

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

**31 MAY 2021**

**DAY 406**



**Gauteng Transcribers**  
Recording & Transcriptions

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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**PROCEEDINGS RESUME ON 31 MAY 2021**

**CHAIRPERSON:** Good afternoon Mr Myburgh, good afternoon everybody.

**ADV MYBURGH SC:** Good afternoon Chair.

**CHAIRPERSON:** Are we ready?

**ADV MYBURGH SC:** Yes we are.

**CHAIRPERSON:** Okay. Let us – good afternoon Mr Gigaba.

**MR GIGABA:** Good afternoon Chairperson.

10 **CHAIRPERSON:** Thank you. Let us do the oath again.

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

**MR GIGABA:** My names are Knowledge Malusi Nkanyezi Gigaba.

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

**MR GIGABA:** No I do not.

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

**MR GIGABA:** Yes.

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

**MR GIGABA:** So help me God.

**CHAIRPERSON:** Thank you. Mr Gigaba his legal

representation is the same as before is it not?

**ADV MYBURGH SC:** Yes it is Chairperson. Mr Solomons is connected remotely.

**CHAIRPERSON:** Okay all right. Okay let us continue then.

**ADV MYBURGH SC:** Thank you. Good afternoon Mr Gigaba.

**MR GIGABA:** Good afternoon Sir.

**ADV MYBURGH SC:** Do you have the – the schedule that we were using last time of the two affidavits before you?

10 **MR GIGABA:** Yes I do.

**ADV MYBURGH SC:** All right. Could I ask you to go to page 22 and to paragraph 34 on the left hand side.

**MR GIGABA:** Yes I am there.

**ADV MYBURGH SC:** When we ended last time we were talking about the trip to Mauritius

**MR GIGABA:** Yes.

**ADV MYBURGH SC:** You – could it be...

**CHAIRPERSON:** Did you say page 22?

**ADV MYBURGH SC:** 22 paragraph 34.

20 **CHAIRPERSON:** Where is my Registrar. You said page 22 paragraph 34.

**ADV MYBURGH SC:** So Chairperson I am referring to schedule.

**CHAIRPERSON:** Oh okay. She has given me the big file. I do not think the schedule is in the big file – it is separate.

Unfortunately we have a different Registrar today not the one we had last week.

**ADV MYBURGH SC:** Chairperson I think we have a spare copy can I hand that up to you?

**CHAIRPERSON:** Oh. Okay thank you.

**ADV MYBURGH SC:** 22.

**CHAIRPERSON:** Thank you.

**ADV MYBURGH SC:** So when we broke last time Mr Gigaba we were dealing with this Mauritius trip, which you  
10 mentioned Ms Mngoma had paid for.

**MR GIGABA:** Yes.

**ADV MYBURGH SC:** I just want to bring to your attention that her evidence was although she refers to it here as a honeymoon trip to Mauritius her evidence was that it occurred shortly before your wedding. What is your comment on that?

**MR GIGABA:** I think she mistook the dates. It happened after the wedding.

**ADV MYBURGH SC:** All right. Ms Mngoma then goes on at  
20 paragraphs 35 and 36 to mention that again continuing to deal with Ms Myeni that agreements between the two of you – you and Ms Myeni then began to emerge. What is your comment on that?

**MR GIGABA:** The – there were – I would not call them disagreements I would say there were issues that maybe as

it was disagreements but it was with regard to a particular issue at SAA though I do not recall what it was – I remember that it was covered briefly in the media during the time where I spoke quite strongly because I felt – I think this was – this must have been around – ja around 20 – either late 2013 or early 2014 but it was not disagreements on – on everything. It was just on a specific issue which might have arisen during the time when the new head of the pilots was being appointed because I think it was during an  
10 interview on that date that I was asked a question at which I spoke quite strongly because I felt that the – the Chairperson of the board at the time was taking a wrong direction.

**ADV MYBURGH SC:** Then at paragraph 37 Ms Mngoma says that on Sundays the two of would – I beg your pardon – regularly lunch in Sandton and then when driving home she would overhear telephone discussions that you had with Ms Myeni and that you would sometimes share the detail of those discussions with her which included that you did not  
20 understand why she had been appointed as the Chair at SAA because you did not believe she was competent – that she would feed information to the former President without telling you and that when you did not follow instructions of Ajay Gupta or Ms Myeni one or other of them would phone the former President to complain. Ms Myeni would then

pass on instructions from President Zuma to you which would upset you and you believed that you should have had a direct line of communication to the former President and not receive instructions via Ms Myeni because you did not report to her. Do you want to comment on that please?

**MR GIGABA:** Yes thank you. It is also untrue that every Sunday or regularly on Sundays we would have lunch in Sandton. That is untrue.

And – now let me deal with the first issue. You know  
10 it would have been ridiculous of me Chairperson to say I did not understand why Ms Myeni had been appointed Chairperson of SAA because I appointed her.

Now if I say I did not understand why she was appointed I would have been referring to myself because I was Minister of Public Enterprises when she was appointed first acting Chairperson when the board resigned – when the majority of board members resigned and subsequently when we requested cabinet to appoint a new board and requested cabinet to approve her appointment as  
20 Chairperson as one of the people who were had sat in the previous board which had been appointed I think by Minister Barbara Hogan.

So I – I am the one who appointed the new board – who appointed Ms Myeni as the Chairperson of the board so I could not say I did not understand why she had been

appointed Chairperson.

And so the issues of my understanding of her – of the reasons for her appointment as well as questioning her competency cannot arise and would not have arisen from me.

Secondly I am not aware of any information that Ms Myeni would feed to the former President. If I needed to discuss issues with the board of SAA I either convened the Chairperson and the CEO of the board and discussed issues  
10 with them or I would request special general meetings of the board in order to raise certain issues with the board or the Department would engage either the board or the – the executive management of SAA to discuss matters relating to the airline.

Any other thing that seeks to suggest that there was information that Ms Myeni fed to the President is – is a fabrication. There was no such view from me and if the President needed to discuss issues with me which relate to SAA – to SAA or other state owned enterprises he would do  
20 so officially either when we present memos in cabinet or – or so.

Now it is also not true Chairperson that I was expected to follow instructions either from Mr Ajay Gupta or Ms Dudu Myeni. Ms Myeni never passed any instructions to me from the President and – and so the issue of me being



upset by this actually does not arise.

Ja and so – and so the rest of 37.3 is just inaccurate because there was no as I have said – there was no information passed to me from the President through Ms Myeni. The President if he needed to talk to me as one of his Ministers he would call me directly and talk to me.

**CHAIRPERSON:** Well I see that here at – in this paragraph she does say which I think she says elsewhere as well that there was a time when you did not want to follow the  
10 instructions of Mr Ajay Gupta and I know that I think on Thursday when you were here we referred to a part also where she was saying that the relationship between yourself and the Gupta family – well she was speaking I think specifically about Ajay Gupta had cooled off – or was cooling off because you felt that according to her you felt that Ajay Gupta – Mr Ajay Gupta wanted you to run your department as he wanted and you wanted to run the department the way you thought would be the right way your wanted to run it.

20 Now the question I want to raise it is why do you think she would bring in this part of the evidence against somebody that she really wants to put in a very bad light that is yourself fabricating a lot of stories. Why did not – why would she not simply put you in her version as somebody who throughout was just following the Gupta

family instructions throughout. Why does she – why would she come to a point where she says no from this point he was standing his ground. He was in effect sick and tired of the interference of the Gupta family in his work and as a result of the stance he took then the relationship between him and the Gupta's cooled off.

**MR GIGABA:** Chairperson that – that puzzles me too and I think more than perhaps beyond what the Chairperson is asking what puzzles me is the entire affidavit. The first –  
10 the decision to approach the commission which did not start as a result of a desire to come to the commission.

I mean the commission has been in existence since 2018 – 2019

**CHAIRPERSON:** 2018.

**MR GIGABA:** 2018. Thank you for the correction. She did not feel the need from then up until this time that she did when the divorce issues were now coming to the fore and the issues pertaining to the – the damaged property at my residence it is only then that she felt this edge – the fire to  
20 come to the commission.

Ms Mngoma did advise me that she was being put under pressure by certain people some of whom are in government others in state security – in the state security department, others in business to depose an affidavit to surrender me as she said because they wanted to destroy

me politically and to that extent such a political destruction of me would result in her being financially rewarded and she mentioned the types of rewards that she would receive as a result.

I – in our many discussions she had she would not accept that and she needed to think about the family and put the family first. But ultimately she did come.

Now the affidavit Chairperson as I have sought to highlight on the number of occasions contains some very  
10 serious contradictions that indicate that this is not the affidavit that she wrote or it is based on media narratives which – which have existed all along which – to which I have not responded. I have sought to maintain a silence believing that the opportunity would come for me to sit before the Chairperson and answer to the many allegations.

And so I do not know which one of the above many reasons or prospective reasons I have outlined would have prompted her to – to say all of these things that she has said because on the one hand I was doing the bidding for  
20 the Gupta's – on the other hand I suddenly decided that no I no longer want the interference.

But the fact of the matter is that I was not receiving any instructions from anyone with regard to the work that I was doing. The work that we did we did collectively. On the one hand it is cabinet but on the other hand I have

following discussions and engagements in the department which would result in us taking certain positions or policy positions, submitting them to cabinet or taking them forward in the form of the state owned enterprises if those decisions did not require cabinet approval.

**CHAIRPERSON:** Well also another aspect where a similar issues may be raised would be this. As I recall she said that she never saw the Gupta's give you cash herself even though she went with you to the Gupta residence many  
10 times.

But she said that there was a bag that you used to carry and you would I think ask one of your protectors it would be I think given to somebody in the Gupta family – residence or it would be given to you or you would give it to somebody – I cannot remember the details. But she then says when you went to Sandton I do not think she meant all the time but there were certain occasions I think it is more than one if I am not mistaken when you took cash from the bag that had been given to somebody in the Gupta  
20 residence and when you left it was brought back. You know.

Now I – I may be inaccurate about some details. When she says that she saw cash in the bag in the boot at Sandton on one occasion or she saw you taking cash out it can be accepted that she is suggesting that that money have come – may have come from the Gupta's okay. But

the question that would arise would be – if she deliberately – if she was fabricating the story that you got cash from the Gupta's why would she go about it in such a roundabout way why would she simply not lie directly and say I saw them give him cash at the residence he put it into this bag and therefore she would be speaking of very direct evidence rather than say no I did not see them give it to him but when we were at Sandton he opened the boot and opened the bag – I saw the cash and I am connecting it with the  
10 Gupta's or something to that effect.

So one would have thought that somebody who really want to implicate you in receiving cash would say I saw – I saw him – we went to the Gupta's a number of times and on certain occasions they gave him cash – I saw it – I was an eyewitness to it.

Why – why do you think she would not do it that way?

**MR GIGABA:** For two reasons Chairperson among others and perhaps I could think of more. The first one is that she  
20 – she never saw this bag. She never saw this bag that is why in her own affidavit she shows one of the – you know these small men bags she took a picture from – she googled a picture of the small men bag and says this is the bag to which I am referring.

The bag to which she refers is a small man bag. I

still have it in my car. It puts everything that I carry including my cell phone, hand sanitisers, my hand lotions, everything. I put them in there so that I do not put them in my pocket. So she never saw this bag and the second reason is that because there is a motive – an ulterior motive to portray me in a particular light she then has to fabricate story so carefully that it does not implicate her. Because if she was there and saw me being given money that was an – that was illicit it implicates her in an illegality. And so when

10 she was being coached about her affidavit it would say recuse yourself you did not see the bag, you did not see this money being given to him you only saw it in the boot and so you do not know where did this money come from. But you can only infer that it came from the Gupta's.

But how much money would I have been carrying in a bag? Could it be R1000 – could it be R2000 – could it be R10000 I was a Minister Honourable Chairperson earning an income and you –you could for some reasons including paying for the – the parking tickets and stuff like that. You

20 could withdraw money, carry cash in your bag so that you able to pay for those things.

So I would not be able to tell the Chairperson exactly her motives or why she crafts her statement in such careful fashion but all I can say to the Chairperson is that the reason she never saw the money being car – being

given to me or being carried by me to the car and tries to implicate the protectors it is because there was no such money.

