate and conclude the transaction, there was a request from them that said listen, we understand that we are dealing with Transnet, to the extent that Transnet requires us to deal with any other party there
10 would need to be a letter from us that actually recognises the identity of the other party and from a bank's perspective the only other people that they would engage with other than the, let us say principal which in this case would be Transnet for the Transnet team, would be people that they recognise as lead negotiators or lead arrangers, so that is the reason we sent a letter to CDB or I sent a letter to CDB informing them that Regiments would be part of the team as lead negotiators together with [indistinct].

ADV MYBURGH SC: I understand your evidence crisply
20 really to be that as far as you are concerned, she actually did not have the capacity to handle this sort of transaction.

MR SINGH: Well, ostensibly they failed to reach conclusion on CDB for ...[intervenes]

ADV MYBURGH SC: Sorry, I cannot hear you, Mr Singh.

MR SINGH: I said they had failed to reach conclusion

with CDB up to that point in time.

ADV MYBURGH SC: Yes, but do I understand your ...[intervenes]

CHAIRPERSON: Because of lack of capacity, I think that is the question.

MR SINGH: Well Mr Chair, it was basically Ms Makgatho, then there was Ms Dorothy Kobe and I think there were two others at that point in time that made up the full Capital Markets team at the time and Ms Kobe was relatively new, I think, at the time. Ms Makgatho was relatively new in her position of Group, so I think she was just appointed I think nine months before that, if I recall, I do not recall correctly and she had not run a corporate treasury before, so that was the context within which the funding or the funding plan of Transnet was being executed then together with the fact that we had to demonstrate to SNP the fact that we had an adequate [indistinct], as I explained.

CHAIRPERSON: So the short answer is that you are saying there was no capacity in Transnet's Treasury.

20 **MR SINGH:** In my view ...[intervenes]

CHAIRPERSON: That is what it amounts to.

MR SINGH: In my view at the time, Mr Chair, Transnet Treasury had the ability to take care of the normal mundane and day to day activities that related to funding.

In terms of this particular funding facility for the

locomotives, it was a significant account, we needed to raise R50 billion for the locomotives, it was not a small amount. The local they kept on market probably would have been able to do it over a period of time, but in order for us to be able to deal with the A&B ratio that SNP had asked us to comply with, there needed to be urgencies relating of the fact that we needed to conclude contracts.

The contract with [indistinct] and I think there was one additional one, I cannot remember right now, I think it was [indistinct] or I think it is in my affidavit, but there were two additional contract that we had been negotiating, which also were behind in terms of being able to be concluded and the fact that those two agreements were not concluded in time, there were certain penalties that we incurred.

When we say penalties, it was not physical penalties that we had to then pay R10 million for example, but in terms of higher cost of debt in terms of being able to miss the appropriate timing of the market.

So Mr Chair, in terms of this yes, the Transnet Treasury had capacity, the Transnet Treasury was there, the Transnet Treasury could do all of this, but at the end of the day it needed to be done within a timeframe within the context of the requirements of agencies, given the fact that we had an extra R50 billion that needed to be made.

CHAIRPERSON: So Transnet Treasury did have the capacity, but it was just that they would not be able to do it within the time that it was required to be done.

MR SINGH: Mr Chair, I think the context is the Transnet Treasury had the capacity to take care of the day to day funding that was required.

CHAIRPERSON: Yes.

MR SINGH: This was over and above the day to day funding, all that it formed part of the funding plan.

10 **CHAIRPERSON:** Yes, so they did not have capacity to deal with this type of matter.

MR SINGH: Mr Chair, they did... No Mr Chair, they did conclude transactions with other development financial institutions, AFD, KFW, all of these people are development financial institutions. We had not concluded a transaction with China Development Bank before.

20 Now in terms of dealing with the, I am just, if you have dealt with them before Mr Chair, it is quite easy to conclude a transaction with them, because you know what their pain points are, they have already dealt with you, they have already understood you. I think this was the first time that actually China Development Bank was making an investment into South Africa, so there was a significant amount of, how can I say, groundwork that needed to be done to be able to make them understand the

South African market firstly and what they were getting into, and secondly what our expectations were and what our alternatives were, to put it that way, because I think one of the things that we found with China Development Bank was that they believed that we had no other alternative other than to come to them for funding and this was one of the issues that we needed to across to them, was that yes, we need your funding, but understand that we actually do have alternatives.

10 **CHAIRPERSON:** Mr Myburgh?

ADV MYBURGH SC: Yes, thank you. Perhaps just dealing with the evidence about the size of the team, could I ask you please to go to page 4, MEM4 and have a look at paragraph 7?

MR SINGH: MEM4?

ADV MYBURGH SC: That is in the same affidavit, it is at page 4.

MR SINGH: Yes, yes.

ADV MYBURGH SC: Paragraph 7. The Treasury team...

20 Are you there?

MR SINGH: Yes, sir.

ADV MYBURGH SC: Yes.

“Had a complement of about 40 staff members, i.e. 32 professionals supported by eight administrative staff. Official staff

in Treasury had multidisciplinary skills. Competencies and experience, this included mathematicians, accountants, investment bankers, commercial lawyers, traders, financiers and economists who were all highly experienced with an average 10 to 30 years of experience in their respective fields.”

Do you want to comment on that?

10 **MR SINGH**: Yes Mr Chair, but Ms Makgatho fails to actually say how many people of those 32 professionals were actually involved in the middle office in terms of fundraising activity. As far as I can recall Mr Chair, I do not think they were more than four or six people in the [indistinct] at that time, but I still stand corrected, because it is a long time, but I can recall that it was not many people.

ADV MYBURGH SC: Have a look at paragraph 13 at page 5.

20 “In the months following my appointment as Head of Strategy Finance I capacitated my area by appointing two professionals and later added two additional resources.”

Paragraph 14:

“In addition, more professionals were

appointed to the Treasury team, including professionals in Treasury Operations to handle complex financial accounting matters, a Forex trader and additional cash and debt management professional.”

MR SINGH: So paragraph 14 actually has nothing to do with fund raising or capital raising. Paragraph 13 is more appropriate, as you can see and when she was appointed Head of Structured Finance she basically appointed let us
10 say [indistinct].

ADV MYBURGH SC: Perhaps we could just go back to 241. In the middle of the paragraph under the heading ‘overall governance’ it says:

“When we negotiate and enter into agreement with lenders and investigators we make certain undertakings and covenants that should apply to future facilities as well. The fact that Transnet’s biggest ever transaction is negotiating and decided by
20 outsiders (Regiments) is a cause for concern, as it exposes the company to undue risk. When a negotiator facility risks magnitude we assemble a multidisciplinary team that includes Legal, Tax Accounting, Structured Finance and Risk Management

team members. This is to ensure that all potential risks relating to the facility are identified and mitigated to the extent possible.”

Do you want to comment on that?

MR SINGH: Mr Chair, firstly when Ms Makgatho refers to the fact that Transnet’s ever transaction is negotiated and decided by outsiders, I would assume she is talking about local transactions, or is she talking about this funding
10 facility?

ADV MYBURGH SC: Well, you would be better placed than me, Mr Singh. You responded to this memo.

MR SINGH: Mr Chair, if she is... Well, in both cases, Mr Chair, whether she is referring to the CDB funding facility or whether she is referring to the locomotive transactions where they also played a role as transactional advisors Mr Chair, they do not negotiate.

At the end of the day ultimately the advice comes from transactional advisors. What we as Transnet
20 management decide to do with it is up to us. They will always advise, we will basically agree with some advice, we will disagree with some, but whoever we believe that is in the best interest of Transnet we will then engage with the, either the OEM or whether it was CDB.

In this case Mr Chair, when she says that the

facility of this magnitude, we assembled multidisciplinary team of Legal, Tax, Accounting, Structured Finance and Risk Management, Mr Chair, there was no difference when we concluded the China Development Bank transaction. All of these different, Legal, Tax, Accounting, Structured Finance and Risk Management teams were all included.

You will see later on Mr Chair, when we actually, maybe if we get there you will see there were certain proposals that were made by, that were recommended by
10 Regiments together with JP Morgan that were rejected, and they were rejected particularly for the adverse accounting consequences that it may have for Transnet.

You would recall yesterday when we read an e-mail from Mr Danie Smit in terms of the transaction advisory stream that they were advising on and you will recall Mr Chair, that Mr Smit said that Mr Pillay had provided significant insight in terms of options. Now these are options that we would consider in terms of dealing with the foreign exchange risk relating to the locomotive contracts,
20 but those option opportunities, let us call it the option opportunity that was proposed by Mr Pillay was not considered and was not considered because again of the adverse tax and accounting implications that it would have on Transnet.

So notwithstanding the fact that Regiments was

involved, it did not take away any of the other processes or it did not override any of the other, how can I say, internal, normal internal processes that would happen. What Regiments would bring to the team, they would bring options.

When I say options, now these are not financial instrument options, but they would bring different thinking or different alternatives, let us say alternatives to the table, it was then up to us to decide whether those
10 alternatives were appropriate or not, were good or bad or indifferent and that is what would then go to each one of these Legal people, Tax people, Accounting people, Structured Finance people, Risk Management people to engage, to understand whether this thing that is being proposed, is it good, bad or indifferent.

ADV MYBURGH SC: So if we then go back to page 33 of the memorandum, sorry of the affidavit, we see at page ...[intervenes]

MR SINGH: Page 33?

20 **ADV MYBURGH SC:** Page 33, MEM33. We see at paragraph 105 that you then wrote a responding memorandum, correct?

MR SINGH: Page?

ADV MYBURGH SC: 135, Paragraph 135 at page 33.

MR SINGH: So this is ...[intervenes]

ADV MYBURGH SC: Anoj Singh wrote a memorandum in response.

MR SINGH: Yes, but I am trying to understand whether this memorandum is in response to the e-mail or is it in response to another memorandum?

ADV MYBURGH SC: It is in response, it seems, to the e-mail.

MR SINGH: No, I do not think so, sir.

ADV MYBURGH SC: Alright well, let us go to your
10 memorandum and that you will find at... Well, insofar as it is important, at 133 Ms Makgatho says that she sent an e-mail, you and ...[intervenes]

MR SINGH: so this is there one I assume we just ...[intervenes]

ADV MYBURGH SC: Yes correct, that is the one we ...[intervenes]

MR SINGH: Yes.

ADV MYBURGH SC: Alright, and then she goes on to say:

20 “However, Regiments recommended that Transnet should proceed with the transaction.”

Et cetera, and then at 135 she says:

“Mr Singh wrote a memorandum, attached as annexure MM33, in response to the concerns that I had raised.”

MR SINGH: Okay, that is fine.

ADV MYBURGH SC: Okay, so I want to take you to 285, that is where you will find your memorandum.

MR SINGH: So it is MM36.

ADV MYBURGH SC: Yes.

MR SINGH: Page?

ADV MYBURGH SC: 285. Now you signed this on, at 287, is that 21st of August?

MR SINGH: It is probably 27.

10 **ADV MYBURGH SC:** 20?

MR SINGH: 27.

ADV MYBURGH SC: 27 August 2014.

MR SINGH: It looks like it.

ADV MYBURGH SC: Is that right?

MR SINGH: That is correct, sir.

ADV MYBURGH SC: Alright, so at 285 you see China Development Bank locomotives funding response, and ultimately at 287 you seek this recommendation:

20 “5. It is recommended that the Group Chief Executive approves the response to the Group Treasurer for issues raised on USP R2, 5 billion loan facility with China Development Bank.

So what you are asking really was that Mr Molefe should prefer your response over Ms Makgatho's e-mail.

MR SINGH: No, I do not think that was the purpose of the memo. The purpose of the memo was to, as you would have seen in terms of the e-mail correspondence and the communication, Ms Makgatho had a tendency of actually not coming to my office, but going directly to Mr Molefe because of her relationship she had with Mr Molefe from National Treasury, so the purpose of this e-mail was to actually not have this he said, she said.

ADV MYBURGH SC: Yes.

10 **MR SINGH:** But to get to a point where if Mr Molefe believed that she was correct, he needed to say it.

ADV MYBURGH SC: Ja.

MR SINGH: If he thought I was correct, he needed to say it.

ADV MYBURGH SC: I think we are saying the same thing.

MR SINGH: Yes.

ADV MYBURGH SC: Yes. Alright, it was to resolve the impasse one way or the other.

MR SINGH: Yes.

20 **ADV MYBURGH SC:** So you did not feel comfortable taking the decision yourself, I mean you accepted that it was contentious.

MR SINGH: No, it was not contentious. I was just, this was a mechanism to deal with the, let us call it for want of a better word, the HR issue.

ADV MYBURGH SC: And Mr Molefe then did not do what you wanted.

MR SINGH: Yes sir, evidently.

ADV MYBURGH SC: Correct.

MR SINGH: I think he had noted, yes.

ADV MYBURGH SC: Ja. I want to take you to page 285.

CHAIRPERSON: That is 2?

ADV MYBURGH SC: 285.

CHAIRPERSON: Oh, just the previous page. Okay.

10 **ADV MYBURGH SC:** You talk about Regiments, paragraph 3(a):

“Regiments Capital was appointed as transaction advisors, in terms of the aforementioned mandate Regiments Capital was required to advise on deal struggling, financing and funding options to minimise risks for Transnet.”

Correct? You have seen that.

MR SINGH: Yes.

20 **ADV MYBURGH SC:** Yes.

“Accordingly, the negotiation with CDB to successfully conclude a ZAR funding facility at a ZAR cost not exceeding 9.3% for a tenure not less than 15 years, at no additional fees, part of their mandate.”

Is that correct?

MR SINGH: Yes.

ADV MYBURGH SC: This was part of their original mandate.

MR SINGH: Yes, based on this memo, yes.

ADV MYBURGH SC: Yes, and you say this as at August 2014.

MR SINGH: Yes.

ADV MYBURGH SC: Then if I could take you back please
10 to page 34, so now by this time Ms Makgatho at 136 has mentioned that Mr Molefe noted, wrote 'noted' on your memo.

MR SINGH: Yes.

ADV MYBURGH SC: It says at 137, page 34:

“On 20 August 2014 I drafted an internal memorandum to the Board, seeking approval for funding initiative, subject to acceptable terms and conditions.”

And then she goes in to say at 138:

20 “I later discovered that Anoj Singh had replaced the Treasury Board memo with a PowerPoint presentation that was based on the flawed, Regiments analysis.”

So it seems that disjunction between the two of you continued.

MR SINGH: Yes, sir.

ADV MYBURGH SC: And then just to complete the chronology, at paragraph 140 at page 35 it says:

“Pursuant to Anoj Singh’s representation to the Board, the attached CDB Term Facility Agreement was signed on 4 June 2015, committing Transnet to (she says) a very expensive loan agreement.”

But leaving that aside, do you accept that the agreement
10 was concluded on the 4th of June 2015?

MR SINGH: I do not recall the date, but I can confirm that we did conclude a Term Facility Agreement with China Development Bank.

ADV MYBURGH SC: Perhaps I could take you in conclusion to this to Mr Mohamadi’s evidence. Sorry, if I could just have a second, Mr Chair, if now seemingly mislaid one of my files.

ADV MYBURGH SC: Ja, I would have to come back to that perhaps after the tea adjournment. Perhaps what I
20 can do is I am going to take you to his affidavit when I find mine, but let me just quote to you what he said in evidence from the transcript.

He is in his evidence concluding that the terms of the CDB loan made no commercial sense to him. He testified that, and this is a quote, the only plausible...

Sorry.

“The only possible, plausible explanation in my perspective would be that there was an agenda for payment to be made to Regiments ultimately, or some entity that existed outside of the system.”

He said that on day 93 on page 144 of the transcript. I am going to read that again. He says:

10 “The only possible, plausible explanation in my perspective would be that there was an agenda for payment to be made to Regiments ultimately, or some entity that existed outside of the system.”

Do you want to comment on that?

MR SINGH: Yes, Mr Chair. Firstly Mr Chair, I do not think Mr Mohamady is competent to make that assessment, I do not think he has actually been involved in a loan negotiation in his professional career that would require a facility of 2, 5 billion Dollars from Chinese investors, and I
20 say that very particularly because investors are finicky about what they want.

So when you deal with US investors there is a particular format in which they want loan agreements to be, there are certain formats in which they will, there are certain terms and conditions that they will accept, there

are certain terms and conditions that they will not accept.

When we dealt with the Chinese there were certain terms and conditions that they would accept, there were certain terms and conditions that they would not accept and Mr Chair, in terms of the CDB loan facility that was concluded, Mr Chair, if I do have an opportunity in the tea break I will reference my affidavit, there is attached thereto a document that effectively outlines the benefits associated with the China Development Bank loan facility that I think
10 will take a long way to put Mr Mohamady's concerns at ease.

ADV MYBURGH SC: You see, the other thing that Mr Mohamady said, and I think that is in the affidavit that I for some reason cannot locate, is he echoed Ms Makgatho's position in that he felt that Treasury would have been able to do this job.

MR SINGH: Well Mr Chair, again with hindsight it is perfect science to be able to say yes, I think they would have been able to do it. Mr Mohamady was part of the
20 Group Finance team at the time, he was part of the locomotive acquisition process and had he had the foresight to say that you know, the Treasury team could have done it at the time he would have, he should have raised his concerns at the time with me, but he did not.

ADV MYBURGH SC: I want to [indistinct] Ms Makgatho's

affidavit by taking you to something different. Could you please turn to page 19?

MR SINGH: 19.

ADV MYBURGH SC: 19.

MR SINGH: MEM?

ADV MYBURGH SC: Ja, MEM19. This is something that I dealt with, with Mohamady. I would like to just deal with it now from 71 to 76, not very long. She talks about the fact at 71, five lines down, on that day, and that would have
10 been in about the third quarter of 2015:

“Anoj Singh gave me a funding proposal from Regiments in hard copy and informed me that it was a very important matter that Brian Molefe needed executed speedily. He said that I should excuse myself from attending FinCo and Capec and rather spend a day working on this urgent proposal and draft a memo recommended the proposal for his signature and approval by Brian Molefe.”

20 Do you want to comment on that?

MR SINGH: Mr Chair, I do not recall the specific event in terms of being able to going to Ms Makgatho. I did receive proposals from Regiments, from Absa, from all the banks regularly and the first thing that I would do, Mr Chair, is take the proposals and provide it to Treasury and say we have

received this thing, please review it and let us know what you think of it, so it was a matter of cause.

ADV MYBURGH SC: Now what this reflects is that what was required of her was to draft a memo recommending the proposal for Mr Molefe's signature and approval.

MR SINGH: Mr Chair, I would, it is unlike me to basically say to anyone to take something and draft a memo on the basis that it is not reviewed or understand the implications thereof on Transnet.

10 **ADV MYBURGH SC:** Well that, I think, is the issue, because she says you did do it.

MR SINGH: I deny it.

ADV MYBURGH SC: You deny it.

MR SINGH: Yes.

ADV MYBURGH SC: At 72 she says:

“The Regiments proposal was that Regiments will facilitate a five year R5 billion loan facility that was to be funded by Nedbank.”

20 Do you recall that?

MR SINGH: Mr Chair, as I said I do not recall specifically this Regiments proposal, but as I said the reason maybe is because I received proposals almost weekly from banks, if not more frequently than that.

ADV MYBURGH SC: Yes, but just to retrace the steps, it is

not a matter of simply receiving a proposal. On her version she says that you wanted her to cancel all of her meetings and spend the day working on an urgent proposal and draft memo recommending the proposal.

MR SINGH: As I said, this would not be something that I would have proposed to Ms Makgatho.

ADV MYBURGH SC: Then at 73 she says that:

10 “The proposed facility was priced much higher than normal facilities or smaller loan facilities or domestic bonds. My calculation indicated that Transnet would have to pay an additional R150 million per annum in interest payments on behalf of what Transnet normally pays for similar facilities. This translated into potential losses of R750 million over a five year period. I shared my analysis with Anoj Singh and indicated that I did not recommend the proposal, given potential excessive costs in
20 interest payments. He responded saying that it is an instruction from Brian Molefe and that I should quickly complete the memorandum for approval the same day.”

Comment on that.

MR SINGH: Mr Chair, as I said, I do not recall this and

this is not something that I would have instructed Ms Makgatho to do in any way, shape or form.

ADV MYBURGH SC: At 74:

“I felt very uncomfortable with the same day approval request, as we have never rushed funding initiatives before, and definitely not same day, especially given the potential losses of R750 million over a five year period.”

10 She goes on to say at 75:

“I decided to discuss the matter directly with Brian Molefe and went to his office. I told him that I understand that he expects me to urgently recommend a R5 billion five year loan that Regiments is proposing, wherein R150 million would be unnecessarily occurred per annum, accumulating to R750 million over a five year period, with no clear benefits for Transnet.

20 I was irate at that time, but I specifically told him that should we approve the structure, we will go to jail for stealing money, as we are the custodians of Transnet’s funds.”

And then this piece concludes.

“The structure was overpriced. We had a direct relation with Nedbank, there was no need to use a conduit like Regiments to engage with Nedbank. Brian Molefe agreed with me and said that he will handle the matter. The structure was never implemented.”

Do you have any comment on that?

MR SINGH: Mr Chair, I do not recall Mr Molefe ever
10 engaging me on this matter, to the best of my knowledge
this was never discussed between Brian and myself.
Mr Chair, this was actually something that was phased in
reality. My response to this issue would have been to
Ms Makgatho to engage with Nedbank to understand why
was Nedbank, as she says we had a direct relationship
with Nedbank, why would it be necessary for Nedbank to
engage with us via Regiments?

So that would have been something that I would
have raised at that time, given that this was a, it seems
20 like a relatively vanilla funding facility. There was nothing
extraordinary about this, except that they were providing
money to us, so there was no need for Regiments to be
involved in any way, shape or form.

ADV MYBURGH SC: I would like to turn now to a different
topic. Chairperson, I do not know if this would be a

convenient time to take tea.

CHAIRPERSON: Ja, maybe it would be. Let us take the tea adjournment. It will be 15 minutes. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay let us continue.

ADV MYBURGH SC: Thank you Chairperson. Mr Singh you said that you wanted to reference a document, did you manage to find it?

10 **MR SINGH:** That is correct sir I did, it is actually bundle BB23.

ADV MYBURGH SC: Alright, is that bundle 5B or 5A?

MR SINGH: 5C.

ADV MYBURGH SC: Sorry yes, okay.

MR SINGH: 5C.

ADV MYBURGH SC: You said at page?

MR SINGH: Page, back numbers 1551.

ADV MYBURGH SC: 1551. Yes?

20 **MR SINGH:** I am just waiting for Mr Chair to get his document.

ADV MYBURGH SC: It is annexure AS4, is it?

MR SINGH: That is annexure AS4, that is correct.

ADV MYBURGH SC: Please go ahead.

MR SINGH: Thank you, sir. Mr Chair, you will recall that Mr Myburgh led some evidence relating to Mr Mohamady's

comments.

CHAIRPERSON: Yes.

MR SINGH: And I have responded by saying that there is a document that outlines the benefits relating to the China Development Bank loan.

CHAIRPERSON: Yes.

MR SINGH: And this document, Mr Chair, purports to record that in terms of the value that was added through the Regiments interactions with China Development Bank.

10 Mr Chair, if you look at 1557 you will see that this is a summary of the value added from negotiation support provided by Regiments.

A 15 year amortising profile was negotiated as opposed to CDB's proposed 10 year amortising profile. The longer profile duration provides a better asset management liability match. So Mr Chair, basically what this means is that China Development Bank had offered a 10 year facility, meaning that you would repay the loan in 10 years, but we insisted in Regiments' interactions with
20 China Development Bank that it actually suits Transnet better if we have a 15 year facility in that the locomotives actually are long-term assets, because it takes three years for them to basically build and come into production.

So if you give us a 10 year loan we basically only have seven years to repay this loan, it then becomes quite

expensive. So the longer the duration of the loan, the better revenue generation and repayment of the loan, so you have better matching of the revenue generation of the assets, so you generate the revenue from the asset and then have the ability to pay the loan.

The capital grace period was extended from 36 to 54 months and again Mr Chair, in terms of the capital grace period this is basically a grace period between which you actually draw down the facility, so let us say you take
10 the money today, the grace period then enables you a period of 54 months within which to then make your first payment, so you are actually allowing the entire period during which the locomotives are being built to actually not pay anything on the loan. The final, the CDB initial pricing was ...[intervenes]

CHAIRPERSON: Of course I take it although you were not paying, interest is being added on.

MR SINGH: Well, you will have to accrue the interest, Mr Chair, because you have got the benefit for the facility.

20 **CHAIRPERSON:** Yes.

MR SINGH: You have actually taken the money, except that you not retain capital, because the locos are not yet generating any revenue.

CHAIRPERSON: Yes.

MR SINGH: CDB's pricing Mr Chair, now pricing is the

actual cost of the facility. You will see it was originally 300 basis points and it ended up being 257 basis points, which is a 43 basis point saving.

Then Mr Chair, as you can see the fourth bullet point, in order for us to have an appropriate level of interest cost relating to the locomotives, because the locomotives was a significant chunk of the capital. You will recall we said that we had a capital spend of R300 billion, the locos was R50 billion of that, now that is a significant
10 portion of the entire, it is almost 20% of the entire capital spent that we were to do.

So if you locked yourself into a very expensive facility for 20% of the facility, of the capital, it would be a, it would be a burden on the interest line for quite a significant amount of time, so in order to actually get to a point where we had an acceptable level of interest cost we actually decided to pull a blended facility, which is a Dollar facility as well as a Rand facility.

Mr Chair, you have to accept it is just economics
20 that when you borrow in South African Rand it is cheaper, when you borrow in US Dollar it is more expensive and just, it is just because of the currency and obviously other factors, but the biggest point is that simply put it is just...

So in order, each time you borrow overseas it is actually more expensive than borrowing local, so in order

to manage that appropriately we had to have a blended
lend of Rand financing as well as Dollar or any other
currency finance.

Then Mr Chair, if you go into the next page you will
see that we actually had other interactions that we have
also achieved, that is on page 1558. So these are
relatively technical [indistinct] Mr Chair, but basically in
terms of the change of the reference rate, so Mr Chair you
would, the reference rate means that the cost of the, the
10 interest cost, you could either do that quarterly or
biannually or annually and depending on which one you
choose, ultimately the amount of debt that you, the amount
of interest you actually pay over the life of the loan is
different.

So in changing the reference rate from let us say
annually to semi-annually or quarterly, there is either a
saving or there is a cost involved there, so that was
identified and captured.

Sensitivity in executing the CCS, now the CCS
20 stand for a cross currency swop or a contingent cross
currency swop in this case. This was executed with
JP Moran and it resulted in a saving of a further 112 basis
points, but in executing, the executing strategy Mr Chair, in
terms of the contingent cross currency swop for JP Morgan
was changed and that was the reason why we actually had

done to the ADC, if you will recall on that memo, to request the ADC to confine the CCDS to JP Moran, because what we actually found that is, if we go to the market and say to the market, now the market is, if you are executing a swop you have to execute it with the counterparty, now the counterparty can only be the banks.

Now when, as you approach the banks, say give me a quote, they already know that a transaction is coming [indistinct] right, and the way that you ask them, the way
10 you test the market is you ask a number of banks, but as soon as you ask a number of banks, what happens? All of them know a transaction is coming and automatically the price for that instrument immediately goes up by 10 to 15 basis points.

So in order to prevent that what we call fund running of the transaction, because of the size of this transaction those 10 or 15 basis points actually add up to quite a lot of money. So what was decided in this transaction was to say let us test JP Moran's pricing, if we
20 are comfortable with JP Moran's pricing there is no need for us to go and test the market in executing this, so we would actually just execute with JP Moran alone and not run the risk of the adding in these points on the transaction relating to the front running risk.

The other, I will move to the other, the other two

items on page 1558 I will skip, as well as the two items on page 1559 I will skip in the interest of time, Mr Chair, but it is the affidavit is on record, the annexure is on record, Mr Chair.

CHAIRPERSON: Yes.

MR SINGH: The last one that I would like to actually comment on is the last thing on page 1559 or the last item on page 1559, which relates to the standby facility. Now Mr Chair, all of these things that I have mentioned to you, 10 me as CFO actually, this standby facility was actually the most important thing that came out of this entire thing, because as I said to you originally the reason why we actually, or why we actually opted for Regiments to partner with Transnet Treasury to negotiate the facility with China Development Bank was actually for us to satisfy what we called the requirements of SNP in relation to the A&B ratio.

Now having signed the facility with China Development Bank of 2, 5 billion Dollars, if you go into the detail of the loan agreement the facility was for 2, 5 billion 20 Dollars, but the commitment to draw down was only 1, 5 billion Dollars, which meant there was a billion Dollars that China Development Bank had committed to us with no actual drawdown requirement, so that was as a facility that we could determine whether we required it in I think in 12 months or 18 months into the future, but that facility

was there. So it was a commitment that China Development Bank had given us in writing that we had a billion Dollars available to us at any given point in time.

So that satisfied the requirement of SNP as a committed facility, so the billion Dollars basically was there, enabling me to satisfy SNP's commitment in terms of the A&B ratio, but to me Mr Chair, this was one of the things that was really, really helped in terms of being able to satisfy SNP requirements.

10 So Mr Chair, this I submit as the benefit relating to the China Development Bank facility in response to Ms Makgatho's comments and criticisms and Mr Mohamady's comments in relation thereto.

CHAIRPERSON: Thank you.

ADV MYBURGH SC: So you have, as I understand it, addressed the value that you say Regiments added.

MR SINGH: That is correct.

ADV MYBURGH SC: Now I think the essential controversy though is whether the internal Treasury could not have
20 added the same value.

MR SINGH: Well, hence Mr Chair, I will then ask the question; where were all of these things that I just read out to you? There were none of these ideas that emanated from Transnet.

ADV MYBURGH SC: Yes, but of course you engaged,

they did not have the opportunity to do that, or do I get the chronology wrong? What happened is when Ms Makgatho came back from travels in the middle of July you had engaged Transnet, no sorry, Regiments.

MR SINGH: No Mr Chair, you would recall that they had an opportunity to engage with CDB for a period of time.

ADV MYBURGH SC: Alright.

MR SINGH: When those engagements, in my view, were breaking down the values in Regiments ...[intervenes]

10 **ADV MYBURGH SC:** That is when you ...[intervenes]

MR SINGH: That is when I ...[intervenes]

ADV MYBURGH SC: Alright.

MR SINGH: But even then Mr Chair, I think I would like to clarify and make this point very clear, and I thought I had done it before but I will reiterate, there was no point in time that I can recall where Regiments had exclusive and unfretted access to either locomotive manufacturers or China Development Bank.

20 Regiments worked in concert with Transnet Treasury for all intents and purposes. They worked with the Cross Function Evaluation team when they were doing the locomotive negotiations, together with Transnet Treasury and the engineers, so from that perspective it was not as if Regiments had this and they then went off and there was no one else with them. It was never that

case.

If they were dealing with China Development Bank there was always a case that they would deal with... Maybe they did not have a Transnet person sitting with them every time they spoke to China Development Bank, but certainly when the feedback was given to Transnet it was given to Transnet on the basis that it was given to me as well as Treasury. There was no way that these Legal people, the Tax people, the other people that Ms Makgatho
10 mentions in her affidavit would have been able to engage with these matters if Regiments was going off and doing their own thing without interaction with Transnet, without interaction with Transnet individuals and staff.

ADV MYBURGH SC: And sorry, there is something that I forgot to mention to you, just reminded me, Ms Makgatho alleges that you excluded her from the Data Room, something I did not put to you. Do you want to comment on that?

MR SINGH: Mr Chair, again I think Ms Makgatho does
20 make that allegation, there was no that I would have given an instruction like that for anything. Ms Makgatho was, on her own version, a member of the Cross Function Evaluation team, she had full access and rights to be in the Data Room and get access to any information she required.

The Data Room was not under my control, Mr Chair. As I mentioned in testimony yesterday, the entire evaluation process relating to the OEMs and the Data Room was actually at Transnet Freight Rail, it was not at Corporate Centre. I had no oversight over that Data Room, it actually, oversight lied with Mr Gama and [indistinct].

ADV MYBURGH SC: And then perhaps I could just ask you with reference to your slide, at page 1559 you mention to the Chairperson that you thought the advice in relation
10 to the standby facility was particularly useful and valuable. Do I understand you correctly?

MR SINGH: 1?

ADV MYBURGH SC: 1559.

MR SINGH: That is correct. Ja, I am there.

ADV MYBURGH SC: And is that, so that standby facility of a billion Dollars, correct me if I am wrong, is that the then what was dealt with by way of the ZAR Club loan?

MR SINGH: I would... This one and that one is not the same.

20 **ADV MYBURGH SC:** Are they different things?

MR SINGH: They are different.

ADV MYBURGH SC: All right, thank you.

MR SINGH: This is a standby facility, so if you need it you could have drawn down.

ADV MYBURGH SC: It was not another fundraising

mechanism.

MR SINGH: This one? No, no, this was... So if we, let us put it this way; if we needed this there was no other agreement that you needed to sign, all you needed to send is a letter to CDB to say we are activating this facility, can you please proceed us a billion.

ADV MYBURGH SC: And then I have now found, thankfully, my Mohamady file, EXHIBIT BB3A, BB3A. Could you please turn to page MSM18?

10 **MR SINGH:** Yes.

ADV MYBURGH SC: So Mr Singh, I have already put this to you, but just for the purpose of the record, MSM, page 18, paragraph 5.5.9, Mr Mohamady states:

“The Transnet Treasury team had sufficient expertise to enter into loan transactions without the need for external support. In my view there was no need for the abovementioned loan arrangement fee to be incurred.”

20 And it then makes certain other statements to that effect. Do you have anything to add to what you have already said?

MR SINGH: No.

ADV MYBURGH SC: I think you have already told the Chairperson that firstly you do not think that he has the

expertise to proffer this view, and secondly if my memory serves me correctly you said that if he had that concern he should have raised it at the time.

MR SINGH: That is correct.

ADV MYBURGH SC: And is it your evidence that he did not do that?

MR SINGH: That is correct.

ADV MYBURGH SC: And then perhaps I could just take you to one aspect, some regulatory issues. In
10 EXHIBIT BB27, so that is the POI bundle.

MR SINGH: Ja. Can I just do some housekeeping? I am there, sir.

ADV MYBURGH SC: And I would like to take you to page 395, part of the MNS transaction advisor report. Paragraph 2.7.12 in the middle of the page, the report reads:

20 “The guideline on cost containment measures, the DOA framework of 1 September 2014 and the PPM October 2014 all make reference to the use of internal skills and resources before the procurement of external consultants. It is only in the event that there are no skills and resources internally that a public institute such as Transnet had then procured external

consultants.”

Do I understand you to be saying that Transnet did not have these skills internally?

MR SINGH: Ja Mr Chair, I think as I have said in my view Transnet Treasury was not sufficiently capacitated at the time to meet the needs of the organisation at the time, that is why we engaged with Regiments.

ADV MYBURGH SC: No, I appreciate that. And then just for the sake of completeness, 2.7.13:

10 “Further to the fact that Transnet is required to ensure that there are no internal skills and resources available for procuring external consultants, the Transnet DOA framework also places an obligation on Transnet employees/business units to always obtain on FX rates and liaise with Transnet Treasury Trading Desk. It will verify the rates to ensure it is market related.

20 The business units can only enter into the FX hedges with the supplier once the rates are accepted by the Treasury Trading Desk via e-mail. Once the above approvals are obtained, the Treasury Traders will sign off on the rate acceptance.”

Then at paragraph 2.7.14:

“The exclusion of Transnet Treasury in terms of the CDB facility was in contravention of the guidelines on cost containment measures and (which we have dealt with) the DOA framework. The use of Regiments should not have been approved without having obtained the Treasury Trader’s signoff on the rate acceptance.”

10 Do you want to comment on that?

MR SINGH: Mr Chair, again I think as you would see in testimony that would follow, I think MNS takes elements of applicable lead negotiator or procedures or policy out of context and uses it for their purpose to obtain their pre-determined outcome, in my view.

If you look at this particular DOA framework that they are actually referring to Mr Chair, and I am not too sure if Mr Chair would actually want to go to it. If you would like to we can, because I think there is a delegated
20 authority framework attached in one of my affidavits.

You will see Mr Chair, this delegated authority framework that they refer to and this issue of Transnet employees, Mr Chair, and business units. This is saying that, remember we have a centralised Treasury, so there is a Treasury Department that does whatever they do and

Treasury activities, they are the only ones that are allowed to engage with banks.

So what this is saying, it is saying employees other than these Treasury employees, it makes reference to business units, business units are all of the people outside Treasury, so it will be Transnet Freight Rail, it will be Transnet National Ports Authority, Pipeline, all of these other people.

If they had to engage in a foreign transaction, if
10 they had to engage with a supplier relating to equipment that needs to be bought in Dollars, what this says, they had no authority to commit Transnet to that particular rate that the supplier is offering without actually having reference to Transnet Treasury first, that is what that... The purpose of the delegated authority framework, that is the purpose of why it is there.

It is not, this interpretation Mr Chair, that MNS supplies to that provision of the delegated authority framework is incorrect and Mr Chair, if you would like we
20 could go to that delegated authority framework to look at that specific element.

CHAIRPERSON: So this comes from 2.7.12 and then it goes up to 2.7.14.

MR SINGH: So the one that I am referring to, Mr Chair, is 2.7.13.

CHAIRPERSON: Ja.

MR SINGH: If you look at the third line it says
...[intervenes]

CHAIRPERSON: Ja, but let me go back to 12.

MR SINGH: Yes.

CHAIRPERSON: The guideline on cost containment
measures, the DOA framework of 1 September 2014 and
the EPM October 2013, all make reference to the use of
internal skills and resources before the procurement of
10 external consultants, which all makes sense. It is only in
the event that there are no skills and or resources
internally that a public institute, a public institute such as
Transnet may then procure external consultants, I guess no
problem there.

MR SINGH: So Mr Chair, I have given the response and
said in my view we did not have ...[intervenes]

CHAIRPERSON: Yes, okay. Then 13:

20 “Relative effects, Transnet is required to
ensure that there are no internal skills and
resources available to it before procuring
external consultants. The Transnet DOA
framework also places an obligation on
Transnet employees/business units to
always obtain quotes on FX.”

Is that foreign exchange?

MR SINGH: That is foreign exchange.

CHAIRPERSON: Right.

“Or what rates and liaise with Treasury Trading Desk that will verify the rates to ensure it is market related. The business units can only enter into the FX edges with the supplier once the rates are accepted by the Treasury Trading Desk via e-mail. Once the above approvals are obtained, the Treasury Traders will provide signoff on the rate’s acceptance.”

10

And then 14:

“The exclusion of Treasury in terms of CDB facilities was in contravention of...”

So what is your contention of what this means? Obviously you are saying MNS has misapplied or misinterpreted the delegated authority.

MR SINGH: They quoted the delegated authority in 2.7.13 correctly.

20 **CHAIRPERSON:** Correctly?

MR SINGH: Correct.

CHAIRPERSON: Ja.

MR SINGH: So that is what it says.

CHAIRPERSON: Ja.

MR SINGH: I can confirm that. In applying it in 2.7.14

they are incorrect.

CHAIRPERSON: Ja.

“The exclusion of Transnet Treasury in terms of CDB facility was in contravention of the guideline on cost containment measures and the DOA framework. The use of Regiments should not have been approved without having obtained the Treasury Trader’s signoff on the rate
10 acceptance.”

Okay, just repeat what your point is, why you say they were wrong.

MR SINGH: So Mr Chair, in terms of the, so they are saying the use of Regiments could not have been approved without having obtained the Treasury Trader signoff on the rate acceptance and Mr Chair, in my view they are dealing with two matters. Firstly they are saying, and I do not know, they seem to be confused, the use of Regiments should not have been approved, okay. Now I am saying
20 the use of Regiments could not have been approved and I am assuming in terms of the cost containment measures, which I have given a response for, without having obtained the Treasury Trader signoff on the rates accepted.

Now again Mr Chair, as I have said to you Regiments does not have the ability to approach the

market, they have the ability to go and look at their screens and do whatever they do on [indistinct] because everyone has access to [indistinct], but at the end of the day it still comes back to the Transnet Trading Desk that has to issue the instruction to JP Moran to say please place this instrument in the market.

JP Moran will never issue an instruction on Regiments, they will never accept an instruction from Regiments. They have to accept an instruction from
10 Transnet and the only people that they would accept that instruction from is the Trader. They would not even accept an instruction from me being the CFO, because I am not the delegated counterparty to issue that instruction. So from that perspective, Mr Chair, and for all appropriate times the Traders would have to be involved in issuing the instruction to execute the hedge of execute the instrument.

CHAIRPERSON: Yes. So are you saying that although Regiments ultimately there was no breach because before anything could happen they would have to go back to
20 treasury.

MR SINGH: Treasury was the only approved counter party to it – to engage – to – they were the approved counter party with BADC to basically issue instant. And this paragraph that they have quoted Mr Chair 2.7.13 as I said relates to business 00:00:24 not to Treasury itself.

Because remember this instrument was being issued not on behalf of Transnet Freight Chair. There is no Transnet Freight here. Transnet Freight is not a legal entity. Transnet was a legal entity. This loan was entered into between Transnet the legal entity and China Development Bank.

Transnet Treasury would then be the authorised entity to enter into a cross-currency swop with a counter party which was JP Morgan in this case.

10 **CHAIRPERSON**: Mr Myburgh.

ADV MYBURGH: Yes thank you Chairperson. So I want to deal now with another topic and that is McKinsey Regiments Consultancy contracts on confinement four in four days.

So so far we have been dealing with the 1064 transaction advisors contract and fund raising. There were other parts of the fund raising that you were not involved in which occurred in the time of Mr Gama the – principally the ZAR club loan.

Can I take you please to Bundle 5(b) page 499. No
20 Mr Singh sorry I – it is your exhibit.

MR SINGH: Oh sorry.

ADV MYBURGH: 5(b).

MR SINGH: This is the file.

CHAIRPERSON: 499 ne?

MR SINGH: Sorry which page?

ADV MYBURGH: Yes Chair.

MR SINGH: What page Sir?

ADV MYBURGH: 499. If I can direct your attention please – so this is a part of one of the money flow reports at 499. Could I direct your attention to paragraph 44/5 and 6. You will see at 44 –

10 “31 March 204 Transnet decides to award the coal line contract. 31 March 2014 Transnet decides to award the coal line contact to McKinsey and Regiments on a confinement basis without competitive bidding.

Then 1 April 2014 the next day Transnet decides to award the Kumba Iron Ore contract to McKinsey and Regiments on a confinement basis without competitive bidding.

20 And paragraph 46 on 3 April 2014 Transnet decides to award the manganese contract and the NMPP contract to McKinsey and Regiments on confinement without competitive bidding.”

You see that? So there are the four contracts in four days. You see that?

MR SINGH: Exactly.

ADV MYBURGH: So you accept that happened?

MR SINGH: I remember – I recall that these contracts were...

ADV MYBURGH: Yes.

MR SINGH: Or these confinements did occur.

ADV MYBURGH: We will come – we will come to – we will come to some of them in a moment.

MR SINGH: The basis I am not too sure but I do confirm that they did occur.

10 **ADV MYBURGH:** I just want to take you – and it is something that we touched on yesterday. Could I ask you please to go to page 716.

MR SINGH: Of the same bundle?

ADV MYBURGH: Same bundle 716 it is an annexure to this report. Now what you see at 716 perhaps you could keep your finger there and then turn back to page 700.

MR SINGH: If I put my finger here go back to page 700.

ADV MYBURGH: So you will see at 700 that this is a bid submitted in respect of the coal line. Do you see that?

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

ADV MYBURGH: But if you go forward to 716 this was a bid submitted by McKinsey and Regiments Capital jointly and 716 says:

“We, that being Regiments Capital will sub-contract consultants and services from a

company advisory Homix and Albertine and provide them with skills development opportunity.”

You see that.

MR SINGH: That is correct.

ADV MYBURGH: So when I mentioned to you that – what happened in respect of these contracts is that Regiments actually used Homix and Albertine as Supplier Development partners, do you see that?

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

ADV MYBURGH: And these are the two main – or amongst the two main money laundering entities. You see that?

MR SINGH: I see that Sir.

ADV MYBURGH: Did you ever read this bid?

MR SINGH: Mr Chair as I explained previously Mr Chair these – the confinements that Mr Myburgh referred to would be prepared by procurement based on the facts that is given by business if they believe that the confinement rules apply in the business circumstances they would then prepare the
20 necessary confinement documentation that would then be approved and submitted to myself and ultimately to be approved by Mr Molefe.

Once those documents are then approved Mr Chair the confinement document is approved it goes back to procurement. Procurement then basically sends out a

request for proposal – a formal document. That formal document would then set out the business requirements and what is required from the potential service provider or the potential service providers.

A cross-functional team would then sit – oh sorry before that the – the RFP would then set out the return date and all of those requirements that needs to be fulfilled.

The cross-functional evaluation team will be identified and they would sit and receive these – the bid or
10 bids as the case may be and they will evaluate that bid against the business requirements that were 00:08:00 and the evaluation criteria that was set up.

This particular document Mr Chair would go to the – would go to the procurement team or the evaluation team that would then evaluate that.

I – I would not necessarily ordinarily receive an RFP document.

ADV MYBURGH: And when you say not necessarily what do you mean by that?

20 **MR SINGH:** I would – I have never – well in this particular document, I did not receive it.

ADV MYBURGH: All right. Well let us go to just one other example. Go to page 721 here you will see that it is the bid for the NMPP do you see that?

MR SINGH: Yes.

ADV MYBURGH: And if you go forward then to page 732 you see the same text in respect of Regiments 732 third bullet point your sub-contract consultants and services from companies such as a company advisory Homix and Albertine and provide them with skills development opportunities. You see that.

MR SINGH: That is correct Sir.

ADV MYBURGH: Could I ask you please to turn back then to page 500 it says there at paragraph 49.

10 “McKinsey and Regiments prepared bids – you have gone through these coal line Kumba, iron ore, manganese and NMPP contracts with Transnet. Regiments indicates they will be using Albertine and Homix as its Supply Development partners. Albertine is Moodley’s company, Homix is a Gupta laundering vehicle which is ultimately paid more than a R100 million of the value Regiments receives under these contracts.”

20 You see that.

MR SINGH: That is correct Sir. Mr Chair I think it is also appropriate to probably comment in terms of the – the evidence of Mr Fine in response to this I think he did allude to the fact that I am not sure if they actually did – McKinsey did reference X or actually vetted Albertine and Homix in

any way or form before allowing them to be Supply Development partners of McKinsey.

ADV MYBURGH: Just so that I understand it perhaps you must correct me if I am wrong. In relation to these four contracts this is not Regiments being McKinsey Supply Development partners. It seems that they bid jointly as in a partnership effectively.

MR SINGH: I do not think so. I think this was where there is – there is Supplier Development partners to Regiments.

10 **ADV MYBURGH:** All right. So you understood the structure to be the Regiments was still – you can have – I can have a look at that it was still McKinsey Supplier Development.

MR SINGH: Yes.

ADV MYBURGH: Partner.