If you go to the evidence of Witness 3. Witness 3 says the – Mr Gigaba would go in and would come out. There was no money. But two days later I saw – I would see money in the bag. Now how would this money have arrived in the boot of my car unless either Ms Mngoma or Witness 3 have put the money in there themselves for their  
10 own purposes because if the money is being given to me it would be given to me and if I went to collect money I certainly would not need company to go collect money.

So this money would probably have been asked for by – by one of them, given to them, they would know what the money is for and now they are trying to – to paste or to implicate me by claiming that that money belonged to me.

Insofar as I am concerned I have never seen in the boot of my car cash carried in bags of such an extent that it is being alleged I think in front of the commission because  
20 certainly in my handbag you cannot load that much money. Even my purse cannot load – it cannot even fit R10 000.00. It is just a small purse that can carry perhaps at best – at most R5 00000.

**CHAIRPERSON:** Mr Myburgh.

**ADV MYBURGH SC:** Thank you. And at paragraph 38 Ms

Mngoma repeats something that I think you have already commented on. She says that Ms Myeni told you that if you did not do what you were told you would go back to the Department of Home Affairs. You want to comment on that.

**MR GIGABA:** Chairperson as I indicated in the previous meeting the Department of Home Affairs is not punishment. In actual fact in many countries to be Minister of Home Affairs or what they refer to as Minister of Interior or what they refer to in the UK as the Home Secretary it is quite a  
10 prestigious position. It is not punishment.

And so what Ms Mngoma is referring to here is what was in the media immediately after the announcement of the new cabinet in 2014. It was said that I am being sent to Home Affairs as part of – as punishment because I had failed to perform my duties as effectively as Minister of Public Enterprises and the whole range of other things were said.

So much so that I even took the liberty to – to say to the President because the allegation at the time was that –  
20 or a second allegation which came out was that I was very bitter about this.

So I even on one occasion informally said to President Zuma that Mr President if there is an allegation that I am bitter about being made Minister of Home Affairs I want to allay that that concern immediately and altogether



and assure you that I am actually very happy to be back at Home Affairs. We actually just burst out laughing about it because he knew it was a lie – I knew it was a lie and so my return to Home Affairs I took it not to have anything or as not having anything to do with the allegations which had been made but I took it as having to do with the fact that I had been in the department for a long time. When Minister Mapisa-Nqakula was Minister she started the turnaround – the turnaround strategy of the Department of Home Affairs.

10           Minister Nkosizana Dlamini Zuma spent a short stint at Home Affairs during which time she also tried to continue with the work of transforming Home Affairs.

Minister Pandor came in and also tried to do the same and so my return to Home Affairs in 2014 I viewed it honestly as a desire by President Zuma to bring into the department somebody who had a proper grasp of the turnaround of the department as having as having been initiated by Minister Mapisa-Nqakula and they wanted someone who was going to be able to carry on that work.

20           And I think during the time that I was there we did tremendous work to transform the department – to continue the transformation of the department.

**ADV MYBURGH SC:** So Mr Gigaba perhaps I can just get your direct answer to 38. Did Ms Myeni tell you that if you did not do what you were told you would go back to the

Department of Home Affairs?

**MR GIGABA:** I think – as I have given a direct answer last week no she did not. All of this is not true.

**ADV MYBURGH SC:** All right. Then under the heading Your Return to the Department of Home Affairs I think you have dealt with much of this. Ms Mngoma says at paragraph 40 that you did not believe that the former President would transfer you back to the Department. That you were shocked and hurt when this transfer was  
10 announced and that were told of it in front of the Top 6. You want to add to that?

**MR GIGABA:** Chairperson.

**ADV MYBURGH SC:** What was really said.

**MR GIGABA:** Chairperson you are dealing here with a – a fabrication. To start with I think I have said in one of my affidavits that being appointed – you know every administration serves its tenure. There is no Minister who has an expectation that at the end of the term I will either be retained in the same portfolio or I will be moved into a  
20 portfolio of my preference. Every new administration – that is why the President does not – does not when they constitute [word cut] administration they do not simply say we will only call those who are being removed and those are being retained in the same portfolios will just report to duty.

All Ministers take a new oath of office when the new

administration, when the term of the administration does, so I did not have any expectation that I would be retained as Minister of Public Enterprises and I did not even have any expectation that I would be retained as a Minister, the appointment to cabinet is the discretion of the President, you serve at the pleasure of the President, if you have not been appointed or reappointment it is still the pleasure of the President, that is with regards to paragraph 14.

**ADV MYBURGH SC:** ...[break in recording] the car never  
10 returned, perhaps I could also just mention to you that in her evidence Ms Mngoma said that she drove this car for about a year and a half, that she had pictures of it on her phone but those were deleted, and that it was registered then into a friend's name.

Now you simply deny that, what do you have to say about this car, this BMW.

**MR GIGABA:** The BMW did not exist in my opinion, when I met Ms Mngoma I had – she had a number of cars that she used to come and visit me on, as I mentioned last week  
20 they included ...[intervenes]

**CHAIRPERSON:** Did you say when you met her?

**MR GIGABA:** When I met her yes.

**CHAIRPERSON:** Okay, she used to drive she used different cars.

**MR GIGABA:** Different cars. They included an ML350,

they included the BMW One series, she also indicated to me that she or her uncle had an Aston Martin, I had never seen that one in particular. Now this white BMW I never saw, this three series. When prior to my taking office as Minister of Public Enterprises I had only recently met her and I was – I had a Mercedes Benz ML430, which was white, that I had got while I was serving as the President of the ANC Youth League and I continued using that car, that car I never got it from the Guptas, it had been handed to me to  
10 us by the ANC Youth League, apparently it had been donated by Mr Tokyo Sexwale to the ANC Youth League and it was then handed to me to use as one of the pool cars as President of the ANC Youth League, so that ML430 was in my possession. Ms Mngoma continued using that ML430 until she took employment at Gajima Technologies at which point she bought herself a black Mercedes Benz again.

So I am not aware of the BMW three series which was then registered in her name, but what also confused me about this is why would a car that needed lights to be  
20 repaired be sent to a friend of mine so that this friend, I don't know should probably fix the lights but then the car never returned and she never enquired about the car.

The so-called – I think in her testimony the last time she was at the Commission she made mention of Mr Joe Mbazo and said the car was given to Joe Mbazo. Joe

Mbazo worked in the security industry, he doesn't fix cars, I don't Joe Mbazo even knows how to fix his own cars.

He works in the security industry and there is no car that I gave to him in order that he should fix its lights and so there is no such – there is no truth to this story.

**ADV MYBURGH SC:** So is it your version, just so that I understand it, that Ms Mngoma drove a white 3 series BMW?

**MR GIGABA:** I never saw her driving a white 3 series  
10 BMW, she may have had the car. When I met Ms Mngoma, as I have said again previously, she had many cars. I never questioned the ownership of those cars. She had plenty of money and that she said to me was - you know, was her family wealth and she said she had a father living in New York City doing business in New York City and subsequently the father passed on I think around  
20 2010/2011. He left her a lot of inheritance that she was stressing about to protect because apparently the father's girlfriend wanted a piece of the inheritance and a few other  
20 business people, prominent South African business people whose names I request not to mention who also apparently wanted a piece of this inheritance.

I was to learn later that this so-called father was in actual fact her fiancée, so all along I had laboured under the understanding that this wealthy father was in New York

only to find out later that no, it was her fiancée who living here in Johannesburg who was well-to-do and left her inheritance. So whether she had the BMW 3 Series or not I cannot confirm or deny but all I can say to you is that I never saw her driving such a white BMW and I certainly never gave such a white 3 Series to anyone to fix the lights so that it never returned.

**CHAIRPERSON:** I take it you understood that he was her former fiancée?

10 **MR GIGABA:** He was a former and late. He is late now.

**CHAIRPERSON:** Yes, I mean, at the time you heard.

**MR GIGABA:** Well, I only heard last year that the father in New York was actually a fiancée. Whether former or not I cannot confirm or deny but when the father passed away – when the father passed away in 2010/2011 it was mentioned to me that in actual fact the person who passed away was the fiancée not the father.

**CHAIRPERSON:** I take it you attended the funeral?

20 **MR GIGABA:** No, Chairperson, I was not invited, I did not attend it.

**CHAIRPERSON:** Oh, okay.

**MR GIGABA:** Maybe not that I was not invited but, you know, the relationship was pretty new and we did not how serious it would become.

**CHAIRPERSON:** Oh.

**MR GIGABA:** So I thought it would be unwise of me to impose myself.

**CHAIRPERSON:** Okay, alright. Mr Myburgh?

**ADV MYBURGH SC:** Thank you. At paragraph 50 Ms Mngoma goes on to say that the two of you were married on the 30 August 2014, that she did most of the wedding planning or invited both the former president and the Guptas but none of them attempted and Mr Molefe was invited and did attend. Now her evidence was that you  
10 were the person who invited the president and the Guptas. What do you say to that?

**MR GIGABA:** The wording invitation was – the wording invitations were done by her. I gave her the name of the president as one of the people who needed to be invited but there were many other people who were invited so, I mean, the choice of Mr Zuma, the Guptas, Mr Molefe is well-calculated. There were many other people who were invited, they included several cabinet ministers, not all of them, but I invited some cabinet ministers but the working  
20 invitations were being done by her.

I do not recall the names of all the people invited, you know, you see, because the relations with the Guptas at the time were such that I do not believe I would have submitted their names as part of the people to be invited to the wedding.

**CHAIRPERSON:** That would be on – or maybe that would be on both your version and her version. Well, her version in a certain way because both of you do say that in 2014 your relationship with the Guptas had cooled off or was cooling off.

**MR GIGABA:** Ja.

**CHAIRPERSON:** So I think that is the one reason you are – that is the one reason why you are saying you do not believe you would have invited them.

10 **MR GIGABA:** Certainly, I did not ...[intervenes]

**CHAIRPERSON:** Because the wedding was 30 August.

**MR GIGABA:** Yes.

**CHAIRPERSON:** That is the second half of the year.

**MR GIGABA:** Yes. When they had punished me by sending me back to Home Affairs, according to her version.

**CHAIRPERSON:** Okay.

**ADV MYBURGH SC:** Then what Ms Mngoma goes on to say at paragraph 51 is that you informed her that as a wedding gift the Guptas gave you a cash donation towards  
20 the cost of the wedding in addition to paying for the cost of a honeymoon in Dubai.

“I do not know how much money the Guptas in fact gave.”

What is your response to that?

**MR GIGABA:** As I said in paragraph 108 that there was



no - you know, Chairperson, again the – just the logic of all of this, let us take her version and use her version. She says I did not want to be pressured by them and to do their bidding, they punished me by influencing my return to Home Affairs and thereafter reward by giving me cash benefits for the wedding. But why would they do that? Because the relationship has cooled off, I am no longer doing any bidding for them as, as I said in my previous response, the issue of the naturalisation, I found it  
 10 underway in the department, it did not need me. It certainly was not influenced by me. I found it already underway in the department, so what was the need for this cash incentive towards my wedding at which they were not invited? So there was no cash donation which was made by the Guptas towards the wedding.

**CHAIRPERSON:** So your answer is one, there was no cash wedding gift from the Guptas towards the wedding.

**MR GIGABA:** Yes.

**CHAIRPERSON:** And two, the version that they gave you  
 20 a wedding gift in the form of cash, you say is inconsistent with the version that in 2014 your relationship with them had cooled off or was cooling off because you were resisting their attempts to get you to do certain things in the department.

**MR GIGABA:** With a slight rectification, Chair, that is her

version that I was resisting to do certain things.

**CHAIRPERSON:** No, no, that is what I am saying, ja.

**MR GIGABA:** In terms of my version it was cooling off because of other reasons and my concerns about ...[intervenes]

**CHAIRPERSON:** Yes, ja.

**MR GIGABA:** ...just on her version.

**CHAIRPERSON:** Ja. Okay, Mr Myburgh.

**ADV MYBURGH SC:** Sorry, it was cooling off because of  
10 your concerns about what?

**MR GIGABA:** About growing – I mean, about high public perceptions. You know, I think things heightened after the landing at the Waterkloof Air Force base and there were high public concerns about their role, their influence, namedropping and other things and I thought that I also needed to step off in order to protect me and my principles and that is why I decided that I am cooling the relationship off.

**ADV MYBURGH SC:** But then why were they invited to  
20 your wedding?

**MR GIGABA:** I beg your pardon?

**ADV MYBURGH SC:** Why were they invited to your wedding in those circumstances?

**MR GIGABA:** Who invited her – who invited them?

**ADV MYBURGH SC:** So are you suggesting that Ms

Mngoma unilaterally invited the Guptas to your wedding?