MR SINGH: Yes.

ADV MYBURGH: And then Regiments itself had its Supplier Development partners as we have seen.

MR SINGH: Or sub-contracted a portion of the work to...

ADV MYBURGH: All right.

20 **MR SINGH:** To their – to whoever they needed to do it.

ADV MYBURGH: Could I now take you please for the first time to Exhibit BB2.1(a).

MR SINGH: Just give me a second Sir let me just ...

ADV MYBURGH: And then could I ask you please to turn to page PSV62.

MR SINGH: There is lots of notes and stuff in this one – it is not official.

ADV MYBURGH: So I do not know about that.

MR SINGH: It seems like a working ...

ADV VAN DEN HEEVER: Chairperson can we just get a bit of clarification exactly what this relates to so – because we sitting with electronic versions that we are trying to find our place.

10 **ADV MYBURGH**: It relates to these – it relates to these contracts.

CHAIRPERSON: Okay.

ADV VAN DEN HEEVER: What contracts?

ADV MYBURGH: The ones that we just talking about now – the four on four days.

CHAIRPERSON: Ja.

MR SINGH: This is – this is Mr Peter Volmink's statement. I think that is what you are looking at.

ADV MYBURGH: So page 62 and I am going to ask you to comment I think on three things Mr Singh.

20 **CHAIRPERSON**: And page 62 Exhibit BB2.1(a) if that helps you.

ADV VAN DEN HEEVER: He does have those bundles maybe if my learned friend can refer to a specific person because I know we were given as an example affidavits and we saved it in that regard.

ADV MYBURGH: it is Mr Volmink – Pita Volmink. All right. Now what Mr Volmink says at page PSD 62 paragraph 138 – are you there Mr Singh?

MR SINGH: 138 I am.

ADV MYBURGH: Ja. So he talks about over a period of four days, the previous GCE approved four confinements and he sets them out. And at 139 he says:

10 “Although each of the transactions viewed separately fell within the DOA for confinement given to the GCE up to 250 million the combined value of the transactions fell within the DOA of the BADC at the time up to but not exceeding a billion.”

He then states:

20 “That given the fact that the transactions related to the same or similar services and were awarded to one firm within a few days of each other Transnet effectively awarded one package of projects to McKinsey valued at 16 – sorry 619 million that ought to have been taken to the ADC for confinement purposes. The applicable provision of the PPM warned against the practice of parcelling under the heading Prohibit

Practices PPM 14.2.3 states the following.

“When the full scope of work is known at a point in time requirements may not be deliberately split into parts or items of lesser value in order to keep the transaction value within a particular delegation of authority level or to keep it below the threshold of an AC or a person with higher delegation of authority. This is considered to be parcelling and will be regarded in a serious light as it amounts to non-compliance with procedural requirements.”

10

And then he ends by stating that on the face of it the splitting of the transactions amounted to a breach of the rules against parcelling.”

Give you an opportunity to comment on that.

MR SINGH: Mr Chair firstly in – in terms of our 10.6 response that we were required to respond to Mr Volmink’s statement we were not required to respond to this allegation that he makes.

20

But in the interest of time and for us to move forward with this Mr Chair I was – am not completely familiar with the rules of parcelling in terms of the PPM as it is basically outlined here in terms of paragraph 4 – 14.2.3 of the PPM.

But what I can say Mr Chair is that and I am not an expert at procurement and as I said before these confinement documents would have served before procurement.

Procurement would have probably been the people that actually prepared the document and I would assume that having it gone to Mr Molefe and myself in terms of value it would have been approved by – at least Mr Pita I do not recall if he did or he did not but if we have the submission documents we can confirm that.

10 And Mr Chair in my view I would suggest that this does not amount to parcelling in that the – it may have been services that were provided by one firm but the skills set that was required and the service that was required in each of these items were significantly and distinctly different.

 So if you take for example the NMPP contract. The NMPP contract Mr Chair was a de-risking of a capital project. So it basically says capital project is in trouble – it is like a Medupi and Kusile its costs are going from – it started at 9 it was at time I think 25/26 billion and we were
20 behind schedule and the costs were continuing to escalate.

 So the nature of that project Mr Chair was basically to rescue the project and required very different skills compared to let us say a manganese construction contract.

 Now the manganese construction contracts Mr Chair as you will remember when we were giving evidence

regarding Mr Bester that contract – the manganese project let us call it the manganese project as it relates to McKinsey was advice on a contract that was still to be entered into to prevent what we had seen on the NMPP to 00:18:52 so again it was very different deliverables. It was distinct deliverables.

The iron ore contract Mr Chair again was a 20 year if not 50 year contract if not an evergreen contract that we had I think with Kumba Iron Ore and 00:19:08 at the time
10 with an attempt to renegotiate that contract and to be able to get a higher revenue stream out of that contract for 00:19:20.

So in that case Mr Chair that was again a very different set of skills that was required. You needed to understand the iron ore industry. You needed to understand the capital requirements of a mine. You needed to understand the capital requirements of Transnet in terms of the iron ore line specifically.

So it was very different skills. In terms of the coal
20 line contract Mr Chair that was also a very distinctly unique different deliverable.

In terms of the coal line contract we needed to unlock the bottle necks that the coal line was experiencing and unlocking the bottle necks meant that if we were doing let us say 75 million tons of coal through the iron ore line

per annum we needed to identify the bottle necks; de-bottle neck the line to enable us to move from 77 to 70 – from 75 million tons to 77 million tons per annum.

So in my – in my view Mr Chair the distinct nature of each of the deliverables in my view does not allow it to be classified as parcelling albeit that it was probably issued to McKinsey as one firm. If – maybe if we issued this out on open tender Mr Chair you – it would have went to three or four different firms because of the different skill sets that
10 are required to actually achieve the outcomes that we required.

ADV MYBURGH: Now there is two other things that I just...

CHAIRPERSON: I – I wonder whether the – the test to establish whether a set of transactions separate kind of transactions constitute parcelling would be whether there would be any problem if they were given to different bidders could they be done by different bidders?

MR SINGH: Chair I do not – I do not know if you are finished.

20 **CHAIRPERSON:** As I understand the parcelling.

MR SINGH: Yes.

CHAIRPERSON: And you will tell me if I have misunderstood you. It is when one transaction is split up

MR SINGH: Yes.

CHAIRPERSON: Into different kind of transactions in

quotes in order to circumvent a certain image on delegation of authority. Okay. Now that obviously and maybe would be easier to see if you have one transaction maybe that has different components so it could be given to one person in one go but you decided to give it to the same entity as if it is different transactions but actually it can be different components of the same thing.

MR SINGH: Mr Chair I think – well I am not too sure what you are asking. I followed you until...

10 **CHAIRPERSON**: I am just thinking if you

MR SINGH: Yes.

CHAIRPERSON: If you – instead of saying I am giving Mr Singh this contract to build a bicycle.

MR SINGH: Yes.

CHAIRPERSON: Okay. Instead of saying that I say I am giving Mr Singh a contract to do a certain part of – or certain part or parts of the bicycle today. In a month's time I give him a contract to do another part or other parts of a bicycle that must be parcelling or would it not be?

20 **MR SINGH**: I think Mr Chair the – maybe let us use this...

CHAIRPERSON: It is like splitting.

MR SINGH: It is like splitting but maybe let us use this example. Let us say Transnet has a requirement for 1000 books okay. So the buyer knows he requires a 1000 books but he then says okay I place an order for 250 books in

week one. I put another order in week 2, another week in 3 and another in 4 to the same supplier.

CHAIRPERSON: Ja.

MR SINGH: But knowing that the 1000 books would need to go to let us say the GCE for approval but the 250 books can be approved by himself. So truly put that is what parcelling is Chair.

CHAIRPERSON: Basically splitting ...

MR SINGH: Splitting something that would 00:24:25.

10 **CHAIRPERSON:** That should be one transaction.

MR SINGH: That should be idea – but also it should be relatively identical to something that you would get.

CHAIRPERSON: Ja.

MR SINGH: So you cannot say – let us say – say if he had a requirement for 1000 books right but black books and then he needed 250 blue books. So when he places the order for 250 blue books not necessarily that he is then splitting the order for – from 1000 black books. So there has to be some ...

20 **CHAIRPERSON:** So you say there must be some identity.

MR SINGH: In my understanding yes Chair as if I am not just exploiting this aspect of the PPM or the PPM in general.

CHAIRPERSON: Yes.

MR SINGH: But I am saying there has to be some similarity

for you to link.

CHAIRPERSON: And you say here because one is coal another one is iron ore another one is manganese and so on you say it cannot be.

MR SINGH: Well not by just the nature of coal, iron ore or manganese and NMPP. I am saying the del – it could have been NMPP for all of them but the nature of the output was significantly different.

And the skills set that was required was significantly
10 different. Mr Chair let us say for example if we sent the coal contract – or the coal confinement to Mr Molefe. He may have said no. He said no send it out to open market right. And then he would have had 50 other suppliers coming and saying they could do this.

So the – so again it comes back to the point of is it splitting or is it not. It is not because you could have had an independent procurement event.

CHAIRPERSON: Ja.

MR SINGH: That led to the award to – for iron ore,
20 manganese or NMPP.

CHAIRPERSON: Okay. I guess Mr Myburgh and counsel for Mr Singh us being lawyers will think of splitting of charges. Yes continue Mr Myburgh.

ADV MYBURGH: Thank you. So there are really three things that Mr Volmink deal with. One was parcelling.

Secondly he submits that the requirements for confinement were not met in these instances but thirdly what he says and it is the thing that I want to take you to in the interest of time is the notion of confidential confinements. Could I ask you please to go to page 63 – PSV 63. And we dealing still as you know with these four contracts.

MR SINGH: Yes Sir.

ADV MYBURGH: So there has a heading Confidential Confinements. If I could fast forward – let me take you to
10 147 over the page. It says there:

“However for reasons of confidentiality some of the McKinsey confinements such as manganese, NMPP and iron ore transactions did not follow the normal review and sign off process. This meant that the confinements were taken to the GCE for sign off with little or no input from reviewing bodies.”

The next paragraph.

20 “The 2013 PPM states that “in instances where a confinement if confidential the GCE may approve such confinement without the confinement request being routed via any other authority.” This was based on a provision in the 2013 DOA framework that allowed for confidential confinements.”

And then at 49 he says:

“There are a number of concerns with the manner in which confidentiality was invoked in the McKinsey confinements.”

And perhaps before we get there let me show you one of these contracts. If you go to Exhibit BB2.1(d). There is this – this is where you find them and they were all signed by you and Mr Molefe – these four contracts or four confinements rather.

10 Now Mr Volmink...

MR SINGH: Sorry what page is this.

ADV MYBURGH: Well let me just ...

MR SINGH: Oh.

ADV MYBURGH: Retrace my steps. He says that the –

“For reasons of confidentiality some of the McKinsey contracts such as manganese, NMPP and iron ore.”

Let me take you to the manganese contract which you find – or sorry I keep saying contract – confinement you
20 find at PSV1299. So there you will see from yourself to Mr Molefe manganese exit and if you go to page 1305, you will see that you compiled this. Is that the 31st of March 2014?

MR SINGH: That is correct, sir.

ADV MYBURGH SC: 31?

MR SINGH: [No audible reply]

ADV MYBURGH SC: And your recommendation – and all of these confinements were similar, all four. Your recommendation is:

“Recommended that the Group Chief Executive approve the Resourcing Strategy and Remuneration Model for the Manganese execution by accelerating and optimising, thereby supporting the initiative to mitigate the EBITDI at Risk by mobilising a team...”

10 And then sub-2:

“Confining and awarding the service to support the internal team to McKinsey & Company and its BEE consortium partners...”

Do you see that?

MR SINGH: That is correct.

ADV MYBURGH SC: Now the issue of confidentiality arises – if you have a look at page 1302, there is, firstly, a motivation for confinement itself. Do you see that?

MR SINGH: H’m.

20 **ADV MYBURGH SC:** In the table.

MR SINGH: Yes.

ADV MYBURGH SC: And then at paragraph 25, it says:

“Additionally, due to the confidential nature of the information, the engagement cannot be subject to an open tender process...”

It is in terms with para 15.1.4(c) of the revised PMM.

“In instances where a confinement is confidential, the DC may approve such confinement without it being routed via any other signatory...”

Do you see? So that is a reliance from that provision in the PMM.

MR SINGH: [No audible reply]

10 **ADV MYBURGH SC**: You see that?

MR SINGH: That is correct, sir.

ADV MYBURGH SC: So perhaps you can keep that open Mr Singh and then we go back to what Mr Volmink in is affidavit. If I could ask you to have a look at paragraph 149? I think I have read you the first sentence at page 64:

“There are a number of concerns within the manner in which confidentiality was invoked in the McKinsey confinement.

20 (1) As already stated, multiple layers of review were bypassed as a result of invoking the confidentiality provision.

(2) The confinement memos contained very little, if anything, but explains why the submissions were confidential.

(3) In addition to invoking confidentiality

as a reason not to route the confinement memos through the normal sign of process, the submissions are only invoke confidentiality as a reason for confining itself...”

And then 152:

(4) In certain instances, the confinement memos made no claims to confidentiality...”

We will not be dealing with that now. But effectively, what the complaint is by Mr Volmink because
10 this was a confidential confinement. There is really one layer. It was compelled by you and sent to Mr Molefe and he approved it. Now what was confidential about these contracts?

MR SINGH: Mr Chair, as we – as I said originally. I had not been privy to this part of Mr Volmink’s affidavit in terms of the 10(6). We were not required to respond to these paragraphs of Mr Volmink’s affidavit. And Mr Chair, in terms of the document that *went through my name(?)*. This as well, Mr Chair, I have not seen this document at all. So
20 if I can have some time to be able to – I can possible be ...[intervenes]

ADV MYBURGH SC: Certainly...

MR SINGH: ...give some ...[intervenes]

ADV MYBURGH SC: Okay.

MR SINGH: Ja.

ADV MYBURGH SC: I mean, you will understand, of course, that you can be questioned about things that you were not asked to put an affidavit on.

MR SINGH: No, no I do.

CHAIRPERSON: H'm.

ADV MYBURGH SC: But perhaps, just so that – and I am more than happy to afford you the time. I mean, it is a very important issue. Maybe what I can do is. I can just show you where there are other – or perhaps we can look
10 at all four of them.

MR SINGH: Yes, yes.

ADV MYBURGH SC: Yes. These confinements.

MR SINGH: Yes.

ADV MYBURGH SC: And then over lunch or whenever, you can have an opportunity to look at it. If you go to page 1283.

MR SINGH: 1283?

ADV MYBURGH SC: 1283. Here you find the coal contract or coal confinement. You will see that it is at
20 1289, compiled by you, signed by Mr Molefe. And you will see at 1287 that there is reference to confidential nature of information. Then if you go to 1291.

MR SINGH: 1291?

ADV MYBURGH SC: 1291 is the Kumba(?) Contract. It is also compiled by you, signed by Mr Molefe. And then

again the confidentiality provision. You will see on each occasion, Mr Singh, after that a table and then you get, in this instance, paragraph 22 at page 1295, the confidentiality provision is referred to. At 1299, you will find the Manganese contract, confinement which I have taken you to.

And then the fourth contract appears at 1307. This is the NNPP. Again, at 1313, compiled by you, signed by Mr Molefe. And you will see at paragraph 27 at 1311,
10 again, there is reference to the confidential nature of the information.

MR SINGH: I see that, sir.

ADV MYBURGH SC: Then, perhaps what I could also do is just to assist you in this regard. If you have a look at page 1273.

MR SINGH: 1273...

ADV MYBURGH SC: This is a different confinement, relating to capital optimisation. And I am not dealing with the McKinsey confinements but if you have a look – if you
20 turn then to 1280, you will see it is another confinement and here it goes through the various levels prepared by Mohamedy, recommended by Pita, recommended by you, recommended by Volmink and then ultimately approved by Molefe. The point made by Mr Volmink, in short, is that once one invokes confidential confinement then the GCE

is, essentially, entitled to authorise it himself, which is what happened in relation to these contracts.

MR SINGH: That is correct, sir.

ADV MYBURGH SC: So you will have a look at that for us? I mean, there is simply one question, really.

MR SINGH: Yes.

ADV MYBURGH SC: And that is. On what basis were these contracts confidential?

MR SINGH: That is so.

10 **ADV MYBURGH SC**: Yes. And then if I could take you back to paragraph or to page 500 of Bundle 5(b)?

MR SINGH: Are we done with Volmink?

ADV MYBURGH SC: Ja.

MR SINGH: Okay in... [Speaker unclear]

ADV MYBURGH SC: So I just want to point out to you paragraphs 51 and 52. So we know that these four contracts that were awarded to McKinsey/Regiments resulted in money laundering. There are two other contracts that you signed which also resulted in that. The
20 one was the Swop 2 contract at paragraph 51 and then at 52, it says:

“On the same day, 24 March, Brian Molefe issues his recommendation for the GFB contract to be awarded to McKinsey and Regiments on a confinement basis without

competitive bidding.

This is another contract which is later discovered to have been used by Regiments to launder Transnet payments through Gupta laundering vehicles...”

Do you have any comment on that?

MR SINGH: No, sir. I do not have any knowledge of these laundering activities but I do remember that we did ...[intervenes]

10 **ADV MYBURGH SC**: Sorry?

MR SINGH: I said, I do not have any knowledge to the issues relating to money laundering but I do remember the Swop 2 contract and I do recall, I think it is something relating to a GBF project.

ADV MYBURGH SC: But perhaps I can just show you that GBF contract. If you go back to Volmink, BB-2.1(d). And can you please turn to page 1315?

CHAIRPERSON: Did you say 5(b)?

ADV MYBURGH SC: BB-2.1(d).

20 **CHAIRPERSON**: H'm.

ADV MYBURGH SC: At page 1315. That is where you will find the so-called GBF confinement. This time not – but on a confidential basis. If you look at 1322, it was compiled by Mr Gama, recommended by you and then recommended by Mr Molefe. Do you see that?

MR SINGH: That is correct, sir.

ADV MYBURGH SC: And it is addressed then to the BADC.

MR SINGH: Yes, sir.

ADV MYBURGH SC: It goes through various levels.

MR SINGH: [No audible reply]

ADV MYBURGH SC: Now, Mr Singh, that brings me to the issue of invoice tracking. Could I ask you, please, to turn to page 698 of Bundle 5(b)?

10 **MR SINGH**: 698?

ADV MYBURGH SC: [No audible reply]

MR SINGH: 698, *né*?

ADV MYBURGH SC: And – so you know this is a second Money-Flows report that you were provided with?

MR SINGH: We only – so to my knowledge we only received a 3.3 Notice relating to the McKinsey Money-Flow...

ADV MYBURGH SC: No - well, this is what we are dealing with. We got two. Well, you have seen this.

20 **MR SINGH**: I will check and confirm it.

ADV MYBURGH SC: So – well, let me ...[intervenes]

MR SINGH: We can carry on.

ADV MYBURGH SC: I mean, I can take you back to the notice if you want, but as I recall and you must tell me if I am wrong. What happened here is the following. There

are two reports in your exhibit. The one report is at 490.

Do you see that?

MR SINGH: [No audible reply]

ADV MYBURGH SC: That is the one we have been discussing which sets out the four confinements in four days. Do you see that?

MR SINGH: [No audible reply]

ADV MYBURGH SC: Mr Singh, you have looked through these. You have seen that report. Correct? We have been
10 dealing with it.

MR SINGH: [No audible reply]

ADV VAN DEN HEEVER: Chairperson, just for the record. Is my learned friend saying that we got this per a 3.3 Notice?

ADV MYBURGH SC: Well, I just want to confirm what the problem is here.

CHAIRPERSON: Ja.

ADV MYBURGH SC: Just so that – I am just trying to take Mr Singh to the reports and to just identify what the
20 concern is.

CHAIRPERSON: H'm.

ADV MYBURGH SC: In the bundle, Mr Singh, and we can come to issue of 3.3. There are two Money-Flows report. You have seen that?

MR SINGH: Yes.

ADV MYBURGH SC: Okay. So the one – and I am not trying to quarrel with you, I just want to see if there any issues.

MR SINGH: Carry on, sir.

ADV MYBURGH SC: The one you will find at page – it starts at 490 and it is headed or titled: Report on Vikas Sagar's relationship with Regiments.

MR SINGH: Yes, sir.

ADV MYBURGH SC: Do you see that?

10 **MR SINGH:** Yes.

ADV MYBURGH SC: Now that is the report that you and I have already dealt with in some detail already. For example, at 499, we have dealt with the four confinements. There are a lot of annexures to that report, as we have seen. It has got the RFP's, etcetera. The next report – and this first report on Vikas Sagar is dated the 14th of November.

The next report is contained at page 694. It is the second report. This is dated the 13th of November. It is a
20 report on the laundering of Regiments' proceeds. Do you see that?

MR SINGH: That is correct, sir.

ADV MYBURGH SC: And that report too contains the series of annexures. I think it goes all the way to - I think it is 768.

MR SINGH: Yes, sir.

ADV MYBURGH SC: Alright. Now, do I understand you to be saying that you never received a – you received the first report? You remember – and why I am – I may not be entirely familiar with the facts. These came from Money-Flows, not from Transnet.

MR SINGH: No, no I am familiar with this. You can ...[intervenes]

ADV MYBURGH SC: Okay ...[intervenes]

10 **MR SINGH**: We can ...[intervenes]

ADV MYBURGH SC: You are familiar with this?

MR SINGH: Yes.

ADV MYBURGH SC: Alright. So let us go to the second report. And I want to direct your attention to paragraphs 13 and 14 at page 698. Are you there?

MR SINGH: I am, sir.

ADV MYBURGH SC: Okay. So what is painted here in this Money-Flows report, is that Regiments maintained a running reconciliation of the payment that it had received
20 from Transnet and the corresponding payments that it made to Essa's laundering entities and Albertine.

Now, I mean you are familiar with what is alleged by Money-Flows. We need not to go back. I have put it to you many times that there was this arrangement between Essa and Regiments in terms of Essa would get 50 cents to

the rand and Albertine, you might have heard, got 5% in the form of Mr Moodley. Alright?

MR SINGH: [No audible reply]

ADV MYBURGH SC: So we can go back into the report but if we need not, we will not. So Regiments maintained a running reconciliation of the payments that it had received from Transnet and the corresponding payment that it made to Essa's laundering entities and Albertine. The spreadsheet containing this reconciliation was named,
10 Advisory Invoice Tracking.

The copy of the Advisory Invoice Tracking spreadsheet generated on 7 December 2015 (Annexure 6). It shows that these laundering payments included payments on every contract with McKinsey and that, in addition to the payments in the 215/2016 financial year, just under R 90 million worth of laundering payments had been made in respect of Regiments/McKinsey contracts in the 2014/2015 year. Now in or on the 7th of December 2015, by that time you have moved to
20 Eskom.

MR SINGH: That is correct, sir.

ADV MYBURGH SC: Alright. So I just want to take you then – and we are going to come back to paragraph 14. Can I just take you to this document at page 7 – Annexure A which you will find at page 760.

CHAIRPERSON: That is seven, six ...[intervenes]

MR SINGH: Zero.

CHAIRPERSON: Zero.

ADV MYBURGH SC: It is Annexure 6. It starts at 760 but is rather un-usefully, DCJ, a blank page. So 761, yes.

CHAIRPERSON: Okay.

ADV MYBURGH SC: So here is a series of spreadsheets. You have had an opportunity, presumably, to look at this, Mr Singh?

10 **MR SINGH**: No, I did.

ADV MYBURGH SC: Alright. So what one sees, and perhaps I am just going to go to things that we are familiar with. And then, we have spoken a lot in your evidence about the China Development Bank but if you go and you run down the second last set of rows, you will see there, there is a date, 2 June and you see project in the middle, China Development Bank. Do you see that?

MR SINGH: What page are you on, sir?

ADV MYBURGH SC: I am at page 761.

20 **MR SINGH**: Yes.

ADV MYBURGH SC: And the second set of – the second last set of rows but ...[intervenes]

CHAIRPERSON: Is it ...[intervenes]

ADV MYBURGH SC: Another way to track it, is to go down and the date ...[intervenes]

MR SINGH: No ...[intervenes]

ADV MYBURGH SC: ...the date of invoice to 2 June 2015 towards the bottom.

MR SINGH: H'm.

ADV MYBURGH SC: Are you there?

MR SINGH: H'm.

ADV MYBURGH SC: Dated invoice, 2 June 2015. Then there is an invoice number and then there is the project, China Development Bank. They received R 189 million that
10 was paid. We have been through this. You see that 147 on the schedule was paid to Albertine. Do you see that?

MR SINGH: Yes.

ADV MYBURGH SC: And I think I have given – I have told you that what happened money after that. It is that R 122 million was laundered to Sahara Computers. But this gives you a sense then, does it not? I mean, if you drop down a few lines. 1, 2, 3... There you the MNPP contract we have been speaking about. Drop down two lines under that. You will see the GFB Breakthrough
20 contract which we have just discussed. Do you see that?

MR SINGH: That is so.

ADV MYBURGH SC: Alright. So if we go back then, please, to paragraph 14 at page 698?

MR SINGH: [No audible reply]

ADV MYBURGH SC: Yes.

“Regiments forwarded copies of their advisory invoice tracking spreadsheet to Anoj Singh when he was the CFO of Transnet. (See, for example, Annexure 7.)

Email of Wood to Singh on 18 May 2015 and to his successor as Transnet’s CFO, Gary Pita. (See for example, Annexure 8).

Email of Wood to Pita of 5 August 2015...”

And then they say:

10 “The CFO’s of Transnet were aware of the payments being made by Regiments to Essa’s laundering entities...”

Now can we have a look then at this Annexure 7 which you will find at 765?

MR SINGH: Yes, sir.

ADV MYBURGH SC: So, at 766. We start at the bottom from Yvonne McCorney(?) to Eric Wood on the 18th of May 2015.

20 “Good day, Mr Wood. Attached is the updated schedule...”

And then shortly after that, I think two minutes later, Mr Wood forwarded it to you. Subject: Re Revised Outstanding Revenue. Attachment Invoice Tracking 2015/2016:

“Hi, Anoj. I have attached a list of OS...”

I assume that is outstanding. Do you confirm that?

MR SINGH: That is so, sir.

ADV MYBURGH SC: “...invoices as requested...” Do you see that?

MR SINGH: That is correct, sir.

ADV MYBURGH SC: Now we have then provided you with the attachment and that attachment and in fact this email appears in Bundle 5(c) at page 1932. And your attachment is at 1924.

10 **CHAIRPERSON**: Please just repeat the bundle, Mr Myburgh.

ADV MYBURGH SC: It goes to the B Bundle.

CHAIRPERSON: 5(b)?

ADV MYBURGH SC: Five – no, sorry, 5(c).

CHAIRPERSON: 5(c), yes, okay.

ADV VAN DEN HEEVER: Just repeat the page. One, nine, what?

ADV MYBURGH SC: Page 1923.

MR SINGH: I am there, sir.

20 **ADV MYBURGH SC**: Alright. So the attachment – we have provided you with a number of schedules comprising that attachment. They run from 1924 through to 1935. Do you see that?

MR SINGH: That is correct, sir.

ADV MYBURGH SC: Now if you go to 1924, what is

written at the top by one of the investigators is that:

“When you open this document, this is the first view...”

And what you see here is I think importantly in the third column, the invoice date. Then we have the project and you have the amount. Do you see that?

MR SINGH: I see.

ADV MYBURGH SC: And it is indicated whether it is been paid or outstanding. Do you see that?

10 **MR SINGH**: Yes.

ADV VAN DEN HEEVER: Sorry, Chairperson. We cannot hear the client.

CHAIRPERSON: H’m.

MR SINGH: Yes, we can, sir.

ADV MYBURGH SC: Alright. Sorry, may I just ask for some advice?

CHAIRPERSON: Ja.

20 **ADV MYBURGH SC**: Alright. I am sorry for the interruption but I had asked because this is quite important for us all to be provided with colour copies, I understand that you do not have colour copies, DCJ, is that right?

CHAIRPERSON: Well, on page 1924 and 1925 I have coloured portions of the ...[intervenes]

ADV MYBURGH SC: I see you have got, are yours colour copies?

MR SINGH: Ja well, one column is coloured, so it is a colour copy, yes.

ADV MYBURGH SC: So I think I am ...[intervenes]

CHAIRPERSON: So in other words sir, unlike the one where we were just now, which was coloured all over, this one is just certain blocks.

ADV MYBURGH SC: That may be correct. I think I might be at a disadvantage, because I do not have colour.

CHAIRPERSON: Okay.

10 **ADV MYBURGH SC:** So what has happened to mine, it has been Photostatted and the colour obscures it.

CHAIRPERSON: Okay.

ADV MYBURGH SC: So I am at a bit of a disadvantage, but DCJ, perhaps just something, if I was given an opportunity I can try and sort out at lunch time.

CHAIRPERSON: Ja, let us do that, ja, deal with it after lunch, if you would like.

ADV MYBURGH SC: No, no, I will go through it now.

CHAIRPERSON: Oh, okay alright.

20 **ADV MYBURGH SC:** So that is the first view. Mr Singh, are you with me?

MR SINGH: I am with you.

ADV MYBURGH SC: Then if you go to the second view it says unhide columns D to J.

CHAIRPERSON: Hang on. I can see the first view, but I

do not see where the second view is.

ADV MYBURGH SC: Okay.

CHAIRPERSON: I thought it would be the next page, but it is not written second view on the next page.

ADV MYBURGH SC: No, it will, these things follow. It is numbered number 3 only because, as I understand from the investigator what had in mind is that the e-mail would be 1.

CHAIRPERSON: Ja, okay. Okay, so the second view is at page 1925.

10 **ADV MYBURGH SC:** That is correct.

CHAIRPERSON: Okay.

ADV MYBURGH SC: So what you then do is one clicks on this Excel spreadsheet to unhide columns J to G and then what happens is you will see from the amount column, which one found at the first view, this then unlocks the one, two, three, four, five, the sixth column on the right hand side.

CHAIRPERSON: Yes.

20 **ADV MYBURGH SC:** So it unlocks columns headed Jevita Hommex, et cetera, Albertine. Do you see that?

MR SINGH: I see that.

ADV MYBURGH SC: So what this second view shows you for example is if you go, if you track down to 15 March, the number of invoices dated 15 March, we have got coal, NMPP which we have dealt with and in fact even one of the

swop contracts we have dealt with, you will see the amount that is due and then you will see Jevita or Hommex and all of those instances they are, it reflects that they are getting half of the fees. Do you see that?

MR SINGH: Yes.

ADV MYBURGH SC: Let us take coal at 1 337 599, that 66 800 is 50% of that and then you will see that Albertine is getting 5%. Do you see that? So 66 880 is 5% of 1 337 599. Do you see that?

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

ADV MYBURGH SC: And so it goes on and then the same, that is March, the same what happened in April. Then if one goes to the next view where you unhide certain rows, all that this really does is then enables one to see what invoices have been paid. Do you see that? So in other words the view before said bank date, that was Absa, there was no information in the last column, but if you go to page 1926 you will now see the right hand column is populated. Do you see that?

20 **MR SINGH:** Yes.

ADV MYBURGH SC: Reflecting the bank date.

MR SINGH: I see that.

ADV MYBURGH SC: Do you see that, Mr Singh? Are you there?

MR SINGH: Yes, I am listening.

ADV MYBURGH SC: So in other words the difference between 1925 and 1926 is that the bank date, that far right hand column is now populated.

MR SINGH: I see that.

ADV MYBURGH SC: Alright, and then there is a whole lot of other information that the investigator has marked 5, 6, 7, 8, 9, 10, 11, 12 and 13, none of which is of particular moment for present purposes. The three important views then are the first, second and third view, pages 1925, 10 sorry, 1924, 1925 and 1926. Now to begin, can I ask you, did you receive this e-mail from Mr Wood on the 18th of May?

MR SINGH: I do not recall the e-mail, but I guess if it is at my Transnet e-mail address I can say I have received it.

ADV MYBURGH SC: And did you have occasion then to open the e-mail, can you remember that?

MR SINGH: I do not recall whether I opened this invoice or not, I mean this e-mail or not.

ADV MYBURGH SC: So it says at 1923:

20 “Hi, Anoj. I have attached the list of
 outstanding invoices, as requested.”

Had you requested Mr Wood to provide you with a list of outstanding invoices?

MR SINGH: Mr Chair, I think this, we would need to explain a bit of background and in order for us to do that

Mr Chair, I would ask that we go back to the previous file.

CHAIRPERSON: Before you do that, will the answer ultimately be yes, you requested or no, you did not request, or you want to check something before you say?

MR SINGH: Well Mr Chair, I do not recall as I said this e-mail or the circumstances behind this. I can only, I can only think that this would have been an invoice or these were outstanding invoices, as you would see from the, as Mr Wood's message says outstanding invoices, and if you
10 then go to the 1924 you will see it is a list of outstanding invoices and you will see that there, this mail has come to me in May and it actually has December, January, March invoices reflected thereon.

CHAIRPERSON: Yes.

MR SINGH: So these are long outstanding invoices. So my only view in terms of why this would have come to me was that these were long outstanding invoices that would need to have been in some way, shape or form settled or we would have needed to investigate why these things
20 have been long outstanding.

Now Mr Chair, why I wanted to go to the other e-mail, this e-mail is actually the e-mail to Mr Peter in August, but it actually gives more clarity as to why this invoice actually, or these invoices came to use.

CHAIRPERSON: Okay, you may go there.

MR SINGH: Thank you.

ADV MYBURGH SC: Mr Chair, I see it is almost exactly 13:00.

CHAIRPERSON: Oh, yes.

ADV MYBURGH SC: Is this not perhaps an opportune time to break? I will then see if I can get myself some coloured copies in the interim.

CHAIRPERSON: Okay, alright. So you will continue with that after lunch.

10 **MR SINGH:** No problem.

CHAIRPERSON: We will take the lunch break, we will resume at 14:00.

ADV MYBURGH SC: Thank you.

MR SINGH: Thank you.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay let us continue.

ADV MYBURGH: Thank you. Good afternoon Mr Singh.

20 **MR SINGH:** Afternoon Sir.

ADV MYBURGH: You before lunch were going to deal with this invoice tracking. Please go ahead.

MR SINGH: Thank you Mr Chair. Mr Chair I was trying to explain the context behind the email that I had received from Mr Wood which is reflected at 1923 and I requested

that we go to – I think it is – Mr Chair Bundle 5(b) page 769.

CHAIRPERSON: 5(b) what is the page number?

MR SINGH: 769.

CHAIRPERSON: 769. Yes.

MR SINGH: Mr Chair this would provide the context behind why Mr Pita and myself would have received these – this spreadsheet.

You can see the attachment is Advisory Outstanding
10 Invoices August whereas mine I think refers to May and the
text of the attachment would be as recorded.

“Hi Gary, please could you assist with the
attached list of outstanding invoices in
particular May and June 2015. Invoices are
overdue. Should you require the underlying
invoices and supporting memos as delivered
to Transnet at the time of the invoicing.
Please let me know. Your assistance in this
regard will be highly appreciated. Thank
20 you Eric Wood.”

So Mr Chair that would be the context within which
these – this document would have been received and as you
can see Mr Chair if we now go back to my document which
is in 5 (c).

CHAIRPERSON: Yes.

MR SINGH: Basically you would see that again it refers to outstanding invoices. So the context Mr Chair is that Mr Wood would have a discussion with me regarding Regiments outstanding invoices – he would have then sent this email to me which I would have received. I would have then open the invoice – the email and as you would have then seen Mr Chair he would have taken you to page 1924 and there is the list of outstanding invoices.

As you would see in the second column December
10 2014 invoices – two invoices outstanding.

January 2015 is another invoice and then you have five 20 – March 2015 invoices. And there is a whole host of April and then you will see February, January and February invoices as well in the last block.

So Mr Chair this is the context within which the email would have been received by myself and I would have then dealt with it accordingly Mr Chair.

The other point to make Mr Chair is that if you have reference to page 1924 Mr Chair you would – you would
20 understand that an email that you would receive would look like 1923. So that is what you would see when you open the email.

Then there would have been an attachment that was attached to the email which is then 1924 and Mr Chair I think the investigator here is trying to basically say which is

what I would have seen when I opened the attachment is this list of outstanding invoices. And that is all I saw Mr Chair.

I had no knowledge or clue that the spreadsheet contained all of this other documents that are reflected from page 1925 right through to I think 1935 if I am not mistaken Mr Chair.

These documents that are attached to the Reference Bundle from 1925 to 1935 would require that you actually
10 physically do something to the spreadsheet to able to access these – let us call it hidden data.

And you will see Mr Chair as the investigator has written on 1924 he said three unhide. So if you – you performed a function on Excel to unhide columns G to J then you would see these columns. If you then had to unhide the rows – the rows on 1926 it would then reflect those rows.

1927 if you performed an unhide of those tabs you will then see the March tab, you will then see the April tab,
20 the May tab and so on. But this required physical – firstly you needed to have knowledge that these things were there. Secondly you then needed to actually go and physically unhide these things.

CHAIRPERSON: Yes thank you.

MR SINGH: So firstly Mr Chair I can confirm that I had no

knowledge of the fact that these – that this spreadsheet contained this information.

Secondly I did not perform any unhiding of any of these documents. Mr Chair the first time that I can honestly tell you that I became aware of the fact that this spreadsheet contained these hidden – this hidden information was actually when we were here and we were presented with this spreadsheet.

And we said from what we can see it only has one
10 sheet and then we engaged with the investigator who then explained to us that if you do this and do this and do this it then reflects all of the stuff.

So Mr Chair from - from my perspective I had no knowledge of any of these spreadsheets. I did not perform any unhide functions and to the extent that the commission has access to my emails whatever – whatever tests you can perform to unto – to identify if I did in fact unhide any of these things or have access to this information you are more than welcome to do it Mr Chair.

20 **ADV MYBURGH:** Well Mr Singh you were – you work with spreadsheets all the time so when you talk about unhiding it is really a clicking on a tab right?

MR SINGH: I did...

ADV MYBURGH: It is not some sort of mysterious computer program it is simply clicking on a tab.

MR SINGH: Well firstly you need to know that it 00:11:54

ADV MYBURGH: Yes but then that is all it is.

MR SINGH: Ja but you need to know it there then you click on it and then it comes out but from my perspective I would not be looking for that.

ADV MYBURGH: Maybe we will – maybe we will need to demonstrate it for the assistance of the Chairman perhaps on another occasion but you accept it just has to be clicked?

10 **ADV VAN DEN HEEVER:** Chairperson maybe my learned friend must just give my client an opportunity to finish his answer before he interrupts him with another question.

CHAIRPERSON: Well I did not hear he interrupted him. I thought he said everything he wanted to say. Mr Singh was there anything else you wanted to say?

MR SINGH: No Sir.

CHAIRPERSON: No okay.

ADV MYBURGH: Oh all right thank you. And then I wanted to ask – I mean what do you – I mean what is very strange
20 here is Mr Wood obviously trusted you with this information.

MR SINGH: Well I do not know if Mr Wood actually knew that this information was there.

ADV MYBURGH: Sorry.

MR SINGH: I would not know if Mr Wood knew this information was there or not.

ADV MYBURGH: It is one thing for you to say you did not know it is there it would be quite another thing to say that Mr Wood – these are his spreadsheets that he is sending to you would not know it is there.

MR SINGH: Well hence I am saying I cannot speak for Mr Wood.

ADV MYBURGH: All right. So just that I understand this you – the email from Mr Wood to you says that you requested the list of outstanding invoices.

10 **MR SINGH:** Yes Sir.

ADV MYBURGH: Is that right?

MR SINGH: Well according to the email.

ADV MYBURGH: And would that be normal. I mean I have seen – I mean you have seen for example in the Eskom judgment you came in for a lot of criticism in dealing with service providers in respect of the payment of invoices. You remember that.

MR SINGH: Well it is not – in my view it is not extraordinary I think as I said...

20 **ADV MYBURGH:** I am sorry I cannot hear you Mr Singh.

MR SINGH: I am saying it is not extraordinary for a CFO to deal with outstanding invoices. As you would have seen Mr Bester and Mr Sumpton also were complaining about outstanding invoices and wanted to have a meeting.

ADV MYBURGH: Except you say you never went to any

such meeting. It had nothing to do with them.

MR SINGH: Exactly.

ADV MYBURGH: Ja I do not know how that helps you.

MR SINGH: No I am saying but it is not unusual on their version to be dealing with the CFO for outstanding invoices.

ADV MYBURGH: Yes. Well just in relation to that that is very unusual because there was then a meeting at a restaurant and Mr Essa was there.

MR SINGH: Mr Chair we going to traverse this again.

10 **ADV MYBURGH:** Maybe you should not go down that road.
All right.

CHAIRPERSON: Well you – you brought it back Mr Singh.

ADV MYBURGH: Okay so you – I have asked you about how you would unhide these columns and I have asked you about whether you – why it is that Mr Wood would trust you with the information. Is it – is it your version that you did not know anything about these payments to Chivita, Homix and Albertine?

MR SINGH: No Sir.

20 **ADV MYBURGH:** Not at all.

MR SINGH: No Sir.

ADV MYBURGH: I mean you did not even know that they were supplier development partners.

MR SINGH: No Sir.

ADV MYBURGH: Let us just have a look at this and do you

accept as well when one works with a spreadsheet that what one does if you hit a tab or unhide columns really what it does on your computer is it enables it to become bigger because not everything fits the first time around on the first view. Correct.

MR SINGH: I do not understand.

ADV MYBURGH: Well Mr Singh you work – you are presumably have very sophisticated computer skills.

MR SINGH: I would say I am average.

10 **ADV MYBURGH:** And I would assume that you have got good Excel computer skills.

MR SINGH: I would say average.

ADV MYBURGH: Yes but you – as the Group Chief Financial Officer of Transnet and Eskom this is your bread and butter. Excel spreadsheets correct.

MR SINGH: Not really Sir. I would not...

ADV MYBURGH: Mr Singh.

20 **CHAIRPERSON:** You do not want to associate with – associate yourself with average Mr Singh. Do you want to do that?

MR SINGH: Well Mr Chair if you – if you are the Group CFO of Transnet Mr Chair it does mean to say that you actually work with Excel spreadsheets every day.

CHAIRPERSON: Ja well –

MR SINGH: Excel spreadsheets are prepared for you.

CHAIRPERSON: That was on a lighter note.

MR SINGH: No but I was just pointing to Mr...

ADV MYBURGH: But I am being – honestly I mean is this not your bread and butter?

MR SINGH: No.

ADV MYBURGH: Excel spreadsheets?

MR SINGH: No Sir.

ADV MYBURGH: Well how – all right. Well we will come to a perhaps a demonstration in time but are you not
10 suggesting that you unfamiliar with the working of Excel spreadsheets?

MR SINGH: I am familiar with the working of Excel spreadsheets – as I said to you I am – if you are to grade me I would tell me – I would tell that myself – my self-assessment on Excel would be rela – would be average.

ADV MYBURGH: So you see Mr Singh for example I think everyone has learnt this lesson in my – what has happened to me is an attorney said I have sent you the information – you the Excel spreadsheet – you phone the attorney and
20 say it is not here and he says you idiot you press that tab and there is the next spreadsheet. I mean you have – we have all learnt those lessons hey?

MR SINGH: Yes.

ADV MYBURGH: Correct.

MR SINGH: Yes.

ADV MYBURGH: Yes. Can we just have a look at some of the – the other stuff that was sent to you. Go to 1927.

MR SINGH: 1927.

ADV MYBURGH: 1927. Here you see that on the face of it it is historical information going back to March 2014, do you see that

MR SINGH: That is correct.

ADV MYBURGH: I mean there for example you will see the second payment the 1064 transaction advisor. In that month
10 the bill was R6 million. Chivita got half and Albertine got 5%. You see that.

MR SINGH: That is correct.

ADV MYBURGH: And then if you go to 1928 again it is another representation of that. You see the 1064 advisory services in March.

MR SINGH: Yes Sir.

ADV MYBURGH: So this other information other than for the first screen shot of screen view have you any explanation why Mr Wood would send it to you?

20 **MR SINGH:** I have no idea Mr Chair.

ADV MYBURGH: And would you have any idea why he would send the information to Pita the person who succeeded you?

MR SINGH: Mr Chair as I have said I think for the purposes as I have read out from the email.

ADV MYBURGH: Then if we can go back to – did you have an opportunity to look at those McKinsey confinement contracts over lunch?

MR SINGH: I did Sir.

ADV MYBURGH: Because there is just the one question and that is the issue of confidentiality.

MR SINGH: Yes Mr Chair. I think from the documents as we have gone through them the reasons for the confidentiality is not mentioned and is not – is not
10 mentioned and I would need some time to go through my records to identify the reasons for those – the need for the confidentiality. Also Mr Chair these documents that we are – was placed before us today was not part of the 10 – as we – as I mentioned it was not part of the 10.6 Notice in order for us to respond to Mr Volmink. The particular documents relating to NMPP swat manganese and coal and iron ore were actually requested from the commission when we engage with the commission relating to the 10.6 Notices and these particular documents were not provided to us. So
20 Mr Chair I would respectfully request that we be afforded some time to be able to deal with these documents and it would seem like we are coming back for another day.

CHAIRPERSON: Well I do not know about that but...

MR SINGH: But either way Mr Chair we will deal with them.

ADV MYBURGH: We will – we are happy to afford you that

time just so that you know of course you were sent the whole of Mr Volminks's affidavit and all the annexures and these issues are in the summons. But I am more than happy to provide you with the time. It is a difficult issue.

ADV VAN DEN HEEVER: Chairperson – oh sorry.

ADV MYBURGH: Yes.

ADV VAN DEN HEEVER: My learned friend can finish.

CHAIRPERSON: Well let – let him finish.

ADV VAN DEN HEEVER: I just want to place on record that
10 what was sent to my client is the affidavit and one single
annexure. The fact of the matter was as my client has
already stated there was a request more than once to be
provided with those documents and it was placed on record
to the best of my recollection my attorney can correct me
that we need those documents – these whatever it is called

CHAIRPERSON: Spreadsheets.

ADV VAN DEN HEEVER: No not – no.

CHAIRPERSON: Not spreadsheets.

MR SINGH: The memos – the memos.

20 **CHAIRPERSON**: Oh the memos.

ADV VAN DEN HEEVER: The memos in order to properly
deal with them and we were not given it. The first time that
it seems on the face of it those documents were forwarded
in now on the 25th when we were sent an updated bundle.

ADV MYBURGH: Well Mr Chairman I have made my

position clear. I am happy to afford...

CHAIRPERSON: Ja.

ADV MYBURGH: As you saw I was happy to have – afford Mr Singh the lunch hour if he needs more time than that I have no difficulty and it is really it is one point question and he has all the documents.

CHAIRPERSON: Ja.

ADV MYBURGH: If there is anything else need from us tell us and then we can deal with it.

10 **MR SINGH:** Thank you Sir.

ADV MYBURGH: And insofar as we may not return it seems that that is the thing that could easily be dealt with on affidavit because it is – it is just a simple answer.

MR SINGH: Thank you.