**MR GIGABA:** No, Chair, no, Chair, I did not say that. I said I would not have invited – let me repeat, I said I would not have invited them or suggested that they be invited to the wedding because the relationship had cooled off.

**ADV MYBURGH SC:** Yes but then, Mr Gigaba, I think you and I are saying the same thing. Your version is that Ms Mngoma unilaterally invited the Guptas to your wedding, she did so herself.

10 **MR GIGABA:** If she says – no, no, no, Chair.

**ADV MYBURGH SC:** Or are you saying they were not invited?

**MR GIGABA:** Go to paragraph 50.

**ADV MYBURGH SC:** Right?

**MR GIGABA:** She says that we invited both the president and the Guptas but none of them...

**CHAIRPERSON:** Attended.

**MR GIGABA:** Attended.

**ADV MYBURGH SC:** Yes.

20 **MR GIGABA:** I think in her affidavit she says that I handled the invitations to the president and the Guptas and that is why I said that is not true. Both, I mean, the former president and all other guests and invitees to the wedding were invited as part of the overall invitation process and I am saying that I would not have suggested the invitation of

the Guptas because of the relations that were cooling and I did not want to resuscitate those relations.

**ADV MYBURGH SC:** So did you not know that the Guptas were invited to your wedding then?

**MR GIGABA:** Well, if she invited them it was based on her own relationship. It is my contention that Ms Mngoma certainly or probably had her own relationship with them which did not involve me because if you consider all the allegations she makes about cash, the allegations she makes about cars, the allegations she makes about being shown an ATM at their residence, I was not present when she was shown an ATM at their residence. If she was there she probably was there on her own volition at her own initiative which did not involve me.

**CHAIRPERSON:** Did you – were there ever occasions when you got to know that she had visited the Gupta residence without you?

**MR GIGABA:** No, there were no occasions when I got to know of such and it is not necessarily because it might not have happened, just as I did not know that her fiancée was her father, you know? I mean, someone who could conceal that from you for so many years until 2020, that is a period of a decade, is capable of concealing her relations and friendships.

**ADV MYBURGH SC:** So, Mr Gigaba, is it your version

then that Ms Mngoma invited the Guptas to your wedding on account of the relationship that she personally had with them?

**MR GIGABA:** Chairperson, I do not know if they were invited or not. If she says she invited them then she invited them without my knowledge. But we had drawn up a list, I gave her a list of my own people who I thought needed to be invited and they included my friend's family and cabinet colleagues.

10 **ADV MYBURGH SC:** Did you go on honeymoon to Dubai?

**MR GIGABA:** I beg yours?

**ADV MYBURGH SC:** Did you go on honeymoon to Dubai?

**MR GIGABA:** We did go on – no, it was not honeymoon in Dubai, it was just holiday. It was not honeymoon, honeymoon was in Mauritius. Dubai we just went on holiday, we had airline credits, I had been flying around, we had some airline credits and we went on holiday. I think we spent about two or three days and came back.

**ADV MYBURGH SC:** She says ...[intervenes]

20 **MR GIGABA:** It was not honeymoon, certainly not paid by the Guptas.

**ADV MYBURGH SC:** As I recall it, she says that you stayed in the Waldorf Hotel.

**MR GIGABA:** I do not recall the name of the hotel at which we stayed.

**ADV MYBURGH SC:** And did you then pay for this trip to Dubai?

**MR GIGABA:** No, I used some of my – what do you call these things, my frequent flyer credits.

**ADV MYBURGH SC:** To pay of the accommodation in the Waldorf Hotel?

**MR GIGABA:** I do not know the hotel where we stayed and I do not think it – it must have been Hilton Hotel, certainly not the Waldorf. It must have been Hilton Hotel,  
10 not the Waldorf.

**ADV MYBURGH SC:** Why would it have had to be a Hilton Hotel?

**MR GIGABA:** Because I think that is what I remember. I think that is what I remember. I do not even know whether there is a Waldorf Hotel, I mean, for all the time that I have been in Dubai on official business I have never stayed at a Waldorf Hotel but in my recollection was that it was a Hilton Hotel.

**ADV MYBURGH SC:** And can you remember when this trip  
20 was, Mr Gigaba, in relation to when you got married?

**MR GIGABA:** I think the person who talked about the trip should remind the Chairperson about the date of the trip, I do not...

**ADV MYBURGH SC:** Well, you are talking about the trip, you say you went to Dubai, you paid with air miles and you

stayed in the Hilton Hotel.

**MR GIGABA:** Yes but I do not recall what date it was.

**CHAIRPERSON:** But do you remember the year in relation to soon after your wedding or much later or before? Were you married already when you went there?

**MR GIGABA:** I think we were married already.

**CHAIRPERSON:** Yes.

**MR GIGABA:** But I do not recall exactly what year, whether it was 2014 or 2015.

10 **CHAIRPERSON:** Would it be probably one of those two years?

**MR GIGABA:** It will probably one of those two years.

**CHAIRPERSON:** Okay.

**ADV MYBURGH SC:** Then at paragraph 52 Ms Mngoma goes on to say:

“I estimate that our wedding cost between 4 million to 5 million. I paid all the wedding expenses including caterers and other suppliers in cash from bundles of cash that I received from Mr Gigaba.”

20 Now intentionally or otherwise your affidavit contains no response to that paragraph. What is your response?

**MR GIGABA:** My estimate of the wedding was that it did not cost R4 to R5 million. That would have been quite an extravagant wedding. The wedding was at the Botanical Gardens in Durban, I do not think it cost that much. It had

two marquees. So this is how it happens, how weddings in the African context happen. The bride takes responsibility for the white wedding, chooses everything, the family pays for it. I have paid lobola, I have brought – I have paid – I have brought *izibizo*. Now I do not know how you call that in English. It is gifts.

**CHAIRPERSON:** You can leave it as *izibizo* and explain what they are. Everybody will call them *izibizo*.

**MR GIGABA:** After you pay lobola you then are supposed  
10 to bring gifts of blankets and other items.

**CHAIRPERSON:** And other items, ja.

**MR GIGABA:** For the family. So I brought that. I had done that. Now the responsibility for the white wedding belongs to the bride, to the bride's family and I, as the groom, take responsibility for the traditional wedding at my home because this is when now culturally and customarily you are welcoming the bride to your home and you will conduct your customs as is required. I was responsible for the customary wedding. At the white wedding she was  
20 responsible for the payment. If she went to Guptas to ask for money I did not ask her because I took it to be her responsibility. One, I knew her to have money. I knew her to have money.

Two, it was responsibility of her family to pay for the white wedding. Even the vehicles in which I arrived at



the wedding were government vehicles because at the time I had a principal car with a backup car. My groomsmen, I fitted them into these cars so that we do not incur any additional expenses. I paid for my suit. My groomsmen paid for their own suits because they were supporting me in that regard. I did not ask her where did you get the money to pay for this, to pay for that and the other because I took her family and understood her family to be wealthy, I understood her to have had money and she did  
10 have money and – so she took responsibility for that. I took responsibility for the customary wedding which is very modest affair which involves traditional singing, you buy a cow which my father bought for me as a gift and then you arrange lunch for people who are there. In the customary wedding men would usually focus on the meat from the cow, they would sit in the kraal and eat there and the nice things would be reserved for mostly women, children and your guests. So the 4 to 5 million, if that is what she paid, she paid for it from her own cash, it had nothing to do with  
20 me. I was responsible for the customary wedding at my home which is, every Zulu person would tell you, is really a modest affair.

**CHAIRPERSON:** Well, on a light note I want to say well, maybe you younger generation now are luckier that the white wedding is taken care of by the bride's family. When

I got married many, many years ago, you know, the groom's family, the groom took responsibility for most of the things including the white wedding except certain specific things that the bride would bring to the family but basically a lot of things were really left to the groom's family to take care of and maybe that would be because the idea would be that [speaking in the vernacular], Mr Gigaba. So that is, what I just said to Mr Gigaba in isiZulu is that maybe that is because you are the groom or the  
10 groom's family, you initiated the whole thing by approaching the bride's family and said you want to marry their daughter so you have to pay more than them. So, Mr Myburgh, you may continue.

**ADV MYBURGH SC:** Yes, I just wanted to ask you, did I understand you to suggest that she, Ms Mngoma, might possibly have got money from the Guptas?

**MR GIGABA:** I am not suggesting that. Ms Mngoma had her own money.

**ADV MYBURGH SC:** Right.

20 **MR GIGABA:** So it was not for me to ask her. Remember, I am the person who was – who wanted us to be married in terms of the ante nuptial contract with not accruals. I could not therefore also be seen to be someone who is so interested in her money where is it, how does she use it, I left it to her to do the things that she needed to do. I

cannot suggest that she may have gone to the Guptas to look for money. I do not have any evidence of that.

**ADV MYBURGH SC:** So let us then ...[intervenes]

**CHAIRPERSON:** So – I am sorry, I did understand on the first day when you said when you met her she created this impression that she was from a wealthy family or something to that effect.

**MR GIGABA:** Yes.

**CHAIRPERSON:** But are you now saying when you were  
10 married to her you got to know that she had a lot of money as a matter of fact as opposed to the impression that you said she had created because I got the impression from you that you were saying this is the impression that she gave you when you met but later on I got the impression that you did not think the impression was justified. But from what you say, I am suspecting that you may be saying at some stage you got to know that she did have a lot of money.

**MR GIGABA:** It is what I believed, Chairperson, and still  
20 do even now that she has a lot of money and at some stage she would have asked me to assist her with some allowances but my understanding was that she was asking that, as she claimed, that the husband has got to provide allowances to their wives but not that she did not have the money herself, even the life she continues to lead now is

quite extravagant, so the money is there.

**CHAIRPERSON:** Okay. Mr Myburgh?

**ADV MYBURGH SC:** Yes, thank you. Could you then go on to paragraph 54? Mr Gigaba, this is something that you have already dealt with, it is where ...[intervenes]

**CHAIRPERSON:** I am sorry, Mr Myburgh.

**ADV MYBURGH SC:** Yes.

**CHAIRPERSON:** You denied that your wedding could have cost the kind of money that she claims. Are you able  
10 to give an indication of what your own estimate might be of what was spent for your wedding?

**MR GIGABA:** No ...[intervenes]

**CHAIRPERSON:** She is talking about 4 million, 5 million.

**MR GIGABA:** No, Chairperson, I cannot give an estimation of how much it would have cost.

**CHAIRPERSON:** Ja.

**MR GIGABA:** But I doubt very much that it cost that much. I mean, if I tried to imagine what would be required at a wedding of 4 to 5 million you probably would have  
20 been at a 5 star hotel, something like that. We were at the Botanical Gardens in Durban. We had two marquees, one for the wedding and another one for the reception ceremony.

**CHAIRPERSON:** And 1 million? Would that be too little, too low or somewhere between 1 million and 3 million?

**MR GIGABA:** You know, Chair, she is the one who can tell you better because she is the one who, through her family, who took care of that responsibility and me, I can say at Mandeni, Nqumeni, we probably did not spend anything more than 100 000 if you consider the cost of the cow and catering for the people who were there and maybe ...[intervenes]

**CHAIRPERSON:** For the traditional wedding.

**MR GIGABA:** Ja, for the traditional wedding, it would not  
10 have amounted to even R100 000.

**CHAIRPERSON:** Ja. Okay, Mr Myburgh?

**ADV MYBURGH SC:** Thank you. So in paragraph 54, it is her version about what would happen at the Gupta residence, you calling for a leather bag and it then been given to you and return to your vehicle. You have already dealt with this, is there anything else you want to say in response to that?

**MR GIGABA:** Chairperson, the issue, as I said, I mean, here she submitted as annexures copies of a man pack. A  
20 man pack carries so many things, at least for me, I mean you can just send someone to the car without me being there to go and look at my man pack, they will find a whole lot of things. Power bank in there, whole lot of things. So the man pack – well, would not be able to carry the amounts of cash which are probably alleged in here, as I

said, unless it is alleged that that cash was maybe R10 000 and so on. I do not usually withdraw R10 000 cash and just carry it around even if – even when I was still the minister I did not do that. There would have been a few occasions and that would have been to pay for certain things which related to the household and related matters, so here she says – she talks about this leather bag, witness three talks about either a sports bag or a travel bag, they are contradicting one another in regard to  
10 this so-called bag because the bag did not exist. The bag did not exist. Such bag that used to go into the Guptas to fetch money and go back to the boot did not exist.