ADV MYBURGH: You might also want to have a look at Mr Molefe's evidence where I think with respect he struggled to explain the issue of confidentiality.

MR SINGH: Will do thank you.

20 **ADV MYBURGH:** All right let us turn then to the procurement of 95 locomotives. Just incidentally, before we get off this. So what did you do when you received this information from Mr Wood – did you then go and chase up the payments and make sure they were all paid?

MR SINGH: Mr Chair as a matter of course I would have referred to the spreadsheet – the – as we call it the first

view. I would have had a look at which invoices which were outstanding and I would have then sent it to the respective individuals I think Mr Mohamody or Mr Mohommed or whoever was actually in charge then.

ADV MYBURGH: And would you then have made sure that they were paid?

MR SINGH: I then would have then followed them up or they would have come back and said this is the out – this is the reason it is outstanding – this is what we are doing with
10 it and then they would have had to resolve whatever they were – what happened.

ADV MYBURGH: Yes but would you have ensured that the invoices were paid?

MR SINGH: I would have not been the person that actually physically went around running around and picking them up.

ADV MYBURGH: Yes.

MR SINGH: But eventually they would have got there.

ADV MYBURGH: I see.

CHAIRPERSON: I guess – I guess the – Mr Myburgh's
20 question could be put this way. They must have sent them to – Mr Wood must have sent them to you to take necessary steps to ensure that payment was made.

MR SINGH: Mr Chair these relate to long outstanding invoices.

CHAIRPERSON: Yes Ja I am talking about that.

MR SINGH: Yes – so these invoices would have been delivered to Transnet with the required supporting documents to the appropriate person who they were dealing with.

MR SINGH: Yes but they were not being paid.

MR SINGH: They were not being paid.

CHAIRPERSON: Ja that is the point.

MR SINGH: Yes.

CHAIRPERSON: That is – it must have...

10 **MR SINGH:** So he would have then – he would have then requested me – my intervention to find out what is happening.

CHAIRPERSON: Ja.

MR SINGH: Or what is the issue.

CHAIRPERSON: Ja.

MR SINGH: And then do we then resolve the issues and then they would have been.

CHAIRPERSON: Obviously, from his point of view he did not know of any reason why payment should not be made.

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

CHAIRPERSON: So he probably wanted somebody to take steps to try and make sure payment was made.

MR SINGH: Indeed Sir.

CHAIRPERSON: Okay all right. Mr Myburgh.

ADV MYBURGH: Thank you. Just on that – just one

related thing. When did you first come to learn that Mr Essa was involved with Trillian – was an owner of Trillian?

MR SINGH: I think it was when McKinsey informed us that they were not going to partner with Trillian anymore and that would have been March 2016.

ADV MYBURGH: At the time at which you were at Eskom.

MR SINGH: Yes.

ADV MYBURGH: March 2016.

MR SINGH: Yes.

10 **ADV MYBURGH**: All right. Can we turn to the procurement of let us start with the 95 locomotives? And let me just paraphrase some facts so that I can get to the point where I want to be. Would you confirm that in September of 2012 CSR was appointed as the preferred bidder for the supply of the 95 locomotives at a cost of some R2.5 billion.

MR SINGH: Mr Chair the date I am not too sure but I do know that CSR was appointed as the OEM to supply 95 locomotives.

ADV MYBURGH: Can we go please to the POI bundle.

20 **MR SINGH**: Sorry Sir.

ADV MYBURGH: Transnet Bundle 6. Ja. You will see there at page 93.

MR SINGH: Black numbers again.

ADV MYBURGH: Yes. You will see at paragraph 5.5 – it is a bit of a mouthful 18.44. It says according to a letter

dated 5 September 2012 from Molefe to PAN Transnet notified CSR that its appointment as the preferred bidder. In the letter, CSR was requested to sign the agreement by no later than the close of business on 6 September 2012. Do you see that?

MR SINGH: I see that Sir.

ADV MYBURGH: If I could ask you please to go to page 39 and this is in the section dealing with the 95 locomotives.

MR SINGH: 39.

10 **ADV MYBURGH:** 39.

MR SINGH: Yes Sir.

ADV MYBURGH: With reference to the table at page 39 would you confirm that this time in September 2011/2012 Mr Sharma was a director of Transnet and a member of the BADC.

MR SINGH: If I may – from my recollection he was yes.

ADV MYBURGH: And you of course were a director we see from that table ex officio correct.

MR SINGH: That is correct.

20 **ADV MYBURGH:** And we know that in August of 2012 Mr Sharma was appointed as the Chairperson of the BADC. You know that.

MR SINGH: 2012?

ADV MYBURGH: I think it is 2013 I beg your pardon.

MR SINGH: No this one – this table refers to the 3 August

2011.

ADV MYBURGH: Yes exactly. That is why I am trying to work out if you know when Mr Sharma became the chairperson.

MR SINGH: Oh no, no, I would not...

ADV MYBURGH: You do not know that – okay.

MR SINGH: No. no.

ADV MYBURGH: All right. What was your involvement in the acquisition of the 95 locomotives?

10 **MR SINGH:** Mr Chair if I recall I had actually a limited involvement in the acquisition of the 95 locomotives. It was really a project that was run by Transnet Freight Rail and I think if my memory serves correctly, I would have signed off on certain memos that would require to be submitted to the board or to the Capital Investment Committee in relation thereto.

ADV MYBURGH: So we have seen that you were at a meeting reflected in paragraph 5.5.9.8 and then also if you go...

20 **CHAIRPERSON:** Paragraph number? Paragraph number?

ADV MYBURGH: Paragraph 5.5.9.8 that table at page 39.

CHAIRPERSON: Okay.

MR SINGH: Yes that was – yes – as I said I would have signed off memos and attended the board meetings or 00:30:09 meetings where these were discussed.

ADV MYBURGH: And then there is reference to another board meeting at page 41 – the board meeting on the 31st of August towards the foot of the page. And there you will see over the page at paragraph 5.5.9.18 you were present at that board meeting as well.

MR SINGH: Yes.

ADV MYBURGH: As was – as was Mr Sharma.

MR SINGH: Yes.

ADV MYBURGH: Now as you know the money flows
10 investigation has revealed that CSR in relation to the 95 locomotives and Regiments Asia which is another of Mr Essa's companies entered into a BDSA with it getting a in this instance a 20% kickback and as I have the evidence to date money flows as – have identified that payments to the tune of some 17 million dollars have been made by CSR in this regard. I take it you say you had no idea of the involvement of Mr Essa and or Regiments Asia?

MR SINGH: That is correct Sir.

ADV MYBURGH: Now Mr Singh perhaps I could just ask
20 you to comment on this – this generally. How is it that there is 20% fat left assuming that that was the kickback that was paid here is that possible?

MR SINGH: Mr Chair I would not be able to comment. I am not au fait or in any way an expert on locomotive pricing so I would not be able to comment.

ADV MYBURGH: So when we – when we get to the 1064 and it is something perhaps one might want to reflect upon I mean there you were in the negotiations.

MR SINGH: Yes Sir.

ADV MYBURGH: There – there is also one of these BDSA's concluded there it is a 21% kickback. How could there be – have been enough fat for a 21% kickback if these negotiations were conducted thoroughly and in a bona fide way? There was hard bargaining. How could it be that
10 there was enough space if you get the point I am making to pay that kind of kickback?

MR SINGH: Well as I said Mr Chair, I would not be able to comment in terms of the margins that the OEM's believed was appropriate for them to earn. Certainly from what I can recall of the process that was followed for the 95's and the 1064's it was a very thorough and rigorous process in terms of the negotiations that occurred.

CHAIRPERSON: Well one would have thought that quite some work would have been done to ensure that if there
20 was an inflation of prices that would be picked up.

MR SINGH: That is correct Sir.

CHAIRPERSON: And if it was not picked up that there was so much that could go to kickbacks does not look like a proper job was done in terms of checking.

MR SINGH: Well Mr Chair as I said from – from my

perspective I think all of the escalations were justified and were as a result of economic variables that had changed during the interphase as well as the contract negotiation phase and I guess we will deal with that when we come to the 1064 locos.

CHAIRPERSON: I mean it is difficult to – to say that if the price includes 21% kickback can be said that the price is justified.

MR SINGH: Well Mr Chair.

10 **CHAIRPERSON:** That is what I – I – amount of kickback.

MR SINGH: Well Mr Chair as I said to you if the OEM's decide to make a lower margin for whatever reason then that is something for them to decide. It has got nothing to do with Transnet.

CHAIRPERSON: Mr Myburgh.

ADV MYBURGH: Yes thank you. Do you know what the margins are in locomotives?

MR SINGH: Not off-hand no.

20 **ADV MYBURGH:** But I mean was it something that you engaged in during the course of negotiations presumably.

MR SINGH: It is not something that one would ordinarily pick up. So it is a very difficult information to get hold of and that was one of the reasons why the transaction advisors were appointed particularly art.

ADV MYBURGH: Do you see the irony. One of the reasons

why transaction advisors were appointed. I mean do you see that happened with those transaction advisors.

MR SINGH: Yes.

CHAIRPERSON: You are allowing them to advise you.

ADV MYBURGH: Mr Singh when you reflect on this do you think that those transaction advisors advised you properly? I mean now that you know the facts.

MR SINGH: Well Mr Chair in terms of the – the work that was required to be done I would reflect and say yes Mr
10 Chair because as far as I am concerned as I said when we deal with the issue of the 30 to 55 billion Mr Chair you will see that the barring the issue relating to the element of contingencies pretty much all of the increase related to economic variables. So from that perspective Mr Chair that leaves little room or manipulation of the numbers.

CHAIRPERSON: Of course you do not mean that if we could go back in time you would still use them.

MR SINGH: Mr Chair for the – for the – well having known what we know now but given the same information then we
20 would probably use – still use them. But given what we know now maybe not.

ADV MYBURGH: Can we then turn to the 100 locomotives. So here CSR was awarded a tender on confinement replacing Mitsui, correct?

MR SINGH: That is – sorry Sir.

ADV MYBURGH: And a LSA was concluded on the 17th of March 2014 at a cost of approximately 4.3 billion. The ETC having been 3.8 billion approximately.

MR SINGH: That is correct.

ADV MYBURGH: And 17 March was the same day as the LSA's in respect of the 1064 locomotives were concluded.

MR SINGH: That is correct.

ADV MYBURGH: Perhaps you can just explain – I am not sure – I know it is amongst the documents but maybe you
10 could just explain to us the reason why the 100 locomotives were acquired at this time.

MR SINGH: We acquired as?

ADV MYBURGH: At this time.

MR SINGH: Okay. Mr Chair if I recall correctly, there was a need for – okay let me explain it this way. Let me start here and maybe we can then – we will go back within time Mr Chair if you allow me because this is how I understand it.

CHAIRPERSON: Ja.

20 **MR SINGH:** But I think it will then fit into the chronology of everyone else is against but this is how I understand it happened.

CHAIRPERSON: That is fine.

MR SINGH: There was a – the coal line was experiencing a problem in terms of meeting its budgeted volumes and it

was a periodic shortfall week after week after week.

At Transnet, we actually measured the volume – the budgeted volumes on a weekly basis because in Transnet revenue is actually one of the most significant – well actually in any company. But we – so we tracked revenues on a weekly basis and particularly budgeted volumes.

So it became a perpetual what we called cash flow at risk item because if you did not earn the revenue you most certainly did not earn the cash flows associated with the revenue and this was then tracked weekly.

So we used to have these EXCO break away sessions where we used to discuss all of these let us call it the cash flow shortfalls and the reasons therefor and what plans do we need to put in place to mitigate.

And we had a series of these meetings and as we got to a point in time I then engaged with Mr Molefe and I said to Mr Molefe listen we continuously having this issue with this coal line and the coal line is not performing up to volume and that is when Mr Molefe engaged with the Mr Gama to understand what was the – the issue relating to the coal line.

And Mr Gama then responded and said locomotives. You give me locomotives I can deliver the volumes. And the coal line locomotives that were required was contingent upon the – the 1064 locos having come on stream at a

certain point in time which would have then allowed for some general freight locos I think to have been deployed to the coal line that would have enabled Mr Gama then to meet his budgeted revenue volume.

So this was the way that this thing worked out. That the cash flow is at risk on the coal line was due to a lack of locomotive locomotives and therefore it triggered this procurement event Mr Chair.

ADV MYBURGH: All right. Now we know that at this time
10 Mr Sharma was the chairperson of the BADC – he is a director. We know also that Essa in the form of Regiments Capital here as well concluded a BDSA with CSR for 21% kickback. There is just one question, which I perhaps have not asked you that I would like you to comment on.

Have you got any idea what it is that Mr Essa – you have looked at some of these agreements? I think you have looked at the Tegeta agreements.

MR SINGH: That they were part of the 00:41:15.

ADV MYBURGH: Ja. Why do you think – are you able to
20 proffer any view why was CSR paying this money – this kickback for what?

MR SINGH: I would have no idea Sir.

ADV MYBURGH: You have read the contracts.

MR SINGH: Yes Sir.

ADV MYBURGH: They seem to indicate that they are

brokers, they have influence, and they can pull off the deal.

MR SINGH: Yes Sir.

ADV MYBURGH: You say – do you say that did not happen.

MR SINGH: No Sir.

ADV MYBURGH: All right. Can we then in relation to the 100 locomotives can I take you to Mr Callard's affidavit please. That you find at Exhibit BB4(a). And could I ask you please to turn to page FQC6. So Mr Singh this is a – stuff that is – we have been through with other witnesses
10 and the Chairperson is familiar with it. I am going to try and paraphrase it and walk through this quickly. If at any time you feel you want to look more carefully at it please feel free. But I am just trying to set out the chronology and sequence so that we can get to the point that I would like to question you on.

You see at paragraph 26 at page 6 Mr Callard says that he prefer – that he prepared the first business case in April of 2012 and then at 26.1 he says in September/October 2013 he was requested by Gama to
20 update the memorandum to the BD – to the BADC. And he says that the memorandum dated the 15th of October 2013 was signed by Gama, Pita, Mohamedy and you. Do you see that?

MR SINGH: That is correct.

ADV MYBURGH: And we know this is stated at paragraph

27 that that memorandum recommended confinement to Mitsui. You agree with that.

MR SINGH: As I recall yes.

ADV MYBURGH: So that is in September/October 2013. If I could ask you to go forward then to paragraph 32 at page 7 he says I was informed through a sms from Gama on 21 October 2013 that the Group Chief Executive Mr Molefe had withdrawn the memorandum at the BADC meeting on the same day. You see that.

10 **MR SINGH**: Yes Sir.

ADV MYBURGH: Then at paragraph 34 Mr Callard said: "I later prepared an updated version which Gama signed on 25 November 2013."

You see that.

MR SINGH: Yes.

ADV MYBURGH SC: And then if we go to the next year, January 2014, at paragraph 38 at page 9. He says:

"On Monday, 20 January 2014, I mailed a pdf version of the revised business case to Gama..."

20

Do you see that?

MR SINGH: Sorry, where are you now, sir?

ADV MYBURGH SC: Paragraph 38, page 9.

MR SINGH: Oh, sorry. Yes.

ADV MYBURGH SC: Let me go through that again.

“On Monday, 20 January 2014, I mailed a pdf version of the revised business case to Gama...”

Do you see that?

MR SINGH: Yes, sir.

ADV MYBURGH SC: Then he says at 39, paragraph 39:

10 “On the morning of Wednesday, 22 January 2014, I received a mail from Lindiwe Mdletshe from Supply Chain Services, requesting my assistance on formatting my memorandum of the previous Monday.

When I perused the memorandum, I noticed that the memorandum had been changed to give effect, to confine and award to CSR for 100 electric locomotives...”

Do you see that?

MR SINGH: That is correct, sir.

20 **ADV MYBURGH SC**: So that is on 22 January. If I could take you then, please, to page 10 at paragraph 44. He says:

“I deliberated long and hard on the Wednesday evening on the implications of what I have learnt.

On Thursday afternoon, 23 January, I emailed Gama and Jiyane, expressing my concern at

the unilateral changes to the business case/memorandum I submitted on the Monday...”

And then if you go to paragraph 45 at page 11. It says:

“My email to Gama and...

Jiyane opens with:

10 “This is a difficult mail to write in helping to format a recent version of the 180 locomotive business case on Wednesday the 22nd. \ I noticed that the case was changed from that which I had submitted on Monday.

This mail is because of the nature of those changes and the implications.

The implications are technical and the rationale for the acquisition which was speedy delivery to mitigate MDS volumes at risk...”

Do you see that?

MR SINGH: I see that, sir.

20 **ADV MYBURGH SC**: And then he sets out at paragraph 46 what his concerns were. And then if you go to paragraph 48, he states that:

“During the preparation of my statement, the Commission provided me with three pertinent emails from which it is evident that Gama,

Singh and Molefe had knowledge of my concerns per the email trail below.

(1) The first was an email sent from Gama to Singh late on 23 January, essentially reflecting my concerns...”

It reads – and this is now from Mr Gama to you:

“Hi, Mr Singh. I am afraid the submission on the 100 locomotives is a mess and will need to be withdrawn.

10 The 20 e-locomotive is a 22-ton per axle locomotive suitable for GFB while the 19 e-locomotive is a 26-ton per axle beast suitable for the coal line.

The two locomotive types are not interoperable while CSR can make additional locomotives in China in a very short space of time to mitigate against MDS volume lost, this will counter to our localisation strategy and would have to be spelled out.

20 85 locomotives to be assembled by T has not yet commenced. So we cannot yet made an argument that this would reduce the risk...”

You confirm having received that email?

MR SINGH: Mr Chair, again, I do not recall the email but if – I do not have any reason to believe I did not receive it.

ADV MYBURGH SC: Well, it seems you must have because at 48.2, the second email that was provided to Mr Callard was from Singh to Gama on the morning of Friday, 24 January, saying that they would discuss the matter this morning. You want me – let me take you there so that you can refresh your memory. If you keep your finger at page 12, you can turn to page 221.

MR SINGH: 221...

ADV MYBURGH SC: That is the cover page. The email
10 itself appears at 222. There you will find Mr Gama's email
at the bottom and then your response on the
24th of January, the morning, 07:02:

“Let us discuss this, this morning...”

On 24 January.

MR SINGH: I see that, sir.

ADV MYBURGH SC: And if you go back to page 12,
paragraph 48.3, the third mail, also on the morning of
Friday, 24 was where Singh forwarded Gama's mail to
Molefe for information. That you will find at page 225. Do
20 you see that?

MR SINGH: So this was when I sent it to Brian? Yes.

ADV MYBURGH SC: Yes. Anoj Singh, 24 January at
07:00 to Molefe: “FYI. Thanks.” Do you see that?

MR SINGH: That is correct, sir.

ADV MYBURGH SC: And then if you go back to page 12,

there was that day a BADC meeting, correct?

MR SINGH: That is correct, sir.

ADV MYBURGH SC: And let us go to those minutes. Those you will find at page 228. So, but you see at 228, is that Mr Sharma was the chairperson and then in attendance were you and Mr Molefe and in partial attendance at 1.4 was Mr Gama and Mr Jiyane. Do you see that?

MR SINGH: Yes, sir.

10 **ADV MYBURGH SC**: At the foot of that page, 5.1, you see that Messrs – what is recorded as Messrs Gama and Jiyane joined the meeting at 11:55.

MR SINGH: Yes, sir.

ADV MYBURGH SC: You see that?

MR SINGH: Yes.

ADV MYBURGH SC: And what we see at page 232 is the acquisition of the 100 locomotives was then discussed as item 5.2. Do you see that?

MR SINGH: That is correct, sir.

20 **ADV MYBURGH SC**: And then if you go to page 237, you will see just above item 5.6 that Messrs Gama and Jiyane were excused from the meeting at 15:03.

MR SINGH: That is correct.

ADV MYBURGH SC: And if I could then take back, please, to page 232?

MR SINGH: 232?

ADV MYBURGH SC: Ja. So it reads at 5.2.1:

“Management took the committee through the submission as contained in the pack...”

Oh, that is the submission to confine to CSR, correct?

MR SINGH: That would be correct, sir.

ADV MYBURGH SC: Alright.

“The submission was taken as read.

10 The purpose of the submission was to request the committee too...”

And it reflects then B:

“Recommend that the board approves the investment in the procurement of 100 electric locomotives required for the coal export line estimated at R 3.8 billion...”

And at C:

20 “Recommend that the board approves the confinement and award of the procurement of the 100 electric locomotives...”

Do you see that?

MR SINGH: Yes, sir.

ADV MYBURGH SC: And ultimately that carried the days(?), is that right?

MR SINGH: Sorry, I could not hear.

ADV MYBURGH SC: That that was recommended?

MR SINGH: Yes, sir. Yes.

ADV MYBURGH SC: Now the memorandum or recommendation that was placed before the BADC on that day, you will find at page 244. Do you see that?

MR SINGH: [No audible reply]

ADV MYBURGH SC: Now that document is quite a lengthy document. It runs up until 267.

MR SINGH: That is correct, sir.

10 **ADV MYBURGH SC:** And it was signed by you, I think, it appears the 21st of January. Is that right?

MR SINGH: That is correct, sir.

ADV MYBURGH SC: And by Mr Molefe on the 22nd of January.

MR SINGH: That is correct, sir.

ADV MYBURGH SC: Now, perhaps I could just ask you to explain to the Chairperson how this change was - overnight change came about and perhaps I want to start off by pointing out to you that Mr Gama did not sign the
20 memorandum which I have just taken you to. You know that?

MR SINGH: No, I have seen that. Yes.

ADV MYBURGH SC: Alright. Can you just explain – you know that a lot of evidence has been given about this. Just explain or please explain to the Chairperson how this

change came about.

MR SINGH: Well, Mr Chair, as I have mentioned before. The issue of the locomotives emanated from the issue of the weekly revenue reports that identified the coal line as an underperforming unit of Transnet, of Transnet Freight Rail and the reason therefore, that was given by Mr Gama was the issue of the track(?) of the locomotives. At that point in time, Mr Chair, Mr Molefe, I think at that time or during that conversation with Mr Gama if not – I may be
10 mistaken, decided that we should then basically confined to CSR. I am not too sure if it was in that conversation with Mr Gama or at a later stage thereafter but it was then decided that we would then acquire the locomotives from CSR rather than Mitsui.

ADV MYBURGH SC: This, you say, was in conversation with Mr Gama?

MR SINGH: As I said, I am not – the – remember I said the – you asked the original question and you said how did this 100 come about and I said: Listen, the 100 came
20 about as a result of the underperformance of the coal line relative to our revenue tracking ...[intervenes]

ADV MYBURGH SC: Right?

MR SINGH: ...that occurred on a weekly basis. So when the revenue tracking indicated again that the coal line had underperformed, I engaged with Mr Molefe to understand

what are we going to do now because yet again the coal line has underperformed.

And this would have been on the back of previous engagements that we would have had with Transnet Freight Rail in terms of what are they doing to mitigate these volumes that are constantly being shipped(?) on the coal line.

So when I had gone to Mr Molefe to raise this continued risk relating to the coal line, even engaged with
10 Mr Gama to understand what was the problem.

ADV MYBURGH SC: Yes?

MR SINGH: And then he, Mr Gama, conveyed to Mr Molefe that the issue was the fact that he did not have *fact of reference(?)* [Speaker not clear]

ADV MYBURGH SC: Yes, I think you and I are missing one another. I am talking about the change.

MR SINGH: Hence ...[intervenes]

ADV MYBURGH SC: Overnight change.

MR SINGH: Hence I am saying to you that that – the
20 decision then was taken by Mr Molefe in that conversation, whether it was with Mr Gama on the phone or with me thereafter. I cannot exactly remember but then the decision was made with Mr Molefe to say let us confine to CSR.