**ADV MYBURGH SC:** And then at paragraph 55 Ms Mngoma goes on to say that:

“I subsequently learnt that the leather bags contained bundles of cash notes.”

Just to repeat the point that the Chairperson made, it is not her version in paragraph 54 that she actually saw money in the bag at the Guptas but she says she  
20 subsequently learnt that the leather bags contained bundles of cash notes. She says at 55.1:

“There were several occasions when Mr Gigaba and I would go to Sandton City immediately after visiting the Gupta residence. At Sandton City, in my full view, Mr Gigaba would take bundles of cash out of

the same leather bag that he had brought out of the Gupta residence and which had been placed in the boot of his vehicle for handing to loans to pay for suits.”

And then HTK Store, she says that when Mr Gigaba purchased suits from the store suits would be kept aside for him from which he would make a selection, he would leave the store with the suits and inform the salesperson that one of his protectors would return to pay for it.

10 She says Mr Gigaba sometimes shopped at the Fabiani store in Sandton City when I was with him, he paid in cash for clothing that he bought there. She goes on to say on several occasions I had also personally observed Mr Gigaba transferring money from his brown bag. Sorry, his brown and black leather bags into his brown leather personal bag.

As I recall, Chairperson Ms Mngoma’s evidence was that she actually corrected that and said that she had only seen that once and...[intervene]

20 **CHAIRPERSON:** Ja, I think you are right, yes.

**ADV MYBURGH SC:** ...she attaches photographs. She said he would like to use the cash from his personal carry bag to pay for our meals at restaurants and then she ends off by saying apart from a Louis Vuitton handbag bought in Sandton City which Mr Gigaba paid in cash, he did not

typically buy a gift for me with the cash collected at the Gupta residence. He told me to use the credit card up to no more than R100,000 monthly credit limit which he gave to me years before, this card was linked to his money market bank account he did however give me cash of between 100 to 150,000 for shopping when our holidayed overseas. Do you want to deal with that?

**MR GIGABA:** Yes, thank you, the story here by Ms Mngoma and Witness 3 they - especially in so far is 55.1 is  
10 concerned, they are aligned coached very well. You see Chairperson let me say I have already said there was no cash in my boot. I did not travel with cash, imagine if you are stopped by traffic officers and there is a bag of cash in your boot.

How do you explain it, where do you say you got it from secondly, this period is unspecified where I used to buy suits at HTK, I have said that I am friends, personal friends with the owners of HTK that I have bought a few suits from them. Not a lot, a few I do not know how many  
20 from them most of the time I would buy a T shirt, I would buy shorts for summer and they give me those stuff at discounted prices and because we are friends they allow me to abuse them and pay for these things over time.

This suits you are talking about would amount to about R7000 or something like that, something which I



could afford as a Minister and they would allow me to pay for these things over time as I say at discounted prices. Now during the period 2012 to 2013 I embarked on a weight loss program I had gained quite significant weight and because of that, I - my outfits you know as I was losing the weight my outfits needed to be altered. They had an in house tailor, they had an in house tailor and one of the tailors or some of the tailors were based at another shop which has since closed, I think it has been closed  
10 now for about five years or more.

So I used to bring my outfits to them and say guys, I am in a rush, can you please get these things altered. So altering a suit, pants, altering a T shirt certainly does not need one to carry loads of cash in the bag and it will cost anything R200, R250 something like that, that you bring you pay for - and I only brought them gradually because I knew I could not bring everything all at once, as I would be required to wear some of the things.

So, I would not have had to pay for these things all  
20 at once, it will take time for me to pay for them because as I say, I would bring them gradually. Obviously, during the times when I was not present I would ask my protectors to go collect, and when I asked them to go collect the suits or outfits which have been altered, I would not give them money, because I would negotiate that with the guys when

I am there as I come to pay for them.

So, this story of HTK buying suits, paying loads of cash is inaccurate. Secondly, since I met Ms Mngoma I have not shopped outfits at Fabiani, except to buy perfume, fragrances. A fragrance could be 1800 to 1500, depending on the brand that you are buying, but you do not buy a fragrance every month, you buy them over time, and they stay for long, because you do not just get into a fragrance and throw it into a bathtub and swim in it. You  
10 use it over a period of time and then you will buy it again the next few months, maybe six or sometimes even a year and I am quite - I use my fragrances quite sparingly.

The fragrances which I bought while I was serving in government, many of them I still have and I have not bought a fragrance since I left government in 2018. So that goes to tell you that even when I went to Fabiani and there were two fragrances or three at Fabiani that I liked and I would come in and buy those, that did not require me to carry a bag, a brown or black with loads of money.

20 The issue of these leather bags in 55.2, black leather or brown leather personal bags. No, no Chair I have one personal bag, only one. The other bags which I carry would be work - we grew up - when we grew up they were called briefcases something like this, where you carry all your documents and other things which you use for work

and if there were files the department needed you to sign, you do not travel around with those files.

One of the things you are taught as a Minister is that you do not travel around with cabinet files because – and even departmental files because they contain classified information in case anything happens they must not get lost or fall into wrong hands. So the files, the department would drop them off at home, at the official residence. You sign them and you carry them back to work  
10 or if you were in the office, they would hand them over into your PA and who would hand them over to your protectors.

They put the files in the car, you go home, you sign them the following day you bring them back if you cannot bring them back they send someone to come and collect them. So I had no empty leather, empty brown or black leather bag that was waiting for stashes of cash to be loaded into so that they stay in the boot of my car.

And going to 55.3 when I met Ms Mngoma I had a Nedbank Visa Card with a withdrawal limit of R3000 and I  
20 had a debit card which was linked to my Nedbank Visa Card. I then especially after she fell pregnant and moved in with me, I then gave her the debit card and said look in case I am not around and you need to buy things, medicines and things like those because you are not yet on my medical aid, please use this card.

But that card could not withdraw more than I think the debit cards withdrawal limit was even less, because I got the debit card when my visa card got damaged and while I was waiting, I needed a debit card. I did not have a credit card with Nedbank and even the R100,000 monthly credit limit is a lie, a blatant lie because the - I did not have a credit card. So, the issue of a credit limit on a credit card falls off, I did not have a credit card.

10 The money I had on my visa card which was in a way a cash card, a cheque card was money only to the extent that I have been paid that month and paid my policies, paid my debits and put R10,000 into the money market. That money market account was used by me for various things, which I needed to take care of and therefore that money market account hardly ever had R100,000 just sitting there available.

And even then Ms Mngoma would never have had access to the money market account, because she was not the principal holder of my account. These things she says  
20 here under paragraph 55 is a lie, blatant lie.

**ADV MYBURGH SC:** So just going back to your 115 Mr Gigaba would you - you say many instances...[intervene]

**MR GIGABA:** To my 115?

**ADV MYBURGH SC:** Your 115, yes on page 30.

**MR GIGABA:** Yes.

**ADV MYBURGH SC:** You say in many instances such suits would be sponsored by local designers, is that correct?

**MR GIGABA:** Yes, some of them, yes. I omitted that in my response now, Chairperson, because some of the suits have been sponsored to me because of my public profile. Some local designers would come to me and say can we do a suit for you, two suits for you. Even the suits I was wearing going the budget day was sponsored to me so that  
10 - and most of the suits I would wear during the State of the Nation Address would be sponsored just so that I advertise the people who have done the suits.

And I was a very keen supporter of local designers and that is why you would never have seen me wearing your brand suits. I supported local designers and they made me suits and gave them to me as a result.

**ADV MYBURGH SC:** Ms Mngoma says that as far as she is concerned you only had one sponsored suit.

**MR GIGABA:** She is lying in order to perpetuate her  
20 narrative. It is a lie and I would not always have come to her but even if I did, she knows that she is lying – I mean in the same way that people ask her to advertise their weaves they made they do her makeup in order to advertise them, give her flowers in order to post them on social media.

The same applied to me and if you saw my social media, I would have said that I am wearing a suit done by so and so.

**ADV MYBURGH SC:** And how would you pay for these suits that you bought at the HTK store?

**MR GIGABA:** I think I have explained that I would pay for these suits over time and they would be discounted to me and I would pay for them overtime.

**ADV MYBURGH SC:** Would you pay in cash or would you  
10 pay with your debit card?

**MR GIGABA:** Sometimes I would pay cash, sometimes I would use the debit card but most of the time because if you say to me - if I buy a suit for R7000 you give me a discount maybe I end up having to pay R5000, so sometimes I would just come and give you 2500 and then give you another one or maybe stagger that, even so.

**ADV MYBURGH SC:** And then I just want to make sure that I capture your evidence correctly Mr Gigaba when it comes to the credit card as I understand what you say is  
20 that you never gave Ms Mngoma a credit card.

**MR GIGABA:** Because at the time I met her I did not have a credit card. I destroyed my Nedbank credit card long before I met her because of the problems which - I had accumulated an overdraft and I was upset with them because I thought they needed to cap it at the limit which I

had agreed with them in my contract.

**ADV MYBURGH SC:** So you - on your version provided her with a debit card with a 3000 cash withdrawal limit?

**MR GIGABA:** Yes, that was the debit card, and then that debit card - so that debit - that was one account, which I used and I gave her the debit card. So if she needed to withdraw money, she would call me because I had the main card, which could swipe and do many things. The debit card was just for a cash withdrawal in order to pay for  
10 things that she needed to buy in the instance that withdrawal limit of R3000 has been exhausted, she would then not have access to money if she needed money on an urgent basis. So the debit card only had A R3000 withdrawal limit.

**ADV MYBURGH SC:** So, just so that I understand it, I mean, all these cards have cash withdrawal limits, what you are explaining is that she could not use the card to a value in excess of R3000.

**MR GIGABA:** Unless she has made a prior arrangement  
20 with me, so that I do not withdraw, but rather I swipe.

**ADV MYBURGH SC:** Alright.

**CHAIRPERSON:** And this card, debit card that you gave her, do you remember for how long she used it, how long she kept it or was it for a temporary time – a period, or she had it - or maybe she still has it?

**MR GIGABA:** No, she does not have it now, it was for a temporary period Chairperson. I cannot recall exactly because it is way back in 2010, 2011. I do not know how long she had the card but I only changed banks around 2016, ja around 2016, 2017. By then she also was - she had been working at Kijima and she had her own things.

**CHAIRPERSON:** Okay, so you cannot remember how long she kept it but it would have been at least some years?

**MR GIGABA:** No, it would have been some months or  
10 maybe years, maybe some years, maybe two years.

**CHAIRPERSON:** Maybe two years?

**MR GIGABA:** Ja.

**CHAIRPERSON:** Okay, Mr Myburgh.

**ADV MYBURGH SC:** Thank you, then at paragraph 56 this is something that you also dealt with, I think in your introduction. This is Ms Mngoma's version about visits to the Gupta residence and then the CPO's taking bags from the boot, placing them in the lounge and that she then entered your study, and saw you unpacking money from the  
20 bags into your safe.

**MR GIGABA:** Chairperson, was this one week after the Gupta wedding or was it after - or she says that we visited the residents, and then I would return the CPO's took the bags from the boot. How many bags were these, and what was the payment for?



**ADV MYBURGH SC:** Well, let me perhaps just finish off her version and then let me ask you to comment:

“I was shocked, she says over the page, to see all the money and asked him what the money was for. He told me that Ajay Gupta gave the money to him and that was to assist the ANC in its upcoming election campaign.”

So that is - as I say it something you have dealt with already, but you are more than welcome to tell us your  
10 version.

**MR GIGABA:** Indeed, as I say in my response, you know, the issue of these bags, you know, if you want to donate money to the ANC you do not give it to the head of elections.

You can call Mr Mbalula right now, he is the head of the ANC elections campaign and ask him if people would donate money to the ANC for the campaign do so, to him. He will tell you, no, they do not because as the head of the election campaign, you run the program of elections Chair.

20 You have got a number of sub-committees that reports to you, including the Finance and Fundraising Sub-committee, which has a direct line with the Treasurer General of the ANC, and the dotted line with you, because in the end, the Treasurer General does not give the elections campaign management, cash, or money, or

access to money for the campaign.

If you have programs you are running, the rallies, the various campaign items, the advertising marketing, you submit invoices to the office of the Treasurer General and they get paid from the office of the Treasurer General.