ADV MYBURGH SC: Yes, but what caused you to confine

to CSR? There had been a confinement to Mitsui. .

MR SINGH: No ...[intervenes]

ADV MYBURGH SC: But I think we all accept the problem and the need for the locomotives but it is the change that I am interested in from confinement from Mitsui to CSR and that, what appears to be a change, that as you, happens quickly. There is a business case presented by Callard. And we are going to come to Mr Gama's evidence. He did not know anything about this. The first time he knew about
10 it, according to him, was at the BADC meeting.

MR SINGH: Well, there was not a confinement in favour of Mitsui.

ADV MYBURGH SC: Right.

MR SINGH: There was, as per Mr Callard's evidence, there was a confinement memo that as prepared.

ADV MYBURGH SC: A business case?

MR SINGH: No, there was a business case prepared for additional locomotives for the coal line.

ADV MYBURGH SC: Yes.

20 **MR SINGH**: From that you then need to have a confinement memo that actually would give effect to the procurement.

ADV MYBURGH SC: Sure.

MR SINGH: He then prepared this... according to the dates, sometime in September/October ...[intervenes]

ADV MYBURGH SC: Yes.

MR SINGH: ...which then went which I also signed.

ADV MYBURGH SC: Yes, we saw that.

MR SINGH: Which then went to the Acquisition and Disposal Committee and according to information we just read, that did not serve or it was withdrawn or something happened to it. So the confinement memo to Mitsui was never signed or it was never approved. Let us call it that way. Which then did not allow us to buy locomotives
10 between October – well, actually, the business case was done sometime in March 2013 or May 2013.

That is when we ought to have started with the procurement of these locos. The memo for confinement served before the BADC, I think the date was correct, I think sometime in October. That October submission for Mitsui was not approved by the BADC, all was withdrawn for whatever reasons.

And I think the reason was that we had confinement to Mitsui before and we needed to look for
20 alternatives and so on and so forth, if I recall. So those are the issues that the BADC had with the confinement procurement with Mitsui. When Mr Molefe was then confronted with the issue of track(?) effort(?) and I would assume that Mr Gama did explain to him this whole history around why we do not have those *track effort*... [Speaker

unclear]

Firstly, the BADC had not approved the confinement to – for – the confinement to the BADC... was withdrawn. The 1064 locomotive procurement was behind schedule. So he needed locos from somewhere. And I think that precipitated Mr Molefe's decision to say: Well, let us confine to CSR.

ADV MYBURGH SC: Right. Okay. Can I ask you – perhaps you can keep open the minutes of the 24th of
10 January, BADC minutes at page 228.

MR SINGH: 228?

ADV MYBURGH SC: [No audible reply]

MR SINGH: 22?

ADV MYBURGH SC: [No audible reply]

CHAIRPERSON: 228, you said?

ADV MYBURGH SC: Yes, of Callard. Yes, FC-228(?).
And then, could I ask you, please, Mr Singh to go to Mr Gama's exhibit, Exhibit BB-28, Bundle 7?

MR SINGH: Bundle 7?

20 **ADV MYBURGH SC:** [No audible reply]

MR SINGH: Have we got Bundle 7(a)?

ADV MYBURGH SC: [No audible reply]

MR SINGH: I am there, sir.

ADV MYBURGH SC: Let us have a look at – if you could go to page 250.152. I suppose it might help you. It starts

off at approximately in the middle of 152.

MR SINGH: What is it?

ADV MYBURGH SC: 250.152. Are you at 152?

MR SINGH: Yes.

ADV MYBURGH SC: Can I ask you to have a look at paragraph 49.1?

MR SINGH: [No audible reply]

ADV MYBURGH SC: It reads that, according to Mr Gama:

“The changes to the memorandum...”

10 And we have gone through this.

“...were effected by Singh who signed the memorandum on 21 January 2014.

The memorandum was then signed by Brian Molefe on 22 January 2014.

It should be noted that my signature was to appended to FC-14...”

It is the document that I took you to.

“I was not a party to what is alleged to have been the unilateral amendment.

20 It was at all times know to Callard that I supported the confinement to Mitsui & Company...”

I just want to ask you. Do you accept that the changes to the memorandum were effected by you?

MR SINGH: No, sir. I did not affect the changes.

ADV MYBURGH SC: Who effected the changes?

MR SINGH: I do not recall, sir, but the memorandum would have been brought to us or brought to my by someone. I cannot recall who. But I would have – based on the instruction from Molefe, we would have instructed someone to make these...

ADV MYBURGH SC: Yes, but this becomes quite important. Instructed who?

MR SINGH: I would not... [Speaker unclear]

10 **ADV MYBURGH SC:** And what we have is. We have a memorandum that has literally changed overnight. You do not know who did that? Who gave input into it?

MR SINGH: Well, from Callard's evidence, it would seem like Mr Moletse(?) was the one ...[intervenes]

ADV MYBURGH SC: Yes.

MR SINGH: ...who was charged with amending the memo.

ADV MYBURGH SC: Yes. But who was the person instructing the amendment?

20 **MR SINGH:** I would assume that, given that Mr Molefe had decided and I was there, I would have been the one who instructed.

ADV MYBURGH SC: Sorry, I cannot hear you.

MR SINGH: I said, given the fact that Mr Molefe had decided that the confinement would need to be changed, I would have probably engaged with someone in Group

Procurement. It would probably mean Mr Pita. And that would have then filtered down to Mr Moletse and Mr Jiyane.

ADV MYBURGH SC: Alright. So you take issue with Mr Gama when he said the changes to the memorandum were effected by Singh?

MR SINGH: That is correct.

ADV MYBURGH SC: Alright. Then ...[intervenes]

CHAIRPERSON: Ordinarily, would mister – would the
10 memorandum have come from Mr Gama to you and from
you to Mr Molefe?

MR SINGH: That is correct, sir.

CHAIRPERSON: Yes. So it came to you before it went to Molefe, Mr Brian Molefe, on this occasion?

MR SINGH: Sorry, sir?

CHAIRPERSON: Did it start with you for you to sign before it went to Mr Molefe ...[intervenes]

MR SINGH: No, Mr Chair. You would have seen that
Mr Gama sends me an email on the 24th, taking issue with
20 the confinement memo. So that is the very same
confinement that I then signed on the 21st.

So he cannot claim that he has not – he does not know about the confinement memo. So that confinement memo was prepared. It was prepared by individuals within TFR or Transnet Freight Rail. He would have seen that

because he now commenting...

CHAIRPERSON: But is his position not that he was against this change? He was against this change and you and Mr Molefe are the ones who seem to have wanted this change.

MR SINGH: Well, Mr Chair, if you read his – the comments on his email – the comments on his email related to the fact that the memorandum referred to a 20 e-locomotive, yet they required a 26-ton axel locomotive
10 which is a 19 e-locomotive – a 19 E equivalent locomotive. He then led – he then spoke about the inter-operability of these locomotives and he spoke about the issue of localisation. So, Mr Chair, in the revised memo, those three issues were taken care of. So from that perspective, I would have assumed that he was happy with the memo.

CHAIRPERSON: But ...[intervenes]

ADV MYBURGH SC: [laughs] He is happy with the memo.

CHAIRPERSON: [laughs] That is – ja, that is ...[intervenes]

20 **MR SINGH:** That is the three ...[intervenes]

CHAIRPERSON: ...he would assume that he was happy with the memo.

MR SINGH: No, no. Let me finish. I would not have – that was when he sent us these issues. You would recall, I then said that I would discuss it with you in the morning.

ADV MYBURGH SC: Yes, but you did not.

MR SINGH: I do not recall having the discussion but I am sure I did have... [Speaker's voice drops – unclear] Because then those various same changes made its way into the final...

ADV MYBURGH SC: Alright. Let us carry with Mr Gama's evidence. That is page 250.153.

10 "I recall that I received a telephone call from Callard during the evening of 23 January, when he informed me that confinement to Mitsui had somehow been changed to a confinement to CSR..."

51.3:

"I indicated to him that I would liaise with Singh to establish what was going on.

I sent the email referred to during the evening of 23 January 2014 after my conversation with Callard.

20 The email was premised on input provided by him.

At that time, I had not yet seen the email which Callard had sent me..."

He says:

"I agree with Callard concerning the matters raised by him..."

Then over the page at paragraph 53.1:

“I did not support the confinement to CSR, a fact well-known to Molefe and Singh.

The memorandum to the BADC was not signed by me...”

You want to comment on that?

MR SINGH: Mr Chair, I have difficulty with that because on the morning of the BADC meeting, Mr Gama, myself and Mr Molefe actually met in Mr Molefe’s office and you would
10 see that Mr Molefe actually approved the memo on the 22nd. Now when was the meeting of the BADC? The 22nd?

ADV MYBURGH SC: The meeting of the BADC ...[intervenes]

MR SINGH: Was the 22nd ...[intervenes]

ADV MYBURGH SC: ...the 24th.

MR SINGH: Ja, it was the 24th. So I think the meeting on the morning of the 24th, there was a meeting between Mr Gama and myself and Mr Molefe where this matter was discussed. And Mr Gama had accepted the fact that the
20 confinement would be to CSR.

And again, this is confirmed by the fact that he attended the meeting and basically accepted that the confinement was now going to be with CSR. He did not raise any of these issues that he now purports to raise to say that he did not know about it or there were issues

about the memorandum that we had presented to the BADC.

ADV MYBURGH SC: Well, Mr Molefe has given evidence here. He, to the best of my recollection, it is something I would hope I would not have forgotten. He never spoke about that meeting in the morning before the BADC meeting. It seems critical from what you are telling us.

MR SINGH: Well, maybe he just did not recall it but I certainly do recall that a meeting did occur on the – on that
10 morning. Equally so, Mr Chair, the – I had occasion to ensure that the memorandum was actually signed by Mr Game, not on the day that the BADC meeting had occurred but certainly subsequent to that.

And once that memorandum was signed by Mr Gama, I had occasion to file it to the company secretary. I am not sure if they still have record of it or not but the signed version of that memorandum was filed with the company secretary.

CHAIRPERSON: You mean the one that we have here
20 where he has not signed ...[intervenues]

MR SINGH: That is correct, sir.

CHAIRPERSON: You say there is a signed version where had signed?

MR SINGH: If my memory recalls – if my memory serves, Mr Chair, there is a signed version of this memo filed with

the company secretary.

CHAIRPERSON: H'm. So are you saying, apart from the existence of that – the existence or non-existence of that memo where you say, as far as you recall, he signed after the meeting, after the event, as I understand the position.

MR SINGH: Yes.

CHAIRPERSON: Are you saying that there was a meeting where – involving the three of you, you, Mr Gama and Mr Molefe?

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

CHAIRPERSON: Where you were discussing, basically, the memo, the issues in the memo?

MR SINGH: Yes, Mr Chair.

CHAIRPERSON: Ja.

MR SINGH: And remember, Mr Chair, this meeting is quite of significance.

CHAIRPERSON: H'm?

MR SINGH: It was not just that we were discussing the 100 locos. This was a meeting at which we were also
20 discussing the 1064 locos.

CHAIRPERSON: Yes.

MR SINGH: That was the – the bulk of the meeting, actually, was to discuss the 1064 locos.

CHAIRPERSON: Yes.

MR SINGH: So, in my view, there was a – that is the

reason for us actually having this meeting or the briefing with Mr Molefe.

CHAIRPERSON: H'm, h'm.

MR SINGH: So that he could actually be brief in terms of what was happening on the 1064's as well as the 100's.

CHAIRPERSON: And you say he knew that at that stage the proposal or request was for the confinement to CSR?

MR SINGH: That is correct, sir.

CHAIRPERSON: And he did not raise any issues with
10 that?

MR SINGH: No, Mr Chair. I mean, the minutes are here, Mr Chair.

CHAIRPERSON: Yes.

MR SINGH: We presented with him being there.

CHAIRPERSON: Yes.

MR SINGH: And he did not raise any concerns relating to the ...[intervenes]

CHAIRPERSON: Well, you talk about the minutes of the board committee now?

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

CHAIRPERSON: Ja. But you said there was a meeting earlier on. I thought you said there was a meeting earlier on involving the three of you?

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

CHAIRPERSON: Just ...[intervenes]

MR SINGH: And that was precursor to this meeting.

CHAIRPERSON: Ja, ja.

MR SINGH: As, Mr Chair, I would expected him to raise his concerns in this meeting.

CHAIRPERSON: Yes. Well, it would be interesting to establish if there was such a – there is a copy that he signed of the memo because when he gave evidence, my understanding was that, he was certainly against this. But why would he be required to sign after? What would be the
10 importance of him signing the memo after the event?

MR SINGH: Well, Mr Chair, it would have been a matter of record that actually a signed copy of this memorandum done did exist. Mr Chair, one of the issues that the board and the board committees insisted on, was that when documents are put before them that they are actually signed by executives so that they know that, you know, someone has looked at this thing.

CHAIRPERSON: H'm, h'm.

MR SINGH: So one of the things that the secretariat did
20 actually inform is that we always used to ensure that documents are signed before you present it to the board. On this occasion because it was an urgent matter, the – we requested the secretariat to basically – or I am to provide the secretariat that there would be a signed copy of this document that would come. And thereafter, a signed copy

of it was – I made sure that a signed copy was presented to the company secretary.

ADV MYBURGH SC: And when would you have procured Mr Gama's signature?

MR SINGH: I am not too sure.

ADV MYBURGH SC: Would it have been done in a few days or years or months?

MR SINGH: No, no not years, certainly not years. But it would have certainly not been the day thereafter. If I had
10 to guess, it would have been the next time, we either had an exco meeting or subcommittees of exco so that when all of us were together again as a group.

ADV MYBURGH SC: So, Mr Singh, I mean, what you say now is very important. I am sure you appreciate it.

MR SINGH: Yes.

ADV MYBURGH SC: So just so that I am – make sure that I understand this. You say that on the morning of the 24th, you – of January, you had a meeting with Mr Molefe and Mr Gama?

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

ADV MYBURGH SC: Alright. And that whatever concerns Mr Gama had expressed in his email to you, those concerns were satisfied and he no longer had concerns?

MR SINGH: No, because as you would recall as well, that very same email that Mr Gama had sent to me, I then sent

to Mr Molefe.

ADV MYBURGH SC: No, no I understand that but I just want to understand. Whatever concerns he had were resolved at the meeting between the three of you?

MR SINGH: Yes, because one of the reasons ...[intervenes]

ADV MYBURGH SC: Okay – I am sorry.

MR SINGH: Ja.

ADV MYBURGH SC: Let me not interrupt. Carry on.

10 **MR SINGH:** I was just going to say, one of the reasons for me to having suggested that the meeting happened was not to have the issues raised at the BADC meeting where everyone was having an issue with their own issues.

ADV MYBURGH SC: And then you say, it goes to the BADC meeting and he does not object. In fact, he agrees to the decision to recommend a confinement to CSR.

MR SINGH: Well, he was part of the meeting and there is no objections recorded.

20 **ADV MYBURGH SC:** And then – just to back it up, you say subsequently and shortly thereafter or – he then signed the memorandum?

MR SINGH: I recall getting a signature from him. Yes, sir. Which I then filed with the then secretary, Ms Ayanda... [Speaker unclear]

ADV MYBURGH SC: So you say you filed it with?

MR SINGH: Ms Ayanda Ceba.

ADV MYBURGH SC: Your company secretary?

MR SINGH: Yes.

CHAIRPERSON: What was the frequency of the meetings of this group of three, yourself, Mr Molefe and Mr Gama?

MR SINGH: Well, Mr Chair, this was just an ad-hoc meeting.

CHAIRPERSON: Oh.

MR SINGH: Yes.

10 **CHAIRPERSON**: What is your assessment? Would it be that it might have taken weeks or days or weeks or months before you secured Mr Gama's signature?

MR SINGH: I would have think maybe between – as I am saying, logically, Mr Chair – or practically, not logically – but practically, Mr Chair, the chief executive of the operating divisions met or had more interactions with Mr Molefe than myself but interactions with them would be at subcommittee meetings of Exco.

20 So it would have been on a monthly cycle. If I had to see a chief executive of an operating division, it would certainly be at least monthly. So I am saying that I would probably have seen him again in February as part of those meeting but remember also, at this time, the 1064 locos were being negotiated.

So I may have, probably, missed some of the

subcommittee meetings or may have also missed Exco at the time. So it was a time where it was actually significantly – how can I say – spaced. And it was relatively a pressurised time. Having said that, Mr Chair. Mr Gama and I also interacted quite a bit on the 1064 locos. So again, if he had concerns about the CSR, if he had not wanted the locos, these things would have come out in those discussions.

ADV MYBURGH SC: Alright. Thank you. If we can go
10 back to 250.154?

CHAIRPERSON: Of course, Mr Myburgh. Is it in this meeting of the BADC, this committee that Mr Gama said in his evidence, oral evidence, he might – he did not raise any issues because in that committee you talk – if you are talked to ...[intervenes]

ADV MYBURGH SC: Yes.

CHAIRPERSON: ...you do not – you have no right to just talk. You have got to wait and see if you are talked to.

ADV MYBURGH SC: Yes ...[intervenes]

20 **CHAIRPERSON:** ...was it in regard ...[intervenes]

ADV MYBURGH SC: ...you speak if you are spoken to or something like that.

CHAIRPERSON: Ja, something like that.

ADV MYBURGH SC: I think he had a Zulu phrase that you then interpreted for us.

CHAIRPERSON: [laughs]

ADV MYBURGH SC: If I... [laughs]

CHAIRPERSON: Ja, but I think you got the part about things spoken to.

ADV MYBURGH SC: Yes.

CHAIRPERSON: So I think that was his evidence, Mr Singh, to the extent that you say he was part of the BADC meeting and he did not raise any objection. I think Mr Myburgh asked him about that and if I recall correctly,
10 his response was – his position in that committee, which I take to be the position of other people who would not be members of the board, you know, or the committee, normal members. You talk if you are asked or you are asked to say something. You do not just come and talk. And that is why he would not have raised any issue.

MR SINGH: Mr Chair, let me make two points in this regard. My first point is actually a point I recall now after you had just started with your intro. And I am not sure if it is recorded in the minutes. I do not think it is. But Mr
20 Chair, at this particular meeting, for some strange reason, now I recall that Ms Yasmeen Forbes, who was a committee member at the time...

I think if I look here – yes, she is actually, a member – actually did ask Mr Gama: Do you support this submission because your signature does not appear on it?

And he then confirmed that the actually does. And Ms Forbes was one of those people that insisted that submissions should be signed by executives.

And given the fact that he was there – I think Ms Forbes and I stand to correction, but this stands out for some reason in my mind, that did enquire of Mr Gama: Listen, you are here. You have not signed the submission but do you support this submission?

And I think he did indicate that he did. That is the
10 first point. The second point is, Mr Chair. Mr Gama is by his nature respectful. He is by his nature respectful.

CHAIRPERSON: Respectful? Ja.

MR SINGH: At least from what I could see.

CHAIRPERSON: Yes, okay.

MR SINGH: And so when he says that he, you know, he goes into a meeting and he will speak when he is spoken to, I would not ...[intervenes]

CHAIRPERSON: You can ...[intervenes]

MR SINGH: ...disbelief that.

20 **CHAIRPERSON**: Ja.

MR SINGH: If he is in a meeting with the President.

CHAIRPERSON: Ja.

MR SINGH: [laughs] But if he is in a meeting with the BADC members, Mr Chair, if he needed to speak about something that he needed to speak about, he would do so.

In my view.

CHAIRPERSON: H'm, h'm.

MR SINGH: And the reason that he did not, in my view again Mr Chair, did not raise this issue with the board was because of the fact that we had this pre-meeting that happened in the morning or happened during the course of that day relating to the update on the 1064's as well as the 100 locos.

CHAIRPERSON: Well, he might not have said this. I am
10 not sure. But could he have taken the view that he need not raise this issue, express his own view because you and Mr Brian Molefe had already taken a view, it was contrary to his. He should not go to the committee and raise a minority view. Is it possible that that could be a factor or could have had an effect to the extent that, on his version, he was not asked?

MR SINGH: Well, Mr Chair, from my perspective, as I sat there, we had come to the consensus view, given the meeting of the morning that the route that we were taking
20 was confinement to CSR.

CHAIRPERSON: H'm. Did you deal with this in any affidavit about this meeting that the two of you had in the morning and about it?

MR SINGH: No, sir.

CHAIRPERSON: You did not deal with it?

MR SINGH: No, sir.

CHAIRPERSON: And about the resolution that you say he signed after the event, you deal with that?

MR SINGH: No, sir.

CHAIRPERSON: Okay alright. Was there an affidavit of yours that responded to his or there was not?

MR SINGH: There was not an affidavit responding to his, Mr Chair.

CHAIRPERSON: Ja.

10 **MR SINGH**: We – I think we received a redacted version of his affidavit.

CHAIRPERSON: Ja.

MR SINGH: And I think he only mentioned me once there.

CHAIRPERSON: Okay.

ADV VAN DEN HEEVER: In fact, Chairperson, maybe just to place you in the picture. We received an extremely redacted version. If my recollection is correct, it was two or three pages. And we specifically again went on record and requested an unredacted version of Mr Gama's
20 affidavit and I do not think we ever got it.

CHAIRPERSON: Okay, okay.

ADV MYBURGH SC: Alright.

CHAIRPERSON: Well, maybe on the face of it, he might not have – well, I do not know, it might – you know, sometimes – I think the experience within the Commission

is that sometimes it is very difficult to say whether an affidavit of one witness implicates somebody or not.

ADV MYBURGH SC: Well... part that we considered and of course, these are judgment calls.

CHAIRPERSON: Yes.

ADV MYBURGH SC: We may got it wrong.

CHAIRPERSON: Ja.

ADV MYBURGH SC: Where we felt that Mr Singh was implicated in respect of Mr Gama's version about the
10 alleged meeting with Mr Essa.

CHAIRPERSON: Ja, ja.

ADV MYBURGH SC: But certainly, Chairperson, from the Legal Team's perspective. We are not going to make any issue of the fact ...[intervenes]

CHAIRPERSON: Ja, ja.

ADV MYBURGH SC: ...that Mr Singh has not set this out in his affidavit.

CHAIRPERSON: Yes, ja.

ADV MYBURGH SC: What is more important, of course, is
20 for us to try and make sure that we understand the opposing versions.

CHAIRPERSON: Ja, ja, ja.

ADV MYBURGH SC: Mister ...[intervenes]

CHAIRPERSON: So it may have meant something if he – there had been occasion for him to respond.

ADV MYBURGH SC: Yes.

CHAIRPERSON: And he responded but did not say anything.

ADV MYBURGH SC: The other thing is, of course, that it might mean that we need to direct an inquiry to Mr Gama ...[intervenes]

CHAIRPERSON: Yes.

ADV MYBURGH SC: ...and ask him to respond to this version.

10 **CHAIRPERSON:** Ja, I think that would be important.

ADV VAN DEN HEEVER: Chairperson, maybe one more thing. I think my learned friend will bear with me. Yesterday morning we requested or enquired whether Mr Gama made an affidavit pertaining to the 1064's or the 100 locos. And we were told that there is no such affidavit.

CHAIRPERSON: H'm.

ADV MYBURGH SC: Of Mr Gama?

ADV VAN DEN HEEVER: [No audible reply]

CHAIRPERSON: H'm.

20 **ADV MYBURGH SC:** I am not sure. I think my learned friend and I might have got our wires crossed.

CHAIRPERSON: Ja.

ADV MYBURGH SC: I mean, we have Mr Gama's affidavit.

ADV VAN DEN HEEVER: I might be mistaken but there

was specifically a request about an affidavit and my recollection – again, I might be mistaken – was in respect to the confinement of the 1064 and the 100 locos.