It is not given to you as an individual and we are not allowed to go around raising cash as individuals because there will be duplication, or they would have been duplications, the legislation has changed now in terms of  
10 all of this. There would have been duplication in terms of who the money is raised from, the President would raise money, the SG, the TG, the head of elections, or some other individuals from the same people, that would have caused problems for the ANC because people would then wonder whether they are donating money to the ANC or giving it to individuals.

So we are not allowed, we were not allowed to do that, I therefore would never have gone around raising money. If this money was being raised, because the head  
20 of the elections campaign does not go around with stashes of cash that you need to use to pay for whatever.

Every province has its own budget, for T shirts, for rallies, for volunteers, for transport, for branding, for everything. Every province has its budget, it has its allocations from head office, much of the money they

raised themselves through local means and then those activities are paid through those mechanisms.

The head of the elections campaign does not go around raising money for the elections campaign, because all of the items that need - even if I raise that money, that money would go to the head office of the ANC to the Treasurer General, for it to be registered there, it does not come into your boot and then go into your safe and you use it from there, that is not true, it is not correct.

10 **ADV MYBURGH SC:** But Mr Gigaba is it not - well, let me put it this way. I mean, perhaps you were caught in the act – I will ask you to comment on this, of stashing cash into your private safe and then you made up this explanation. What would you say to that?

**MR GIGABA:** I would say Chairperson that that is incorrect. I think if I use my intents, it is incorrect. I was never caught – I was never seen or caught in the act by Ms Mngoma stashing money anywhere, because read her affidavit. The contradictions and inconsistencies contained  
20 in that affidavit. All that she is trying to say is that you received money.

You received money in black bags, you received money in brown bags, you received money in your personal mail bag and you took this money to your account. Insofar as I am concerned, there was no such money that was

given to me by the Gupta's or by anybody. So if Ms Mngoma had money herself or so money it certainly was not in my possession and it had not been collected by me anywhere.

**ADV MYBURGH SC:** Do you have a - or did you have a safe in your study in this house?

**MR GIGABA:** The safe in this study is provided in all Ministerial residences. It is for the safekeeping of the documents, of the confidential documents of Cabinet  
10 Committees and departments and those are the things that you store in there and you do not store any money in them. Yes, I had the safe but it was for the purpose, which I have just outlined.

**ADV MYBURGH SC:** And can you recall an incident where she came to your study to tell you that one of your children were ill and that you needed to go to hospital?

**MR GIGABA:** No, I do not recall that incident. I mean, if children are ill - or let me just say I do not recall that incident.

20 **ADV MYBURGH SC:** Alright, and then let us deal with Nozipho Gigaba...[intervene]

**CHAIRPERSON:** I am sorry Mr Myburgh, can I take both of you back to the question of the card that Mr Gigaba said he gave to her. You may or you may not have covered this either Mr Myburgh or now but I think it was in regard to

your version that the card you gave her had a limit of R3000, if I am not mistaken.

I think it was in response to that version, that she said when she appeared the last time here that she said, what could she do with R3000 rounds. Now, if I am mistaken, Mr Myburgh, you must remind me but I know that she said, what could I do with R3000?

And my understanding was that - that may have been said in response to this to say, he could not give me  
10 R3000 because I could not do anything with R3000. Mr Myburgh is my recollection...intervene]

**ADV MYBURGH SC:** Yes, that is correct, Chairperson.

**CHAIRPERSON:** What do you say to her responding in that way, to your version in this regard?

**MR GIGABA:** Chairperson, Ms Mngoma probably was use - and is use to an extravagant lifestyle, where R3000 does not mean anything. For many people, for many households in South Africa R3000 would be a luxury and in this instance, she had her own money and all that I did was to  
20 say to her use this in case you need to buy things related to your pregnancy, the medicines, or whatever else or some household things that you need for you to have maybe while I am not away, I mean, while I am not around.

So if she thought that the R3000 was nothing, but that is what was in the card as a withdrawal limit, which

withdrawal limit was shared between her, herself and I and for many households in South Africa R3000 is quite a luxury. It is money that they wish to have but do not have.

**CHAIRPERSON:** Mr Myburgh.

**ADV MYBURGH SC:** Thank you. If we could turn to paragraphs 57 and 58 relating to Nozipho Gigaba. Ms Mngoma says:

10 “That during 2013 your father called us to a meeting at your family home in Mendini in Kwazulu Natal following a private discussion that Mr Gigaba held with his father, he told me that his father had asked him to assist his sister. Ms Nozipho Gigaba to settle her R850,000 bad debt in her name. Mr Gigaba told me that when we returned home, he would ask Mr Ajay Gupta for the money. At a later stage, this is paragraph 58, Mr Gigaba told me that Ajay Gupta had agreed to give him the 850,000 and that Mr Mahlangu would collect the initial amount of 425,000 for payment towards the debt. He also told 20 me that Mr Mahlangu would assist the family with the process to have his sister's name removed from an adverse listing by credit bureaus. I was informed that the name was removed from credit listing.”

You want to respond to that?

**MR GIGABA:** This is also not a lie; I mean sorry it is a lie. If my father – you know my father was a traditional man. If my father wanted to discuss issues relating to my sisters or the family, he would call me as his eldest son. He would call me, sit me down - and he did not discuss those things on the phone he would call me home, sit me down and discuss those things. So my father never called Ms Mngoma and I to discuss my sister's bad debt. Yes she had accumulated bad debt at some stage and she – she  
10 needed assistance with advice on how to deal with the – with the blacklisting – the – ja with – with adverse listing by credit bureaus whilst she sold off her assets and liquidated her company so that she can settle the debts.

So the bad debt did not accumulate in – in the absence of assets being available for my sister to sell and to settle those – to settle those debts and that is what she did.

What she asked – what I asked Mr Mahlangu to do was to advise me on how to deal with – how to advise her. I  
20 asked him to advise me how to advise her on dealing with the credit bureaus. And I did not ask him to help remove my sister's name from the credit bureaus because our understanding was that the liquidation process and the selling of assets would take time but ultimately it would be done and she would be able to clear her name from the

credit bureaus.

Now you will see in the – in the email that is the – that is in the possession of the commission which was from sister to me that she says in that email that I continued to engage various sources to assist me to ensure the settlement of this debt.

She did not say to me thank you for how you helped me or for offering to help me. I suggest you go talk to so and so – she said I continued to engage various sources to  
10 help me settle this debt. But the debt was settled in large measure through the liquidation process and selling of the assets.

Where I would have helped would have been on occasion when – because her practices at some point ground to a halt. So I would assist with here is some money for you to buy groceries because she was raising our late sister's son. So it was necessary for us to assist in – in – with the groceries so that the child and my sister would have food.

20 It would have been irresponsible of me not to help her in some regard. But I did help her with regard to a monthly allowances and even then it was not every month. I probably would have helped her two or three times because the greatest burden of this responsibility was borne by my parents. Even though they were retired –



close to retirement but the greatest burden of this responsibility was borne by my parents.

**CHAIRPERSON:** The – the – that is the burden of doing what?

**MR GIGABA:** Of assisting with living – living

**CHAIRPERSON:** Expenses.

**MR GIGABA:** Expenses yes.

**CHAIRPERSON:** Not for – not to settle the debt.

**MR GIGABA:** No – they could not afford settling the debt.

10 **CHAIRPERSON:** Ja.

**MR GIGABA:** And that is why we – we said – because my sister at the time I think had about three practices – optometry practices so our decision was if you sell your assets and liquidate the company it puts you in a better position and that is what she did for – liquidate the company – sell the assets off = get out of the optometry practice.

**CHAIRPERSON:** Mr Myburgh.

20 **ADV MYBURGH SC:** So she liquidated those practices – do you say she had three of them?

**MR GIGABA:** Ja I think she had – I think she had three of them. Probably the third one was not formal but there were – there were two formal one in Port Shepstone another one I think in Mount Ayliff or something like that.

**ADV MYBURGH SC:** Port Shepstone and Mount

Edgecombe.

**MR GIGABA:** Mount Edgecombe – no. Mount Ayliff.

**ADV MYBURGH SC:** Sorry I have – Mount what?

**MR GIGABA:** Mount Ayliff.

**CHAIRPERSON:** Mount Ayliff.

**MR GIGABA:** I think it was Mount Ayliff I could be wrong with the second one.

**ADV MYBURGH SC:** Mount Ayliff.

**MR GIGABA:** Yes.

10 **ADV MYBURGH SC:** All right.

**CHAIRPERSON:** Is that the Eastern Cape.

**MR GIGABA:** Yes.

**ADV MYBURGH SC:** And perhaps I could just for the sake of completeness ask you for the first time to turn to your – your exhibit. Exhibit BB24 this is Transnet Bundle 7(a). Could you please go to page – you know there is a series of documents Mr Gigaba following page 996. Could you turn up 996.14.

**CHAIRPERSON:** Please just repeat which – is it a bundle?

20 **ADV MYBURGH SC:** Yes Bundle – Transnet Bundle 7(a)  
Chair.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** And we are at Exhibit BB24.

**CHAIRPERSON:** Okay.

**MR GIGABA:** Yes I am there – I am there.

**ADV MYBURGH SC:** Page 996.14 Chair.

**MR GIGABA:** Yes.

**ADV MYBURGH SC:** So what we have here is an email from your sister to you and she says:

**CHAIRPERSON:** One second Mr Myburgh. I see that we have gone past four but I do not see Mr Anoj Singh and her legal team as yet.

**ADV MYBURGH SC:** I am sure they are probably sitting just outside Chair.

10 **CHAIRPERSON:** Ja so maybe – maybe we will go on with Mr Gigaba until half past four or what are you suggesting?

**ADV MYBURGH SC:** Well I think that Mr Gigaba may have to come back in any case.

**CHAIRPERSON:** No, no he will – ja – he will have to – we will not be able to finish.

**ADV MYBURGH SC:** So I – half past four is..

**CHAIRPERSON:** Half past four should be fine.

**ADV MYBURGH SC:** Fine.

20 **CHAIRPERSON:** Well Mr Gigaba we will go with you up to half past four. I know that on Thursday I think we – we all thought we would finish today but I do not think that we can finish today without doing injustice to the issues because it is important that you also get an opportunity to deal with all the important issues. So okay all right. 99?

**ADV MYBURGH SC:** 996.14 Chair.

**CHAIRPERSON:** Thank you.

**ADV MYBURGH SC:** So Mr Gigaba this is the email that you speak about as I understand it.

**MR GIGABA:** Yes.

**ADV MYBURGH SC:** It is from your sister to you, the subject is ITC Debt and you then forward that on to Mr Mahlangu.

**MR GIGABA:** Yes.

**ADV MYBURGH SC:** And you say:

10           “Herewith find attached the issue we spoke about regarding my sister.”

**MR GIGABA:** Yes.

**ADV MYBURGH SC:** And you say you wanted him to do what?

**MR GIGABA:** I wanted him to give us advice from a legal point of view.

**ADV MYBURGH SC:** All right. And then...

**CHAIRPERSON:** I am sorry Mr Myburgh. 996.4?

**ADV MYBURGH SC:** 14 Chair.

20 **CHAIRPERSON:** Oh 14.

**ADV MYBURGH SC:** 14.

**CHAIRPERSON:** 14. Okay I am there.

**ADV MYBURGH SC:** And you then you see at 996.15 that is effectively a list of her debts, is that correct?

**MR GIGABA:** Yes.

**ADV MYBURGH SC:** So the one thing that Ms Mngoma gets almost right is that she was indebted to the tune of about R850 000.00.

**MR GIGABA:** Yes.

**ADV MYBURGH SC:** So I take it then you deny that Ajay Gupta gave you any money. You deny that Mr Mahlangu would have gone and received the first part payment.

**MR GIGABA:** Chairperson if you read the emails because this is the tangible evidence before the commission.  
10 Nowhere do I say to Mr Mahlangu go fetch money from Ajay. Nowhere does my sister say you committed to getting money from Mr Ajay Gupta. Here my sister says I am talking to people I can partner with that is 996.14 –

“I am talking to people I can partner with regarding business opportunities so I can pay money – so that I can earn money to pay off. Obviously I will be careful because I work where I work or do I see no option other than to do work on the side.”

20 My sister was committing herself in addition to liquidation and selling of off assets to trying to raise money to business on the side for her to able to pay this money off. And – and she says on – in 996.15

“I will do whatever I need to do to sort this out. I am considering some options.”

So there is no talk here other than the ludicrous allegations by Ms Mngoma. There is no talk here of talking to Mr Gupta and soliciting money from them. This is a conversation between a brother and a sister about how to deal with this and she is committing to doing whatever she can in order to do these things.

If you look at some of these issues the – the – many of these things would be sorted out by just selling them off and ensuring that whoever is – whichever bank is being  
10 owed takes care of – of its debts.

**ADV MYBURGH SC:** Now at 58 she says at the end.

“He also told me – and that is a reference to you – that Mahlangu would assist the family with the process to have his sister’s name removed from an adverse listing by credit bureaus. I was informed that the name was removed from credit listing.”

Is that correct or incorrect?

**MR GIGABA:** It is incorrect. The only advice I asked for Mr  
20 Mahlangu as in relation to what needs to be done in order to remove the names from – to remove her name from the ITC.

But what Mr Mahlangu advised us was what I have said. We did not ask Mr Mahlangu to get the name removed because I did not think he had any influence with the credit

bureaus so that through his influence my sister's names would – my sister's name would therefore be removed as a consequence.

**CHAIRPERSON:** I have seen Mr Mahlangu's affidavit which deals with I think some of the matters dealt with by Ms Mngoma. I have seen that he denies that you asked him to collect money from...

**MR GIGABA:** Yes.

**CHAIRPERSON:** Mr Gupta and I think he also says that you  
10 never asked him to actually help her to clear her name with the credit bureau.

**MR GIGABA:** Yes.

**CHAIRPERSON:** But you – you – he – what he says he did is to advise her to approach an attorney I think in regard to the blacklisting. I think that is what he says.

**MR GIGABA:** That is what he said. That is what he said to us yes. And I was not asking him to have her name removed because as I say I did not think he had influence at the credit bureau.

20 **CHAIRPERSON:** Ja. Well when – when I read Ms Mngoma's version insofar as she may have been saying that you said you had asked Mr Mahlangu to assist to remove her name or clear her name with the credit bureau I thought because it is the type of work that would be done by attorneys and he was a non-practicing attorney that would

have been the context to say she knows exactly what to do – what should be done. But he does say you did not ask him to do that.

**MR GIGABA:** Yes.

**ADV MYBURGH SC:** Thank you Chair. Mr Gigaba could we go then to paragraph 59.

**MR GIGABA:** Yes.

**ADV MYBURGH SC:** It reads according to Ms Mngoma.

10           “The Gupta’s had also employed Ms Nazipo  
Gigaba in a marketing position at Sahara  
Computers. As far as I know she did not  
work there for very long before leaving their  
employ.”

You say:

“My sister worked at Sahara Computers for a  
period of no more than four months an  
employment she got herself without my  
assistance.”

**MR GIGABA:** Yes.

20   **ADV MYBURGH SC:** Is that – would that have been four  
months around about this time – the time when she was  
having a bad debt problem?

**MR GIGABA:** I – I do not exactly recall what period it was  
but she had already left her practices – her optometry  
practices.



**ADV MYBURGH SC:** So what work did she do at Sahara Computers?

**MR GIGABA:** I do not know Chair I did not ask. She got the employment herself. It was not my – I do not go around asking my sisters or my relatives to explain to me what they do – where – how they applied – how they knew about vacancies. They are adult individuals and legal personas.

**ADV MYBURGH SC:** All right. So this was after she had left her practice.

10 **MR GIGABA:** Yes.

**ADV MYBURGH SC:** And did she work for Sahara Computers here in Johannesburg?

**MR GIGABA:** Yes I think so. I am not sure. I – no let me not say yes I am not sure. I am not sure whether it was in Johannesburg or Durban I am not very sure.

**CHAIRPERSON:** Do you know whether she knew the Gupta family or any member of the Gupta family at any stage before she got employed there – before she may have interacted with them with regard to getting a job. Would  
20 you know whether she had known them?

**MR GIGABA:** No.

**CHAIRPERSON:** Before that.

**MR GIGABA:** No Chairperson. To my knowledge she did not know them and as you can see also she did not stay long because she got a job at COPTA and she then moved

to work there.

**CHAIRPERSON:** Okay.

**ADV MYBURGH SC:** So you did not help her secure this employment.

**MR GIGABA:** Absolutely not.

**ADV MYBURGH SC:** You did help your other sister secure employment at Transnet.

**MR GIGABA:** Absolutely not.

**ADV MYBURGH SC:** Well you at least forwarded her CV to  
10 Mr Buthelezi.

**MR GIGABA:** The – well except – except Chair by forwarding the CV but there is no other help. I think if I understand the question to mean bare your influence or bring your influence to bare in order to secure the employment – no I did not do that. Just as I did not help Ms Mngoma herself get employment at Gijima.

**ADV MYBURGH SC:** Let me see if I can in the next or we can Mr Gigaba in the next six or seven minutes finish this other topic dealing with the renovations and then we can –  
20 we can stop at the money counter.

So what Ms Mngoma says is that during your tenure as Minister of DPE you told her that you wanted to extend your two bedroom flat situated in front of the main house on the family's plot in Mandini KwaZulu Natal – a bigger house would better accommodate our family and manage politics.

She goes onto say that Mr Gigaba contracted his brother-in-law who she refers to as the builder to do the building renovations. She says that she learnt that Mr Ajay Gupta funded the building renovation when one day Mr Gigaba told me that he was going to get the money from Ajay Gupta to pay the builder. He later called the same day to tell me that he was flying to KwaZulu Natal immediately to pay the builder. I do not know the cost of the building renovations but the completed structure which took a few months to  
10 build consisted of three bedrooms, two bathrooms and a lounge area. She goes on to say that she was present on at least three occasions when Mr Gigaba paid the builder in bundles of cash for the tiling and plumbing. I do not know how much money was given. And she then concludes by saying despite assurances that Mr Gigaba gave to me I do not know if he officially declared any gifts, cash etcetera.

You want to deal with that please.

**MR GIGABA:** Chairperson the – the extension of this – the – our residence at Mandini was built by my parents. The  
20 extension of the two bedroom that was – which is described here was also my father's idea given the fact that Ms Mngoma was pregnant with our first son and my father thought we needed – actually I do not think it was during the first son I think it must have been when the second son was to be born when my father wanted to extend the house

so that the children including my nephew and my daughter would – you know when they are home have ample rooms to sleep and I also needed to have a room because I was getting married again and the family was extending.

My father undertook those renovations himself to the extent again that I helped him would have been – because I – you know when your father says I am going to do this for you you do not sit back and say oh okay go ahead. To the extent that I made any contribution I remember very well  
10 going to buy the tiles, paying for the tiles, paying for some of the things that needed to be put into the house as they were doing the house and building those rooms.

There is no money you know that we got from the Gupta's for this. The narrative that Ms Mngoma keeps repeating is you went to fetch money, you went to fetch money but I did not see the money but I saw you paying off. She says in paragraph – in paragraph 61 that I told her that I was going to get money to pay the builder. I then said later I was flying down to pay the builder in KZN but then  
20 she says subsequently she was present at least three times – on three occasions when I paid the builder in bundles of cash for the tiling and plumbing and I do not know how much money was given.

Tiles and plumbing – tiling and plumbing is not expensive. If you work as a Minister you know as a Minister

look at this. You do not pay for your flight. You do not pay for the cars. You do not – I do not hire a car when I get to Durban. I have got two residences. I pay rent very discounted rent at one of those residences and you choose which one whether it is Cape Town or Pretoria. You do not pay for petrol. Your family can fly with you – you do not pay. So your income actually is there and available because you – and therefore you are able to use it for certain things. Certainly plumbing and tiling does not need  
10 money from the Gupta's. It is money which I could afford myself as a person who was working in that position at the time.

So the – the underlying narrative of this is an untruth. What is true is that there were extensions. They were undertaken by my father. I asked my late brother-in-law to oversee this because my father was old and you need someone who is more hands on to oversee the builder when they are doing the building so that I do not expect my father to be doing – to be doing that on a constant basis.

20 And there was no occasion not even one where Mr Mngoma was present when I paid the builder. To the extent that I would have paid for tiling and so on or plumbing what the builder would say to me is that look I have found things which are quite reasonable discounted. I work with the – with the various hardware shops and therefore I am able to

get things cheaper from them.

If you go directly to them they are going to charge you an arm and a leg – go through me. I will get – I will get the stuff you will pay me or you pay me in advance and then I will go get the stuff. Quite reasonable stuff – quite reasonable extensions so that we are able to be accommodated as the family is extending.

This money did not come from the Gupta's.

**ADV MYBURGH SC:** Mr Gigaba.

10 **CHAIRPERSON:** But are you – I am sorry. Are you saying that it was your father who paid.

**MR GIGABA:** Yes.

**CHAIRPERSON:** Most of the expenses required for the extension of the house.

**MR GIGABA:** Yes.

**CHAIRPERSON:** And whatever you paid would have been for a few items.

**MR GIGABA:** Yes.

**CHAIRPERSON:** Mr Myburgh.

20 **ADV MYBURGH SC:** I just – perhaps I can just pick up on that. I understood from your paragraph 132 that any...

**MR GIGABA:** Paragraph?

**ADV MYBURGH SC:** 132.

**MR GIGABA:** Okay.

**ADV MYBURGH SC:** So that is opposite Ms Mngoma's

paragraph 60. I understood your version to be that any extensions and renovations that may have been done at the property were funded by your late father. I did not understand your version to be that you paid for them or part of them.

**MR GIGABA:** I still say – well I did pay for parts of the – of the renovations but the greatest part of the extensions and renovations Chairperson were paid for by my father.

**ADV MYBURGH SC:** And if you have a look at paragraph  
10 61 at the end. Is it common cause between you and Ms Mngoma that the completed structure – the completed renovations consisted of three bedrooms, two bathrooms and a lounge area. Is that correct?

**MR GIGABA:** Well the second bed – bathroom to the extent that it is an en-suite in my bedroom yes that is true. So ja this is consistent.

**ADV MYBURGH SC:** So Ms Mngoma says that or as you have mentioned your father was a retired reverend or pastor. He – according to her did not have a lot of money in  
20 fact he could not at the time afford his own medical bills and it really was on that basis that she denied quite categorically that these renovations could have been funded by him. You want to comment on that?

**MR GIGABA:** Chairperson you know I – I honestly sincerely and with great pain regret the insulting of my father in this

fashion. The dragging of my late father to this platform to insult him in this fashion is really very painful to me.

My father worked and my mother they worked and broke their backs building us that residence. That property when my father died he left that property in the custody of his grandchildren not even us.

He built the house for his grandchildren not even us. As a priest as he was anybody would say to you that a priest could not afford a property like that but my parents  
10 worked hard to afford it – to build it. And my parents would do many other things in order to earn an income. At one stage my father had a tractor, had two trailers, a number of things I do not know their names in English to assist people with agricultural programs and he charged them. He earned an income out of that which he saved both to build us that property and to build us – and to save for the future.

We went – my parents had five children. We went to university all five of us and they used their meagre incomes and whatever they generated on the side. There were  
20 moments when my mother had to bear the burden of providing food for us because father's – my dad's income was spent on educating us.

Come someone who joins my family in 2014 who does not know how hard this family has worked and insult my parents and demeans their efforts in order to 00:28:37



out – to 00:28:39 a marriage – a divorce settlement out of me. Not only – I would be happy if she – it was me she was destroying and demeaning. I would be okay if I – if it was me she was attacking. But my father in his deathbed to be told he could not afford his own medical bills. My father had medical aid. My father had children that could look after him. If my father could not afford any medicines I was there to provide those medicines for him as I continue to do so for my mother today. My mother was a nurse. My  
10 mother worked. She had an income. She had pension. She had medical aid. This is an insult that is very painful to me and my family and I am sorry Chairperson for raising my voice but it is – it is – I mean no disrespect towards the Chairperson or the commission. It is just the pain and the anger which I then felt. It is how my feeling – it is being dragged into this, when they do not deserve it. To say that my father could not afford medical bills, it is not just untrue, it is insulting. But Chairperson it is my submission that my father and my mother could – had always looked  
20 after our family even from the modest incomes of a nurse and a priest. Were able to do what they needed to do to look after us.

And that is why I even – when we got married, my parents would say to me: Son, we are not going to let you bear the full responsibility. I will buy the cow. Son, do not

worry about parts of what you need to buy as this for the bridal party. We will provide for that. I never asked them why cow(?). I took that to becoming from their hearts.