CHAIRPERSON: H'm.

ADV VAN DEN HEEVER: I fully agree with my learned friend. He made an affidavit but I was – I am not sure whether he made it in respect of this particular issue.

CHAIRPERSON: Okay, no that is fine.

ADV MYBURGH SC: Well, I am busy reading Mr Gama's
10 affidavit to Mr Singh.

CHAIRPERSON: H'm, h'm. No, that is fine. You can obviously obtain a copy from the legal team.

ADV VAN DEN HEEVER: As I said, Chairperson, I might be mistaken.

CHAIRPERSON: Yes.

ADV VAN DEN HEEVER: It might have been pertaining to Mr Pita.

CHAIRPERSON: Ja.

ADV VAN DEN HEEVER: And then I apologise to my
20 learned friend.

CHAIRPERSON: Ja.

ADV VAN DEN HEEVER: But I recall there was an issue about that.

ADV MYBURGH SC: It did, in fact, as I remember, relating to Mr Pita. My learned friend and I have ring

fenced a number of issues.

CHAIRPERSON: Ja.

ADV MYBURGH SC: Perhaps we should leave it at that and see if we can sort them out afterwards.

CHAIRPERSON: Ja, okay.

ADV MYBURGH SC: Mr Singh, if I could just carry on with Mr Gama's version, please?

MR SINGH: [No audible reply]

ADV MYBURGH SC: At paragraph 54.1, he says:

10 "I have read the minutes, particularly,
 paragraph 5.22.....[intervenes]

MR SINGH: Sorry, what page?

CHAIRPERSON: I am ...[intervenes]

ADV MYBURGH SC: Page 250 ...[intervenes]

CHAIRPERSON: I am sorry, Mr Myburgh.

ADV MYBURGH SC: Yes.

20 **CHAIRPERSON:** What I forgot to ask is. Do we know if
 Mr Brian Molefe ever spoke when he was giving evidence
 about this meeting that happened between – among the
 three of them?

ADV MYBURGH SC: I have mentioned to Mr Singh that to the best of my recollection, he did not.

CHAIRPERSON: Ja.

ADV MYBURGH SC: But that is something that I think we need to look at more carefully and perhaps ask him about

it as well.

CHAIRPERSON: I think – ja, ja, ja. And Mr Singh, do you know whether Mr Brian Molefe got to know at some stage that Mr Gama ultimately signed the memo that he had not signed at the time of the BADC meeting?

MR SINGH: No, Mr Chair, that would have been between Mr Gama and myself and I would then ...[intervenes]

CHAIRPERSON: Okay.

ADV MYBURGH SC: Thank you.

10 **CHAIRPERSON**: Okay.

ADV MYBURGH SC: So Mr Singh, I am at 250.154, Mr Gama's affidavit. Are you there?

MR SINGH: I am there.

ADV MYBURGH SC: Alright, so let us pick up at paragraph 54.1. He says:

“I have read the minutes particularly paragraph 5.22 of the meeting of 24 January 2014 of the BADC.”

Sub 2:

20 It is clear to me that no one from TFR would have presented anything of the kind reflected in the minutes. As and by of example, “management informed the commission that it was decided that a 26 ton heavy haul line by GE would perform better than a class 19E locomotive from Mitsui.” The foregoing caption is nonsensical in that not only is

the heavy haul line not a locomotive but also that General Electric, GE, only manufactures diesel locomotives and therefore the specifications cannot be compared with those of electric locomotives manufactured for instance by Mitsui.”

Next subparagraph, again he is quoting from the minutes:

10 “Management motivated for the confinement in favour of GE, this was motivated by a submission that was previously withdrawn due to reputational issues that had emanated from old newspaper article. Management requested for a contract extension for class 43E diesel locomotives by CSR.’ From the foregoing it is clear that confusion reigned between a procurement of diesel locomotives by GE (43D) and the procurement of electric locomotives either from CSR and/or Mitsui. Consequently, no reliance ought to be placed on the aforesaid submissions as they are clearly wrong and not representative of what had been discussed.

20 However, what is significant was the fact that whilst I supported the confinement to Mitsui, the BADC had rejected my said proposal on the basis, as I understand it, that such confinement would have been the third with Mitsui. As it so happening, Brian Molefe later informed me that my Mitsui

submission would have been stillborn.”

And then the last subparagraph 54.4:

“Singh and Molefe had removed my memorandum and prepared a new one which they signed and presented to the committee recommending CSR as the preferred bidder.”

Do you want to comment on any of that?

MR SINGH: Mr Chair, I think as the facts would point out that Mr Gama was in possession of the proposed
10 memorandum or the proposed submission which he
comment on to me which I then forwarded to Mr Molefe.
His comments were then taken into account in the final
memorandum that was then submitted to the BADC.

Mr Chair, what he highlights as the discussions in
the minutes in terms of being I would say nonsensical, it
does not make sense the way it is captured. So what, in
my view, he is alluding to is the fact that the minutes
incorrectly capture the discussions that were occurring at
the BADC. It does not mean that the submission that was
20 presented to the BADC contained these [indistinct –
dropping voice]

CHAIRPERSON: Well, I am not sure that that is
necessarily correct. I read what he says as premised on
him saying this is the basis on which this decision was
taken. Look what was being said here.

MR SINGH: Hence, Mr Chair, I say ...[intervenes]

CHAIRPERSON: It does not make sense. Maybe I am being unfair to him but that is how I read it.

MR SINGH: Being unfair to?

CHAIRPERSON: To Mr Gama, that – because the interpretation I put to what he says, I attach to what he is saying, makes him more – makes him critical to those who made the decision or maybe those who presented a case whereas the interpretation you – the meaning you attach to
10 it is more about the minutes and not about the people.

MR SINGH: Well, hence, Mr Chair, the people could have only got this from the submission. So the submission is actually – I think you took us to the submission, it was that long one.

ADV MYBURGH SC: After that.

MR SINGH: Yes, so ...[intervenes]

ADV MYBURGH SC: The submission is at page 244.

MR SINGH: But in a different bundle, right?

ADV MYBURGH SC: It is in Callard's bundle.

20 **MR SINGH**: Yes, 244.

CHAIRPERSON: Would they not have sought to capture what was said at the meeting as opposed to what was in the memorandum?

MR SINGH: Sorry, I could not hear you, Sir?

CHAIRPERSON: Would they not have sought to capture

what was at the meeting as opposed to what was written in the memorandum, those who prepared the minutes?

MR SINGH: Well, Mr Chair, I cannot comment for what they had captured but I can certainly comment on what was presented.

CHAIRPERSON: Ja.

MR SINGH: Because what was presented was what was physically saying by myself, which is basically contained in 244 right through to 267 and Mr Chair you will see the
10 reason why the references to GE come into the minutes is because we were asking for two things to happen, for a confinement to CSR for 100 locomotives, 19E equivalents of 26 ton locomotives and class 43 diesel locomotives from GE. So there were two confinements that were being done at the same time with one memo. So when the discussion was being recorded I would assume that they were confusing CSR with GE and GE with CSR and that is the reason why this is the way it is.

CHAIRPERSON: And you would not have corrected the
20 minutes when they were circulated?

MR SINGH: They should have been corrected.

CHAIRPERSON: But do you remember having raised the issue because I assume that having attended they would be circulated to you as well?

MR SINGH: I think they would have been circulated to

me, Mr Chair, but I do not recall having corrected them.

CHAIRPERSON: Okay. Mr Myburgh?

ADV MYBURGH SC: Yes, thank you. And then let me take you to two other passages please, page 250.168 of Mr Gama's bundle.

MR SINGH: 250 point?

ADV MYBURGH SC: 250.168. Right at the foot of the page he addresses the issue of the acquisition of the 100 locomotives again at 77.1.

10 "TFR had set out to procure 100 locomotives from
the coal line from Mitsui in line with the 19E
acquisition. The BADC determined that we had
utilised confinement as a procurement strategy with
Mitsui on two previous occasions and that this did
not permit a third acquisition from Mitsui. The
GCEO and GCFO subsequently requested a
confinement to CSR and the BADC agreed to the
request. The decision was taken whilst I was
protesting the appropriateness of the request
20 having regard to the fact that CSR had no
established history with the provision of similar
locomotives in South Africa. Subsequent to the
approval of the aforesaid request by the BADC
which motivated its decision to the board,
Transnet's technical design team engaged with CSR

to create prototypes where after the locomotives were delivered and employed on the coal line. They were named 21E series.”

Do you want to comment on any of that?

MR SINGH: Mr Chair, again you will see that this issue of the reason – Mr Gama and I introduced a new reason regarding the CSR decision in that CSR had not developed these type of locomotives before and he had a concern. This is now an additional concern compared to his
10 concerns that he had on the 23 January in the email that he had sent to me.

Mr Chair, also I think when he says that:

“Transnet technical design team engage with CSR to create prototypes where after the locomotives were delivered and employed on the coal line”

I think I take issue with that, Mr Chair, because you will have reference to a document that I have included in my affidavit, not for this purpose, but it does – had raised this concern that Mr Gama has raised here. It refers to a –
20 maybe we can actually find it, it will then make it much easier. Do we know where Harris’ – that Harris report, in which affidavit the Harris report? Mr Chair, I make for a couple of ...[intervenes]

CHAIRPERSON: Your legal team will have a look, if they find it they will let us know.

MR SINGH: Okay, it is Harris report. I think it is in the 100 or the 1060 ...[intervenes]

ADV MYBURGH SC: Mr Chairman, I think perhaps we should take a – if you would like to take a short afternoon break for five or ten minutes then we can sort this out so that Mr Singh and his counsel can be afforded an opportunity to converse.

CHAIRPERSON: No, no, I think let us continue, if they have not sorted it out by four o'clock when we take the
10 short adjournment...

ADV MYBURGH SC: Alright.

CHAIRPERSON: Ja, let us continue for now.

ADV MYBURGH SC: Sure.

MR SINGH: So, Mr Chair, while we look for the report, the report is – well, we have termed it the Harris report. It is a report from Mr Frikkie Harris. Mr Frikkie Harris I think was the programme director of the capital programme within TFR and the purpose of that report, Mr Chair, was to evaluate the technical submission from CSR. So remember
20 this is how this would have happened.

As I explained before, the confinement happens on day one, so the confinement is approved. Once a confinement is an approved then an RFP relating to that confinement is prepared. So TFR went off and then prepared a request for proposal relating to the confinement

of these 100 locomotives that we then required from CSR.

I think that letter was then signed by Brian in – sometime in February and dispatched to CSR. CSR then would have had to respond with the requirements of that RFP for the 100.

One of the returnable documents of that 100 RFP, Mr Chair, I would assume, was the technical specifications of these locos. What would they do, what would they not do, how do they do it and so on and it was this Harris
10 report – or Mr Frikkie Harris report that effectively assessed the technical requirements or the technical operability of these locomotives with the current 19E Mitsui locomotives and, Mr Chair, that report basically found that the 21E locomotives that were actually proposed by CSR were actually acceptable and adaptable and operable with the 19E Mitsui locomotives that were currently deployed on the coal line.

So it did find one exception, which I think was a minor exception but overall it said it was operable or
20 interoperable and when we find the report we can read you the final conclusion of that document, Mr Chair.

CHAIRPERSON: Okay.

ADV MYBURGH SC: Thank you. And then could I take you, just to end off on Mr Gama's version to page 145 of his bundle, bundle 7?

MR SINGH: 145?

ADV MYBURGH SC: 145, towards the beginning. Are you at 145?

MR SINGH: Yes, sir.

ADV MYBURGH SC: I would want to direct your attention to paragraph 30.2.1 at the top of the page.

“The written recommendation to procure 100 locomotives ...[intervenes]

MR SINGH: Sorry, Sir, you are at 145?

10 **ADV MYBURGH SC:** 145.

MR SINGH: In Gama's...?

CHAIRPERSON: Ja, forget about 250 point something, go back to just 145.

MR SINGH: Okay, 145. It starts with paragraph 37?

ADV MYBURGH SC: No, it starts at paragraph 30.

CHAIRPERSON: It is page 30 of his affidavit.

MR SINGH: Page 30?

CHAIRPERSON: Of his affidavit.

MR SINGH: Okay, page 30 of his...

20 **CHAIRPERSON:** Of his affidavit. Can you see paragraph 30.2.1?

MR SINGH: No, I have got paragraph 64.

CHAIRPERSON: Is there somebody who can help him?

MR SINGH: Oh, sorry. I am there, Sir.

ADV MYBURGH SC: Alright. At paragraph 30.2.1 Mr

Gama says:

“The written recommendation to procure 100 locomotives from CSR was signed by the CFO Mr Anoj Singh and the GCEO, at the time Brian Molefe, in circumstances where I was of the view that CSR did not have the capability to manufacture heavy haul locomotive.”

Do you want to comment on that?

MR SINGH: Well, Mr Chair, again, as I would bring you
10 back to that email of the 23 January where Mr Gama did not raise the issue of CSR’s manufacturing ability, he just raised the issue of the fact that CSR would need to manufacture most of these locomotives offshore rather than do it at PE which would impact on our localisation objectives.

This is introduced as a new concern, in my view, as he had not raised it with us in the email nor had he raised it at the BADC meeting or at the meeting before that and as you would see in the Harris report, Mr Chair, that the
20 CSR did have the ability to produce heavy haul locomotives and Harris actually in fact signed off on the fact that the technical specifications that were submitted for the 21E locomotives was interoperable with the 19E locomotives from Mitsui.

ADV MYBURGH SC: And then at 30.2.2:

“I was informed by the GCEO that Mr Sharma, the Chair of the disposal and acquisition committee had not permitted any further procurement by way of confinement from Mitsui. I deny that I was responsible for making a recommendation to the ADC and that I failed in my fiduciary duties during the acquisition of 100 locomotives for CSR as alleged.”

Perhaps I could just ask you to comment on the first part
10 first. He says he was informed by Mr Molefe that Mr Sharma would not permit any further confinement to Mitsui.

MR SINGH: No, Mr Chair, I cannot comment on what Mr Molefe had either discussed or did not discuss with Mr Gama.

ADV MYBURGH SC: Mr Sharma.

MR SINGH: I mean Mr Sharma. So I cannot comment on that.

ADV MYBURGH SC: Did he express this view at the BADC meeting, Mr Sharma?

20 **MR SINGH:** Mr Chair, that – the only – well, my only recollection is from the documents that have been presented regarding this matter and the meeting that – the BADC that happened in October 2013 where the Mitsui confinement was either served or did not serve and was withdrawn would be where this type of conversation I would

expect would have happened unless there was a conversation that happened outside that meeting, I do not know.

ADV MYBURGH SC: Mr Singh, this is an issue that you deal with in one of your affidavits. Perhaps I could take you to page 5C, to page 1465. The files are stacking up.

MR SINGH: Page, Sir? 15...?

ADV MYBURGH SC: 1465. Sorry, before we deal with the content, perhaps I could ask you, why is it that you
10 supported a confinement to CSR?

MR SINGH: Mr Chair, in my view at the time there was obviously the issue of the revenue at risk and it was becoming more and more urgent that we actually address this issue. So from that perspective, Mr Chair, I believe that the grounds for urgency relating to confinement would have been met.

In terms of the change from Mitsui to CSR, Mr Chair, to be quite honest, I was actually indifferent. As I supported the memo to Mitsui in October which was then
20 withdrawn or was not approved, whichever the case may be, for me, I was indifferent between either one of them.

Mr Molefe gave the instruction, I did not really find difficulty with it because of the history that we had with Mitsui. On the – we had occasion to acquire locomotives previously from Mitsui, 110 coal line locomotives, which is

19Es that Mr Gama speaks about and Mr Callard speaks about and we also I think acquired, if memory serves, 45 iron ore locomotives for the iron ore line, also heavy haul locomotives.

Mr Chair, we did have, if memory serves, quite a significant – or well, not quite significant, a number of issues with the locomotives in terms of commissioning and there was an inordinate amount of delay in terms of commissioning these locomotives.

10 If I recall correctly, Mr Chair, again I am speaking of stuff that happened years ago, there were penalties that were actually levied against Mitsui for the delay or the late delivery of these locomotives. There were issues relating to – I cannot remember the technical issues that related to why these locomotives were not being commissioned but again, the reason why I got to know about these things is because it had an impact on the ability of Freight Rail to deliver volumes and that became a financial issue in terms of the budget [indistinct – dropping voice]

20 And the second issue why I was aware of this, Mr Chair, was when they had a contractual dispute in terms of the penalties that needed to be paid, I then got involved in trying to arbitrate or mediate between Mitsui and Transnet in terms of what the value should be. I do not know what the value actually ended up being but I think, if I recall

correctly, some amount was paid by Mitsui relating to these locomotives.

So it was a historic issue in terms of being able to have comfort that Mitsui will deliver this 19E equivalents without the issues that we had previously.

Secondly, Mr Chair, the proposal that, if I recall correctly, that came from Mitsui relating to the new batch – remember, there was a 110 that came and was delivered, had problems, we are now ordering a new batch of 100 and
10 these batches, Mr Chair, if I recall correctly in terms of the offer that came from Mitsui, because the delivery timeline relating to these locos had now been compressed, there were numerous conditions that came in the order.

Like, for example, they had not yet received the approval of their subcontractor in terms of being able to deliver these locomotives, so they still needed to engage with their locomotives. We needed to sign the notice to proceed by a certain date in order for them to do what they needed to do to deliver the locomotives by a certain date.

20 In order for them to meet let us call it the aggressive delivery timeframe, they needed to take existing 19E locomotive parts that was in Transnet's stock to put them into the production line to produce these locomotive. Now, Mr Chair, in my mind, if you already have a problem on the coal line where it is not meeting its

budgeted volumes then you are going to take parts that you may require for the current existent fleet to be able to meet the already underperforming coal line to mitigate the very same risk you are actually perpetuating the risk if you need the locomotives to break down and need these parts.

So, Mr Chair, the 19E let us call it revised proposal from Mitsui came with its own set of risks that in my view just increased the operational risk relating to the volumes at risk. So that was the reason why, Mr Chair, I
10 did not really feel indifferent between Mitsui or CSR at the time.

ADV MYBURGH SC: And you express those views in paragraphs in particular 52 of your affidavit, correct?

MR SINGH: That is correct, Sir.

ADV MYBURGH SC: So you say:

“My confidence levels in Mitsui being able to meet its proposed very aggressive delivery schedule was low due to the following...”

And you set those reasons out.

20 **CHAIRPERSON:** I am sorry, you are reading from...?

ADV MYBURGH SC: Page 1465, Chairperson.

CHAIRPERSON: Oh, okay.

ADV MYBURGH SC: Bundle 5C.

CHAIRPERSON: Oh, ja. Okay, I am there.

ADV MYBURGH SC: Mr Singh, do you wish to highlight

anything further or is – I think you have addressed those points, have you?

MR SINGH: I do, but now that we are here, I am just looking for the reference to my Harris report.

ADV MYBURGH SC: Harris report. But I see it is almost four o'clock, so you will get a chance to...

MR SINGH: But you continue, I will find it at tea.

ADV MYBURGH SC: Can I now take you ...[intervenes]

CHAIRPERSON: Well, I am sorry, Mr Myburgh. What do
10 you say, Mr Singh, in paragraph 153 does not seem to be consistent with what you have just said namely you were indifferent whether it was CSR or Mitsui who got to do the job.

MR SINGH: Mr Chair, this relates to the reasons why I believed the confinement would be appropriate to CSR in addition to the fact that there was urgency.

CHAIRPERSON: Ja. Ja, but I understood you to be
20 saying ultimately your attitude was really it did not matter much to you whether ultimately it was CSR or Mitsui who got the job.

MR SINGH: Yes, Mr Chair, in my view at the time whether we were going with Mitsui or whether we were going with CSR we were still going to procure them on the basis of urgency because the coal line volumes were at risk, the 1064 programme was behind schedule so the only way to

mitigate that risk was to actually get the locomotives.

CHAIRPERSON: Oh, you are saying that what you were saying related to the ability of either to deliver.

MR SINGH: To deliver, exactly.

CHAIRPERSON: But here you are dealing with the issue of urgency in relation to each one of them.

MR SINGH: Yes.

CHAIRPERSON: Okay, alright.

MR SINGH: Yes.

10 **ADV MYBURGH SC:** Could I then take you to Fundudzi report?

CHAIRPERSON: Would this be right time to take the ten minutes adjournment?

ADV MYBURGH SC: Thank you, Chairperson.

CHAIRPERSON: We did not talk in the morning about whether you were able to make a plan and be able to ensure that we can continue.

20 **ADV VAN DEN HEEVER:** Chairperson, I am not sure if we discussed it in the morning but I – ultimately we were able to ensure that we can sit till five. I could not extend it beyond that.

CHAIRPERSON: Until five?

ADV VAN DEN HEEVER: I think I told my learned friend about that.

CHAIRPERSON: How are we doing in terms of how much

time would we need?

ADV MYBURGH SC: Well, we are not going to be finished by five, I am afraid.

CHAIRPERSON: By five, but how time do we need – and this is not to put pressure, just want to assess so as to take a judgment call as to what should happen.

ADV MYBURGH SC: So, DCJ, I think that we will probably finish the 100 locomotives in an hour.

CHAIRPERSON: Ja.

10 **ADV MYBURGH SC:** Of course we still need to deal with the 1064 locomotives.

CHAIRPERSON: Yes.

ADV MYBURGH SC: And that there is a big chunk of evidence that needs to be led.

CHAIRPERSON: Yes.

ADV MYBURGH SC: Particularly around the increase in the ETC.

CHAIRPERSON: Yes. Well – and that part that we will not have finished, we will not have started after an hour.

20 **ADV MYBURGH SC:** No.

CHAIRPERSON: Would it need half a day, would it need a day? What is your assessment?

ADV MYBURGH SC: I would think it can be done in less than a day.

CHAIRPERSON: Ja.

ADV MYBURGH SC: I think that what needs to be done is to find a way to present to you maybe in a form of a schedule or something the various different versions in relation to the increase in the ETC. There are two expert reports, etcetera.

CHAIRPERSON: Yes.

ADV MYBURGH SC: So – but I think that could be done in a few hours, I do not think we need a whole day, DCJ, I think we need at least half a day. I do not know if we
10 could fit it into a night session.

CHAIRPERSON: Yes. Well, that suggests to me that we should do as much as we can today.

ADV MYBURGH SC: Yes.

CHAIRPERSON: Because we do not have time. I think what you may have to consider is whether if you have to leave at five and of course your client might have to consider that as well. I assume your instructing attorney does not have to leave at five, whether we could proceed in your absence but in the presence of Mr Singh's attorney
20 on the understanding that if, as we go along, Mr Singh, there are questions that he is uncomfortable to answer without getting – talking to you, we could take it from there but we try and make as much progress as we can. Obviously the transcript can be available for you to look at afterwards. Maybe let us adjourn and then maybe you can

talk to me, all sides can talk to me in chambers but we have to try and do as much as possible.

Okay, we adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let us continue.

ADV MYBURGH SC: Thank you Chairperson.

CHAIRPERSON: The arrangement is that we will stop at five and then we will continue on Monday from 4 o'clock in
10 the afternoon.

ADV MYBURGH SC: Thank you Chair.

ADV VAN DEN HEEVER: Confirmed Chairperson.

CHAIRPERSON: Thank you, okay, alright.

ADV MYBURGH SC: Mr Singh I understand you have located the so-called Harris report?

MR SINGH: Indeed sir. Just for an indulgence for one, two minutes Mr Chair.

CHAIRPERSON: Ja?

MR SINGH: You recall I gave you a brief summary of what
20 the Harris Report entailed. Apologies, Mr Chair, I did say that it was an annexure to one of my affidavits actually, it is not an annexure we referenced - if you if you go to Bundle 5C.