They have looked after us all their lives. And I appreciate what my parents have done for them. And we will never allow anyone to insult them.

**ADV MYBURGH SC:** Mr Chairman, if this ...[intervenes]

**CHAIRPERSON:** Well ...[intervenes]

**ADV MYBURGH SC:** Chairperson, if this is a good time to  
10 adjourn ...[intervenes]

**CHAIRPERSON:** Yes ...[intervenes]

**ADV MYBURGH SC:** ...Mr Gigaba's evidence? We can pick up then at the Gupta money accounts when we reconvene.

**CHAIRPERSON:** Yes. Mr Solomon.

**ADV SOLOMON:** Okay.

**CHAIRPERSON:** We have not spoken to him throughout ...[intervenes]

**ADV SOLOMON:** Again, Mr Chairperson, I am here.

20 **CHAIRPERSON:** [laughs] Okay alright. We ...[intervenes]

**ADV MYBURGH SC:** Still awake. [laughs]

**CHAIRPERSON:** Unfortunately, we are not able to complete Mr Gigaba's evidence. I think we – when we all parted on Thursday, we thought it was going to be possible

but I think if we were – if we tried to do that, we would do injustice on some of the important issues. I will have to – we will have to – I will have to fix another date. If it is too close, then we will negotiated it but if we think it is reasonable, we will just impose just, as we have been doing and then – so that we can finish. I am sure we will finish next time. So it should be possible for you to know the date within the next few days ...[intervenes]

**ADV SOLOMON:** Thank you, Chair.

10 **CHAIRPERSON:** ...what the date would be but, as I say, if it is too close, there would be discussions. Mr Myburgh will talk to you.

**ADV SOLOMON:** Thank you, Chair.

**CHAIRPERSON:** If we think it is a reasonable notice, then we will just impose the date.

**ADV SOLOMON:** I hope we will be able to find each other with the best suitable – hugely suitable date. Thank you, Chair.

**CHAIRPERSON:** Ja, okay. Thank you, Mr Solomon.

20 Thank you, Mr Gigaba. We are going to adjourn for about ten minutes to enable the Transnet work stream and to – well, basically, Mr Anoj Singh and his legal team to come in and inform Mr Myburgh to be ready. We adjourn.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Good afternoon, again, Mr Myburgh.  
Good afternoon, everybody.

**ADV MYBURGH SC:** Good afternoon.

**ADV VAN DEN HEEVER:** Good afternoon, Chairperson.

**CHAIRPERSON:** Good afternoon.

**ADV VAN DEN HEEVER:** Chairperson, just before my client gets sworn in. Based on some of the questions that my learned friend has asked on the last occasion that we were here on Friday, my client has collated some evidence  
10 and he wishes to place that before you – before that line of questioning is finished. So if he may, please, be given an opportunity to deal with those issues?

**CHAIRPERSON:** Let us leave it to Mr Myburgh because he is aware of it and then at the right time it can be handed – they can be – I can refer to them.

**ADV VAN DEN HEEVER:** Alright.

**CHAIRPERSON:** And they can be handed up. I have the registrar today who did this job for a long time, sometime back, but she has not done recently. So she has put all of  
20 these files in such a way that I do not see her. I think she does not want me to call her ...[intervenes]

**ADV MYBURGH SC:** [Indistinct] [laughs]

**CHAIRPERSON:** She does not want me to see her and call her – call upon her to do anything. [laughs] Okay. Please administer the oath or affirmation to Mr Singh. I

think it is the oath.

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

**WITNESS:** Anoj Singh.

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

**WITNESS:** No, I do not.

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

**WITNESS:** I do.

10 **REGISTRAR:** Do you solemnly swear that the evidence you will give, will be the truth, the whole truth and nothing but the truth? If so, please raise your right hand and say, so help me God.

**WITNESS:** So help me God.

**REGISTRAR:** Thank you.

**CHAIRPERSON:** Thank you.

**ANOJ SINGH:** (d.s.s)

**EXAMINATION BY ADV MYBURGH SC (CONTINUES):**

20 Thank you, Chairperson. These documents that we have been provided with, they have been paginated with handwriting. We will then endeavour to get them formally added to the bundle but if I might hand them up. They will go at the end of ...[intervenes]

**CHAIRPERSON:** Are those the new documents?

**ADV MYBURGH SC:** Yes, Transnet Bundle 5(c) from page

2205, which is right at the end, through to 2266.

**CHAIRPERSON:** [No audible reply]

**ADV MYBURGH SC:** There is, apparently, one other document that is in the process of being paginated which should be added to this. It looks a lot but as I see it, Mr Singh, it is five or six separate documents. Is that right?

**MR SINGH:** That is correct.

**ADV MYBURGH SC:** Okay. Are these all relating to  
10 things that you have already dealt with in your evidence?

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

**ADV MYBURGH SC:** Okay.

**CHAIRPERSON:** Just hang on one second, Mr Myburgh.

**ADV MYBURGH SC:** [No audible reply]

**CHAIRPERSON:** I do not know if this file is becoming too full. Do they go right at the end?

**ADV MYBURGH SC:** Yes, they should. We will have to get them punched and added to your bundle, DCJ.

**CHAIRPERSON:** H'm. They have already been handed –  
20 included?

**ADV MYBURGH SC:** No.

**CHAIRPERSON:** No? Okay. I think I will keep them outside.

**ADV MYBURGH SC:** Alright.

**CHAIRPERSON:** I think this file is too full. Maybe one or

other part of it is not working properly. Okay. Just to say, we had hoped to started at four o'clock. We were to able to start at four o'clock but let us do the best we can.

**ADV MYBURGH SC:** Thank you.

**CHAIRPERSON:** Of course, between Friday and today, something has changed and the President has announced that the curfew starts at eleven o'clock now. I think from today ...[intervenes]

**ADV MYBURGH SC:** Yes.

10 **CHAIRPERSON:** ...if I am not mistaken. So let me affect the time we wanted to go up to. Maybe I should find out from the Commission's Legal Team and Mr Singh and his legal team. If we were to stop at ten, would everybody be able to ensure that they are not in breach of the curfew?

**ADV MYBURGH SC:** Chairperson, I know that at least one member of our Investigation Team ...[intervenes]

**CHAIRPERSON:** Needs more time?

**ADV MYBURGH SC:** ...lives in Pretoria.

**CHAIRPERSON:** Oh, okay.

20 **ADV MYBURGH SC:** I have been told it might require a little bit more time and that I am not sure exactly.

**CHAIRPERSON:** Yes. And let me check with the technicians and the staff. What is the latest we should leave here to make sure you will reach home before curfew?

**ADV VAN DEN HEEVER:** Chairperson, from our side. In any event, we are going to need more than an hour for my client to go back. So...

**CHAIRPERSON:** Ja.

**ADV VAN DEN HEEVER:** So that is – so ten o'clock is going to be too late for him.

**CHAIRPERSON:** H'm, okay.

**ADV MYBURGH SC:** The technical staff say the latest should be nine o'clock or would be nine o'clock, DCJ.

10 **CHAIRPERSON:** Yes. Okay. Then let us make nine o'clock the latest and then we take it from there.

**ADV MYBURGH SC:** Alright. Thank you.

**CHAIRPERSON:** Okay alright.

**ADV MYBURGH SC:** Have you administered the oath?

**CHAIRPERSON:** Yes, she has, ja.

**ADV MYBURGH SC:** Thank you. Mr Singh, I thought perhaps before we go forward, let us rather go back and if you want to deal with these documents now, you are free to do so. As I have asked you. If you could just make it very  
20 clear what topic you are dealing with and then if you can try and get as quickly to the point as possible but you are more than at liberty to go through these documents.

**MR SINGH:** Thank you, Mr Myburgh. Good evening, Mr Chair.

**CHAIRPERSON:** Good evening, Mr Singh.



**MR SINGH**: Mr Chair, these – there are two topics that I intend to deal with relating to the documents that we have just handed up to you. The first one, if we deal with that 2205, relates to a question that Mr Myburgh had put to me, relating to the alleged 21%, or what did you call it, the business, I think.

**ADV MYBURGH SC**: Yes.

**MR SINGH**: ...or a kickback, alleged kickback that had been paid through the locomotive process. And I think the  
10 issues was. How as it possible that these kickbacks could still be paid vis-à-vis us signing a process and you know coming at a price that we thought was fair and reasonable and justifiable.

Mr Chair, if you look at 2205, it is a document that was prepared and put onto the internet or I think a train distribution magazine. And you will see it is headed as: CRRC remains thread to rail and car suppliers. And Mr Chair, maybe just by way of a little bit of history. CRRC is actually a new entity that has been created in China  
20 which is a merger between CNR and CSR. And both CNR and CSR, prior to the merger, were state-owned companies and CRRC, by virtue thereof, is also a state-owned company.

Mr Chair, the article, basically - if I could read? It would probably be just self-explanatory?

**CHAIRPERSON:** What is the date of the article?

**MR SINGH:** It is posted by a – by Mr Bill Stephens and it was dated January 15, 2020.

**CHAIRPERSON:** Okay and what is the – is it in a particular publication?

**MR SINGH:** It is just – if you look at it, it says: Observation Tower. A blog from trains contributors.

**CHAIRPERSON:** H'm? Is that the name of the publication where it is to be found or what?

10 **MR SINGH:** Yes, Mr Chair.

**CHAIRPERSON:** Okay alright.

**MR SINGH:** If we go to the paragraph that is of interest to us, directly. I think it is paragraphs 2 and 3. And if I just read, Mr Chair, for the record, it would – and then we can explain ...[intervenes]

**CHAIRPERSON:** Ja.

**MR SINGH:** ...the nature thereof or the significance thereof. It says:

20 “CRRC’s corporate parent is a state-owned enterprise that has used subsidies from Beijing to help it win nearly three billion in federal and state contracts to supply merely 750 cars for transit projects in Boston, Chicago, Philadelphia and Los Angeles.

They have own those contract in some cases

by coming in 20% to 30% below the next lowest bidder, says Mike O'Malley, President of the Railway Supply Institute, the trade association that represents more than 200 rail industry suppliers..."

That is paragraph 2. Paragraph 3:

"Underbidding the competition by that much is unheard of.

10 So industry insiders suspect CRRC's bids are well below the production costs or its production costs.

This means, CRRC's strategy is no different to foreign countries dumping aluminium or steel in the US.

The goal is put domestic users out of business and then corner the market.

CRRC disputes this and says it provides good high paying jobs for Americans..."

20 So, Mr Chair, this, basically, gives an insight into the strategy adopted by CRRC in terms of its pricing. As I said to you when the question was posed to me. What the OEM's do beyond the supply agreements that they have concluded with us, we have no view of.

But as you can see, it is a probably a – not probably – it is, based on this article, a defined strategy

that they would underbid or price cut to be able to secure the bidding and then they would get a subsidy from government to make up the shortfall.

So there, Mr Chair, is the strategy that CRRC has employed but I would not think it is any different in our case because in our case, South Africa is the biggest railway consumer of products for trains in Africa. So by controlling the South African market, basically, CRRC controls the African market, just like how they are trying to control or take control of the American market.

So this is a direct – I think indirect response to a question that was posed to – by Mr Myburgh in terms of the alleged kickback and how it was financed. So that deals with the first part, Mr Chair.

The second part is. Mr Chair, you would recall that Mr Myburgh had presented to us a series of confidential confinements. That McKinsey had... Oh, sorry. That Mr Molefe and myself had approved. And that related to the NNP Project, the Kumba Iron Ore Project, the Coal Line Optimisation Project, as well as, the – there was one other – Manganese.

Mr Chair, the documents that start at 2211, is basically a series of documents that relate to those confinements, Mr Chair. That we had signed off, between Mr Molefe and myself. Mr Chair, what you will see is that

the confinement that was signed by Mr Molefe and myself relates to the information that emanated from the Money-Flow work stream and I think it was the four confinements in four days that we had alluded to.

Mr Chair, those confinements were approved on the basis of urgency and the fact that McKinsey had the expertise and knowledge of these – of Transnet and had worked at Transnet previously. The issue of the confidential nature of the confinement was not the ground  
10 for confinement. The confidential nature of the confinement only allowed us not to get a full list of signatories that one would normally expect to get on a confinement.

Mr Chair, what has – and these documents from 2211, basically, takes you through the steps that happened subsequent to the confinement. And what you will see there, Mr Chair, is that all of the individuals that needed to have been involved in the award of the business, subsequently, there from was, actually, involved.