CHAIRPERSON: Bundle 5C?

MR SINGH: Bundle 5C.

CHAIRPERSON: Ja.

MR SINGH: And you go to page 1463 you will see there is a - it starts at paragraph 144.

CHAIRPERSON: 154?

MR SINGH: No, page 1463.

CHAIRPERSON: Oh, ja.

MR SINGH: 1463 and then the page starts at paragraph 144.

CHAIRPERSON: Yes.

10 **MR SINGH:** And it is headed:

“Salient features of the capital program locomotive report.”

And paragraph 144 says:

20 “At Transnet reference Bundle 08702. So in the Commissions records at 08702. Mr Harris authored this report, and it was dated the 14th of March and the purpose of the report was to assist stability of the new CSR locomotives to work with existing 19E locomotives in the coal line and this was done by assessing the technical proposal received from CSR regarding the 100 locomotive coal line locomotives. The conclusion reached by Harris in the report was that the CSR locomotive offered almost the same characteristics as the 19E locomotives. One difference was noted was the fact that the 19E

locomotives was bogie controlled, and the new locomotive was excel controlled. The CSR offer was premised on the locomotive bogie body shell and attraction motor redesigned for heavy haul application.

Paragraph 147:

“In conclusion, Harris states as follows based on further discussions with the various specialists, the conclusion is that the proposed offering from CSR can be considered as a suitable locomotive for heavy haul application that will be capable of working with the class 19E on the coal line.”

CHAIRPERSON: Okay, thank you.

ADV MYBURGH SC: Mr Singh, can I now take you to the Fundudzi Report, please. This you find at Bundle 6 and if I could ask you to turn to page 130 and if I could direct your attention please to paragraph 5.6.9.9, according to Gama the memorandum dated 21 January 2014, to confine to CSR was changed at Transnet Group and not at TFR, do you except that?

MR SINGH: No, Mr Chair, in terms of the previous paragraphs that we have read of this very same report, I think it is evident that the document was actually changed at TFR with inputs from Ms Mdletshe and Mr Callard and that is the same report that was received by Mr Gama,

which he commented on.

ADV MYBURGH SC: Mr Callard, you say gave input to changing it.

MR SINGH: Well Mr Myburgh you recall...[intervene]

CHAIRPERSON: Remember Mr Callard was very upset that...[intervene]

MR SINGH: Yes, but Mr Chair, this was the point at which Mr Callard realised that CSR or Mitsui has been changed to CSR, based on the paragraph we read before. So I am
10 saying Mr Molefe and Mr Callard were TFR employees but the memo had been amended at TFR.

CHAIRPERSON: But are you suggesting that Mr Callard may have been involved in changing it?

MR SINGH: Well Mr Chair, he admits that Ms Mdletshe sent the document to him for some input, whether he provided that input or not, he does not say that eventually the same memo is the same memo that he then complains about to Mr Gama, a day later, after he agonised over it that night, on his version.

20 **ADV MYBURGH SC:** So what we have if you go to FQCO9, perhaps if you can you go back to that please, it is Exhibit BB4A. So he says at paragraph 39:

“On the morning...[intervene]

CHAIRPERSON: Sorry, what is the page number?

ADV MYBURGH SC: Sorry, I beg your pardon page 9,

DCJ.

CHAIRPERSON: Okay.

ADV MYBURGH SC: So what he says at 39, is on the morning...[intervene]

MR SINGH: Sorry 39?

ADV MYBURGH SC: 39.

MR SINGH: Oh sorry.

ADV MYBURGH SC: Page 9, paragraph 39:

10 “On the morning of Wednesday 22 January I received a mail from Mdletshe from supply chain services requesting my assistance in formatting the memorandum. When I perused it, I noticed that the memorandum had been changed to give effect to confirm the award to CSR.”

And then we know what happens after that. So are you saying this reflects that it was changed at TFR?

MR SINGH: But I am confused because I have stated that I received, so I read from paragraph 39, correct?

ADV MYBURGH SC: Yes.

20 **MR SINGH:** “I received the mail from Lindiwe Mdletshe from

supply chain service.”

Ms Mdletshe is the TFR employee.

ADV MYBURGH SC: Yes, but what I am trying to get at, are you saying it is TFR, I mean, I do not know what this

person did, they might have very well have effected changes but these are not TFR driven changes. I mean your own evidence says it is you and Molefe.

MR SINGH: Yes, but I am saying that the changes that were affected, if we needed to change from CSR to Mitsui it would be an instruction.

ADV MYBURGH SC: Yes.

MR SINGH: But if they needed to be as Mr Gama said 19E and 20E axels and this and that and everything else,
10 that would come from TFR.

ADV MYBURGH SC: So Mr Gama says as the CEO of TFR that he did not support this change.

MR SINGH: But as we have read, he sat at the BADDC, he got the memo. He commented on the memo.

ADV MYBURGH SC: Alright, but I suppose the...[intervene]

MR SINGH: He subsequently signed the memo.

ADV MYBURGH SC: I suppose the Fundudzi Report shows up the problem and let us go back to page 130, that
20 is Bundle 6. So just so that you, you appreciate this, I read paragraph 5.6.9.9 to Mr Gama.

MR SINGH: So you are now at one?

ADV MYBURGH SC: Back to page 130.

MR SINGH: And you are at paragraph?

ADV MYBURGH SC: 5.6.9.9, and then we get to what is

the problem one way or the other. Either problem or it would be resolved by your evidence if it was to be accepted. At paragraph 5.6.9.10:

10 “We determined that as per the procurement procedures manual version 2 October 2013 requirement the end user in this case, TFR should be the one motivating the procurement process to be followed i.e. confinement or tender before the memorandum may be taken to the Transnet Group for recommendation to BADC, we determined that Gama and Gianni as the end users did not motivate for the confinement of 100 locomotives to CSR.”

Your comment on that?

MR SINGH: Well, Mr Chair, I would assume that that is arrived at by virtue of the fact that Mr Gama did not actually sign the memo.

ADV MYBURGH SC: Well, also arrived at by the fact that according to Mr Gama, if you go to paragraph 5.6.9.9 the memorandum dated 21 January 2014 to confine to CSR was changed at Transnet Group and not at TFR.

MR SINGH: So, where are you, sir?

ADV MYBURGH SC: 5.6.9.9 the paragraph immediately above.

MR SINGH: 5.6.9.9, oh yes, yes. So that does not accord with Ms Mdletshe having access to them.

ADV MYBURGH SC: But Mr Singh, I do not know - perhaps I have - it is too late in the day, but who - was it you and Mr Molefe that wanted to change the memo initially?

MR SINGH: The decision to change the memo as I already explained earlier, was taken by Mr Molefe, in saying let us confine to CSR.

ADV MYBURGH SC: Okay, so that we know, the memo has changed. We know that somewhere along the line it
10 seems that Mr Callard gets wind of this and he complains to Mr Gama. So it is Mr Molefe's instruction?

MR SINGH: Yes.

ADV MYBURGH SC: What did you do?

MR SINGH: As I explained before, when he did say that I would have either communicated with someone in group procurement, who would have been communicated with TFR in terms of the instruction.

ADV MYBURGH SC: Yes, but the point is it is a group decision. I mean, whoever did the word processing that is
20 not what is important here. This is as I understand it, and you must correct me if I am wrong, because it is an important piece of evidence.

MR SINGH: Yes.

ADV MYBURGH SC: Your version is it is a group decision by Mr Molefe and then furthered or carried out by you.

MR SINGH: Agree.

ADV MYBURGH SC: Correct?

MR SINGH: Correct.

ADV MYBURGH SC: So who did the word processing you accept is not the issue?

MR SINGH: If you - I need to understand what your proposition is, and then I can say to you word processing is of no concern.

CHAIRPERSON: I seem to remember, I do not know
10 whether it was Mr Callard or somebody else who was giving evidence during the first phase, now that we talking about it. I seem to remember, as if somebody testified that an instruction came from I do not know, whether from Mr Molefe or from group level to either TFR or to a particular person to say change the memorandum.

I seem to think that but if that is what happened, it would accord with the decision having been taken at group level and whoever else having to maybe give effect to it if that was the case, but one might have to double check.
20 But what seems to be clear, one from the fact that it is people at group level who signed it at least at the time the matter went to the BADC on your own evidence it was Mr Molefe who took the decision.

MR SINGH: That is correct.

CHAIRPERSON: My memory might be wrong, Mr Myburgh

but I am just saying, I seem to think that I had evidence of somebody who was unhappy that they were being made to effect changes that they were not happy with, but had to comply with instructions or something like that.

MR SINGH: Mr Chair, I do not think we dispute that the decision was taken at group.

CHAIRPERSON: Well, if the decision was taken at group level, then I assume that if the changes were made below that it would only have been on instructions I would
10 imagine.

MR SINGH: Well, Mr Chair that is correct.

CHAIRPERSON: Ja.

MR SINGH: The previous discussions that we were having Mr Chair, regarding the issue of the changes in my understanding related to whether Mr Gama was aware of these changes or not prior to the BADC and then not as to whether the instruction have come from group or not, I think that I was clear about the decision was made by Mr Molefe it was communicated.

20 **CHAIRPERSON:** Ja, but what it would mean, what it may mean might be that if Mr Gama did ultimately go a long maybe if the boss has decided, maybe the boss has decided, I do not know.

MR SINGH: Well, Mr Chair, he did send a mail to say these were his concerns. So, he was at liberty to say no,

if he had said his concerns, Mr Molefe was also aware of the concern because I sent the mail to him, so he was at liberty to say no at any stage.

CHAIRPERSON: Mr Myburgh I may have broaden your...[intervene]

ADV MYBURGH SC: I was trying to find what I thought you had in mind DCJ but alas I have not been able to.

CHAIRPERSON: Ja, and my memory is not so helpful today.

10 **ADV MYBURGH SC:** If we carry on that at page 130, the next sub paragraph 5.6.9.11 we determined that paragraph 15.1.5 of the 2013 pm states that:

20 “The submission for confinement must be fully motivated in writing by the end user and the operational division chief procurement officer [CFR OD], to the operational divisions OD’s main acquisition council AC and the operation nor divisions chief executive officer, [ODCO TFR] for a prior written support for the recommendation to confine. The submission should be submitted on the relevant template under cover of a memo to the GCE.”

Now do you say that happened?

MR SINGH: Mr Chair, this would have in my view happened through the document that was submitted to Mr

Gama on the - I think it was the 22nd which he then responded on the 23rd with his three comments. Furthermore, Mr Chair, I did forward the three comments to Mr Molefe the same morning and the meeting that occurred pre the BADC was again the subject of discussion.

Mr Chair, again I submit that the requirements relating to the ppm of OD involvement and sign off was achieved in some way through the pre-meeting as well as the attendance of TFR at the meeting where they did not
10 raise any concerns relating to the matter.

If you read on in the Fundudzi Report Mr Chair you will see that they actually do raise this issue of Mr Gama actually attending the meeting.

CHAIRPERSON: Did Fundudzi Report get your version; I mean the Fundudzi investigators?

MR SINGH: Mr Chair, they did provide me an opportunity to comment, we did comment on very limited aspects. I think it was just on the issue of - not on - we did not comment on the locomotives or any Transnet related
20 matters, we had commented on the Eskom report I think, but I am not too sure but we did comment on the issue of the FNB bank account, if you recall.

CHAIRPERSON: Okay.

ADV MYBURGH SC: If we could then deal with the increase in the ETC from 3.8billion to 4.8. We know that

the tender was then awarded to CSR on the 17th of March and Mr Laher had evidence that afterwards you requested him to prepare a memorandum explaining why there had been an increase from the business case submission to justify what had been agreed, do you confirm that?

MR SINGH: That is correct.

ADV MYBURGH SC: And then we know that on the 23rd of May 2014, you approved a memo to the Board of directors for an increase in the ETC from 3.8 to 4.8.

10 **MR SINGH:** Support.

ADV MYBURGH SC: From 3.8 to 4.8.

MR SINGH: I do not think I approved, I supported him on it.

ADV MYBURGH SC: Okay, let us go to that memo now, now that memo you find in many different places but perhaps it is easiest for us now, to go to the bundle, that is Exhibit BB 8.2.

MR SINGH: Let me do some housekeeping here.

ADV MYBURGH SC: Are you there?

20 **MR SINGH:** I have the file.

ADV MYBURGH SC: And then if I could ask you there should be a divider in there. If you go to the second part and I only have read pages, it is page 100-23.

MR SINGH: 100?

ADV MYBURGH SC: Hyphen 23, right towards the back in

fact, I think it is the last document.

MR SINGH: 100-23.

ADV MYBURGH SC: Are you there?

MR SINGH: Yes, I am.

ADV MYBURGH SC: And let us go to the end of the document at page 36 you – this is recommended by yourself on the 22nd of May 2014.

MR SINGH: Yes.

ADV MYBURGH SC: Also by Mr Gama and then also by
10 Mr Molefe.

MR SINGH: That is correct.

ADV MYBURGH SC: And what you were proposing to the Board of Directors is that it recommended, you recommended to it that:

“The Board of Directors take note of the main reasons for the increase in the ETC due to the exclusion of the following costs from the 24 January 2014 submission.”

And they are then set out, and B:

20 “The Board of Directors approve an increase in the estimated total cost, ETC for the acquisition of the 100 locomotives from 3.871billion to 4.840billion.”

Correct?

MR SINGH: Correct.

ADV MYBURGH SC: And if you then go back to page 23,

you will see as you correctly pointed out, this really then, comes from Mr Molefe, you and Mr Gama having also recommended it to the Transnet Board of Directors.

MR SINGH: That is correct, sir.

ADV MYBURGH SC: And it was then a...[intervene]

MR SINGH: Sorry, Mr Myburgh is there water?

CHAIRPERSON: You need water?

MR SINGH: If there was one available, it is fine then we can continue.

10 **CHAIRPERSON:** Ja, there should always be water.

MR SINGH: Thank you Chair, we can continue.

ADV MYBURGH SC: So this is a memorandum that was then prepared between 17th of March when the sale was concluded and the 22nd of May, correct?

MR SINGH: That is correct.

ADV MYBURGH SC: So over a two-month period or it took two months. Mr Laher's evidence I do not know if you familiar with it, is that you asked him to assist with the production of this memorandum and that you would send
20 him text as to what had to be typed in and you would affect the amendments etcetera. Is that correct?

MR SINGH: I think the sequencing in events was probably what I dispute but I do not think I dispute the fact that I would have sent him – no.

ADV MYBURGH SC: And I think you have accepted

already. I do not know if it is with reference to this or the 1064 but I think we did deal with the broad deal, we spoke about the ETC increase memos that this was your product, your work product?

MR SINGH: In terms of the preparation of the document?

ADV MYBURGH SC: Yeah.

MR SINGH: Yes, sir.

ADV MYBURGH SC: When both - certainly Mr Gama and I think Mr Molefe as well said look, this is financial stuff, it
10 comes from Mr Singh.

MR SINGH: Yes, Mr Chair.

ADV MYBURGH SC: Now, what we need to just work our way through this document but what I will ask you to comment on is paragraph 14. So and this applies also to the 1064 remembering that they - these two acquisitions run in parallel, paragraph 14:

20 “A contract to acquire 100 electric locomotives was concluded with CSR Pty Ltd on 17. March, at a cost of 4.4billion, including the cost of future escalations and foreign exchange hedging. Thus resulting in an increase of 969million.”

Something that I think we grappling with, perhaps you can assist, Mr Singh is, what is the point of going to the Board of Directors, to ask for close to a billion-rand increase in the ETC once the contract is already been entered into? I

mean, what is the Board supposed to do, I mean, what would happen if they say no?

MR SINGH: That would be an interesting question if they had said no, the - I guess the issue is, Mr Chair, is that practically, it is very difficult to estimate the cost, the exact cost of capital equipment given the fact that there is a long time between the issue of – well a long time between a business case if it is actually approved, on which the procurement event is premised and the actual conclusion
10 of the contract.

And there after the conclusion of the contract to the actual delivery of the product because that entire timeframe, Mr Chair, has to be quantified in financial terms, to be able to understand what is the actual final cost of the product. So you have to keep track of this, of the financial impact from the - let us call it a business case, approval date and the assumptions contained therein right up to the date on which the last the last locomotive or product is going to be delivered.

20 Because the financial impact thereof is actually only known on the last day that that product is actually delivered. So when the Board is sitting and approving these things, Mr Chair, they actually approve it on the basis of the information that is available to them at that point in time with an understanding that economic

variables that change over that period of time would impact that cost.

ADV MYBURGH SC: Yes, but that does not answer my question at all. I mean, I think you can accept that evidence has been led and certainly from the legal team's point of view, we understand the initial business case and initial ETC and the need to increase these, we can understand that.

And I think it was explained well by Mr Molefe and
10 Mr Coleman but my concern is a slightly different one. I mean, I think you accept that you had to go to the Board to get approval for an increase in the ETC of a billion rand.

MR SINGH: Yes.

ADV MYBURGH SC: But then surely it must follow that Mr Molefe and you had to go to the Board before you signed the contract, which included that increase of a billion rand.

MR SINGH: Not necessary.

ADV MYBURGH SC: Right.

MR SINGH: So if the Board had delegated the authority to
20 negotiate, and not conclude we would have to go back to get an approval to conclude the contract. In this the locos were delegated the authority to negotiate and conclude.

ADV MYBURGH SC: So I will use the words, negotiate and conclude because we are going to deal with it. So you say that is what happened.

MR SINGH: Yes.

ADV MYBURGH SC: But then why were not you coming to the Board to say ratify my conclusion of the contract, that is not what you are doing, you asking?

MR SINGH: Remember, this is not - this has got nothing to do with the contract. This has got to do with the fact that the Board in terms of the delegation of authority approved the capital equity.

ADV MYBURGH SC: Yes.

10 **MR SINGH:** Remember, the procurement event is now done. **ADV MYBURGH SC:** Right.

MR SINGH: It is finished so there is no comeback on the procurement event because remember, the procurement event said, negotiate and conclude. It is now negotiated and concluded. However, the Board in terms of the capital allocated to this project had approved 830, well in this case, a 3.8billion number. Okay but now that R3.8billion number to the procurement process has changed.

ADV MYBURGH SC: Yes, well it had changed because
20 you had concluded a contract as well.

MR SINGH: Yes, exactly.

ADV MYBURGH SC: Well perhaps you and I are speaking past one another. Let me put the equation another way. What would have happened if the Board had said no?

MR SINGH: So the point is, again, the Board would not be

able to say no, unless they had...[intervene]

CHAIRPERSON: No, that cannot be right Mr Singh.

MR SINGH: No maybe - let us rephrase Mr Chair, they would probably - they would have raised concerns if - and probably they would have had the prerogative to say no provided that we acted within the confines of the originally approved business case.

CHAIRPERSON: Well, Mr Myburgh will follow up or will pursue his line of questioning, why couldn't all of these
10 matters be provided for before the conclusion of the contract, why could it not – I mean you always provide for escalation of this and that and interest and so forth? Why could all of these things not have in place before the Board if they were not placed before it made the decision so that once it has made the decision, it has a clear picture of the risks that could happen post the conclusion of the contract, economic or otherwise because they have approved the contract fully aware of various risks that have provided for how those risks can be provided prepared? Why could that
20 not be done?

MR SINGH: I think Mr Chair, it comes back to the issue of the timeline that it takes from the conceptualisation of the project, estimation of the cost of that project at conceptualisation and approval of the business case, and up to the point at which you then actually contract.

CHAIRPERSON: Yes, but at the time you say to the Board, approve here is a contract, why should they not have the full picture and decide whether they approve or not, including potential risks and then see how those potential risks can be provided for.

MR SINGH: Mr Chair, I think, because I mean many contracts get concluded, in circumstances where there are risks that can be predicted that they are likely to happen. There are others that are unlikely, and there are others
10 that are incapable, but it can still happen, COVID-19 can happen but they are - I mean, the economic situation, can be taken into account that the economy can change and so on.

MR SINGH: And that is exactly – well Mr Chair, there one other factor well, actually two other factors that I may add to your, your summary. One is the let us call it the maturity of the designs relating to the underlying product. So, if you were building a house Mr Chair, and you had very rudimentary plans, and you went to a builder and say
20 build this house.

He would give you an estimate but given the fact that the plans are very rudimentary, you must also understand his estimation would be less than accurate. Whereas if you have very different plans and you say to him, listen, I want this type of wood, and I want this type of

tiles, and I want this colour, and I wanted from here, and I wanted it from there, his quote would be actually much more accurate.

CHAIRPERSON: No, that is fine but when I approve that you can go ahead and build the house, I must have the full picture.

MR SINGH: No, no that is the problem Mr Chair, you sometimes do not have that certain.

CHAIRPERSON: No, but he certainly can say, the
10 building material as at this stage cost so much it is going to take nine months to finish this house, maybe in six months' time, there can be an increase, maybe 10% because in the building industry, construction industry this is what happens during certain times of the year and then I can make provision.

MR SINGH: So Mr Chair, let us take that example, let us say he has rudimentary plans and you decide you want to build your house here and on this...[intervene]

CHAIRPERSON: Well the rudimentary plans must belong
20 much earlier but when I say go ahead, I must have final plans to say this is the house that I want, I want it to be built like this. This is what it is going to cost me if there is going to be a change in costs. It is about 10% or 15%, I provide for that I say I am fine.

MR SINGH: Yes, Mr Chair, unfortunately, in the example

we used when it is our own house, then maybe we have the luxury of waiting until the plans are more developed but the point is, in principle that you do take is that if you do not have those mature plan, you then have a greater degree of uncertainty relating to the cost.

Now if you look at projects like Medupi and Kusile for example, as well as the NMPP at Transnet, as well as previous locomotive, procurement at Transnet the biggest problem was design maturity. To the extent that you do not
10 have mature engineering designs, you will constantly have escalation in costs.

Mr Chair, that was one of the issues, the other issues that you picked on Mr Chair that I would like to - and it is pertinent in this case, is the issue of economic variables and how do you predict it. Now, Mr Chair, if you look at the rand it is very volatile currency against any currency in the world. Now, when you are predicting from in this case, the business case, I think, was approved in May 2013 and it was premised on the Mitsui quote that we
20 originally received from Mitsui at the time and it was premised on the business - the estimation of what the currency was at the time in 2013 compared to the Japanese yen, which resulted in this 3.8billion number.

Okay, now, the procurement happened in March 2014. So it is a whole year and the currency has obviously

changed, the currencies obviously moved. Another thing that is difficult to estimate at that time, Mr Chair is not knowing what the actual delivery schedule of the locomotives is, is what is the cost associate with basically hedging these and what is the cost of actually the escalation associated with it.

Because you can only take that decision Mr Chair, on the date on which are very close to the date on which you are actually contracting. You can have a view of it and
10 you can include something in the business deal but that is always again, subject to estimation risk and what we are quantifying here Mr Chair, is exactly that.

It is estimation risk that was included in the business fee, barring in this case, there was one cost relating to modifications, the rest of them release related to quantification and estimation.

CHAIRPERSON: Mr Myburgh.

ADV MYBURGH SC: Thank you Chairperson, I see that it is just after five, if this would be a convenient point to
20 adjourn?

CHAIRPERSON: I know that you were following up and I may have interrupted your...[intervene]

ADV MYBURGH SC: It is something that I need to reflect on and certainly have a look and see what powers were delegated to Mr Molefe.

CHAIRPERSON: Ja, okay, alright. Okay, let us adjourn for the day then and we will continue at 4 o'clock on Monday. For the benefit of the public one, we do not have an evening session today and on Monday we will only be hearing – we will only start at two.

We adjourn.

INQUIRY ADJOURNS TO 31 MARCH 2021

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