20 And if I may, Mr Chair, I will take you through each of the documents and the significance thereof. Mr Chair, at 2211, you will see that it is a letter that is addressed to – I think we have addressed Mr Fine but I think if he is a doctor. So it is Dr Fine of McKinsey and you will see it is headed up: Initial Discussion with Consulting Services

required.

“This letter serves to inform you that the Group Chief Executive of Transnet has approved a number of consulting assignments to McKinsey and their consortium subject to a successful conclusion of a master services agreement...”

Now the master services agreement is the – Mr Chair, just contract between McKinsey and Transnet.

10 What is important, Mr Chair, here is that the confinement did not result in an award of work because subject to this process that we have outlined in this letter to enable work to be awarded.

**CHAIRPERSON:** Just repeat that point?

**MR SINGH:** Mr Chair, the confinement that we have dealt with or that Mr Myburgh had dealt with ...[intervenes]

**CHAIRPERSON:** H'm?

**MR SINGH:** Did not result in the award of work.

**CHAIRPERSON:** H'm?

20 **MR SINGH:** It – the confinement, basically, enabled you to approach a supplier for the purpose of determining whether work can be awarded.

**CHAIRPERSON:** H'm.

**MR SINGH:** Okay? So this letter, basically, sets out the process that will enable work to either be awarded or not.

**CHAIRPERSON:** In that context, what would be the purpose of confinement?

**MR SINGH:** Mr Chair, confinement, basically, would ...[intervenes]

**CHAIRPERSON:** Because normally, as I understand it, confinement is referred to, normally, in regard to procurement matters where the idea is that either that particular entity would be the only one. I do not know whether sometimes it can be two or three but it is different  
10 from open competitive tender.

**MR SINGH:** You are correct, Mr Chair.

**CHAIRPERSON:** It is transparent.

**MR SINGH:** You are correct.

**CHAIRPERSON:** The idea would be that the awarding of the contract would happen in the context of confinement.

**MR SINGH:** Mr Chair, yes.

**CHAIRPERSON:** Now in the context in which you explained this. It seems that the confinement would not happen or the award, the awarding of the contract would  
20 not happen during confinement but confinement would happen before. So that is the reason why I am saying, please explain what its purpose would be.

**MR SINGH:** That is correct, Mr Chair.

**CHAIRPERSON:** H'm?

**MR SINGH:** The confinement is a process that precedes

award.

**CHAIRPERSON:** H'm?

**MR SINGH:** So, basically, a confinement, basically – as you correctly have said, allows you not to approach the open market. So as the word says confinement. It is limited to a smaller number of people compared to the open market and it could be one, it could be two, it could be five/ten, depending on the number that you require.

But Mr Chair, in this case it was basically confined  
10 to McKinsey and then a process thereafter followed to enable the award of the business to happen. So it was not a confined an award.

**CHAIRPERSON:** Yes, but in that case, my question is. What is the purpose of confining where the decision to award is not going to be taken during the confinement period? Because from what you are telling me, I get the impression that in this context that you are talking about, one has confinement and then later on after the confinement period, one then does certain things.

20 **MR SINGH:** Mr Chair, in the context of your question. You could have a non-award post confinement.

**CHAIRPERSON:** H'm?

**MR SINGH:** Because in terms of the procurement procedure manuals or in terms of general procurement rules. There is no mechanism to engage with a supplier for



potential services or potential goods if you do not – you have an open tender or pre-confinement.

**CHAIRPERSON**: H'm.

**MR SINGH**: So the only way to legitimately engage with a supplier is to immediately go out and open a RFP which then goes through our evaluation process and then award the business or you go through a confined process to approach certain suppliers but you still then have to through an evaluation process and then award business.

10 **CHAIRPERSON**: I guess maybe what you are saying does not necessarily talk to two separate periods. The confinement means nothing more than that you will not go to open ...[intervenes]

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

**CHAIRPERSON**: ...open market.

**MR SINGH**: That is correct.

**CHAIRPERSON**: It is nothing more than that.

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

**CHAIRPERSON**: So you do not go to open market. When  
20 you do not go to open market that is confinement.

**MR SINGH**: Yes.

**CHAIRPERSON**: And whatever you do, as long you did not go to open market, it is limited to whatever entities. So – okay – no, I understand.

**MR SINGH**: Yes, that is correct.

**CHAIRPERSON:** Okay.

**MR SINGH:** That is correct, sir. So, Mr Chair, the documents then that follow explains the process that then unfolded related to each one of those for tenders that we mentioned or confinements that we mentioned. Mr Chair, by way of example and for the sake of expediency, we have only used the Kumba Iron Ore contract as an example. We intend to, actually, submit to the Commission the documentation relating to the other three confinements as  
10 well. So we will, certainly, do that in due course.

So M Chair, in terms of the letter that you see that is addressed to mister – to Dr Fine and it is dated the 9<sup>th</sup> of April 2014. We, basically, inform McKinsey that the Group Chief Executive has approved a number of consulting assignments subject to the successful conclusion of the masters services agreement.

We also highlight to McKinsey to that they are – in paragraph 2:

20 “...that there a number of regulatory policy and procedure issues relating to procurement that needs to be followed...”

And the fact that these – this award will be subject to those procedures and requirements. And again, subject to the final masters services agreement being concluded. And approves – received from the Group Chief Executive

for the following consultant services. And basically we got the coal line, the manganese execution, the NNP as well as the Kumba Iron Ore contract.

And we then, Mr Chair, say that while we – our teams expedite the issuing of the request for proposal. So Mr Chair, you will then see the next document is actually the request for proposal.

“...for the above assignments, we include the urgency of the services.

10 I kindly request that you mobilise the McKinsey construction to have initial discussions with our teams.

In the unlikely event of that we may not successfully conclude the abovementioned assignments, Transnet will reimburse all costs incurred by yourself relating to the preparation of the documents, the RFP's...

And all of that relating to the content of this letter, Mr Chair. So that is 2211. Mr Chair, at 2211. You will  
20 then see a memo that is dated the 9<sup>th</sup> of May 2014. It is from a gentleman, Mr Moosa, who was a senior buyer at Transnet and it is addressed to Mr Pia, the Group Chief Supply Chain Officer. And the subject, you will see, Mr Chair, is: Go to market approval. And it is for, as you will see in the heading in the third line: Renegotiation of the

Kumba Iron Ore contract for a period of 12-months for R 230 million.

So, basically, Mr Chair, the purpose of this document is to now say that following the confinement and the letter that we have sent to McKinsey, we now have prepared an RFP document that contains the requirements that Transnet believes we would require to meet the objectives of renegotiating the Kumba Iron Ore contract.

You will see there, Mr Chair, that at paragraph 4 of  
10 the document, Mr Chair, you will see that we record that:

“The RFP was prepared and reviewed and performed by the following stakeholders:

- Mr Moosa.
- And then we have got the Procurement Manager.
- Ms Felix
- And Mr Yusuf Mohammed from Group Finance.
- Mr Callan from Group Commercial...”

20 Now, Mr Chair, Group Commercial is basically the marketing division of Transnet within the Corporate Centre. And then we have got from a governance perspective, Mr Wynand Esterhuizen. And Mr Chair, when we talk about governance, we are now talking about Supply Chain Governance.

So the policies, procedures, the legal aspects of procurement would have been taken care of by Mr Esterhuizen, and Mr Esterhuizen was a – I think an individual within Mr Pita holdings(?) team at the time. And then you have got Supply Development that was taken care of by Ms Tjekhe(?).

Mr Chair, then you go on and you will see that on 22113, basically, the document is signed by the relevant individuals on the 26<sup>th</sup> of May 2014 which then resulted,  
10 Mr Chair, in the RFP being issued to McKinsey. At 2215, Mr Chair, you will find the signatories of the individuals that were referred to in the memo as being part of the process of compiling the RFP.

And you will see there, Mr Chair, as listed, Mr Moosa has signed – Mr Mohammed signed. Mr Callan has not signed but there is an attached email at, I think at 2214 that serves as his approval. Ms Felix has then signed. Mr Esterhuizen has signed. Mr Tjekhe has signed. Mr Pita has not signed but that is because of the fact that  
20 he has actually signed the memo. Oh, sorry. Is – there was a person acting in his position at the time.

And at 2216, Mr Chair, you will see the RFP that was then sent to McKinsey to respond to. Mr Chair, at 2244, you then ...[intervenes]

**CHAIRPERSON:** I am sorry. The RFP goes from?

**MR SINGH**: It goes from Transnet, Mr Chair.

**CHAIRPERSON**: I mean, 2216, is it two pages?

**MR SINGH**: No, sir. It is ...[intervenes]

**CHAIRPERSON**: I am ...[intervenes]

**MR SINGH**: 2216 right through to 2243.

**CHAIRPERSON**: 2243. Oh, so that is – so the balance of the document is part of ...[intervenes]

**MR SINGH**: The RFP.

**CHAIRPERSON**: Is Part of the RFP?

10 **MR SINGH**: Yes, Mr Chair.

**CHAIRPERSON**: Okay alright. H'm?

**MR SINGH**: Then at 2244, Mr Chair, you will then find another memo that is addressed to Mr Molefe and it is ...[intervenes]

**CHAIRPERSON**: I am sorry. I see the rest of the documents – I did not realise that there was still 2244 and – that is only up to ...[intervenes]

**MR SINGH**: 2243.

**CHAIRPERSON**: Ja, that is the RFP that goes up to that.

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

**CHAIRPERSON**: Ja. Okay 2244?

**MR SINGH**: Mr Chair, 2244 is then a document to Mr Molefe.

**CHAIRPERSON**: H'm?

**MR SINGH**: The Group Chief Executive. From myself.

**CHAIRPERSON:** H'm?

**MR SINGH:** The Group Chief Financial Officer. And the subject, again Mr Chair, is basically the Kumba Iron Ore contract for a period of 12-months but Mr Chair this is now the memo that effectively awards the business.

**CHAIRPERSON:** Yes.

**MR SINGH:** In between this memo, Mr Chair, and the RFP there would have been a response that was received by or from – that was received by Transnet from McKinsey.

10 **CHAIRPERSON:** Oh, okay. Well, then that means we – I must correct further what I said then because that means that between – what was the page? 2216? Where the RFP start?

**MR SINGH:** Yes, sir.

**CHAIRPERSON:** That means, between 2216 and 2243, that is not all the RFP? There is also a response to the RFP in that – in those pages?

**MR SINGH:** No, no sir.

**CHAIRPERSON:** Oh.

20 **MR SINGH:** That was the RFP that was sent from Transnet ...[intervenes]

**CHAIRPERSON:** Ja.

**MR SINGH:** ...to McKinsey. On receiving that RFP, Mr Chair, McKinsey would have prepared a response.

**CHAIRPERSON:** Yes, but I thought you had just said the

response would be ...[intervenes]

**MR SINGH**: No, no it is not included in here.

**CHAIRPERSON**: Oh, it is not included.

**MR SINGH**: I am saying, in between the issuance of this document ...[intervenes]

**CHAIRPERSON**: ...have received?

**MR SINGH**: And... Yes. And the preparation of this document ...[intervenes]

**CHAIRPERSON**: Okay.

10 **MR SINGH**: ...there would have been a ...[intervenes]

**CHAIRPERSON**: Okay.

**MR SINGH**: ... a response that was received from McKinsey.

**CHAIRPERSON**: Yes, okay.

**MR SINGH**: And I think it is probably in my bundle.

**CHAIRPERSON**: Ja, okay.

**MR SINGH**: So, Mr Chair, that response that we would have received from McKinsey ...[intervenes]

**CHAIRPERSON**: H'm?

20 **MR SINGH**: ...would have been summarised into this document.

**CHAIRPERSON**: Ja.

**MR SINGH**: And ostensible, Mr Chair, this document would, basically, be the document that awards the work.

**CHAIRPERSON**: It would – this memorandum would take



into account what the request for proposals said and what the response was ...[intervenes]

**MR SINGH**: From McKinsey.

**CHAIRPERSON**: Yes, yes. And then evaluate what

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

**CHAIRPERSON**: ...was required and what was ...[intervenes]

**MR SINGH**: What is ...[intervenes]

**CHAIRPERSON**: And see if you people are happy and  
10 then when whether the decision is to award or not to award.

**MR SINGH**: That is correct.

**CHAIRPERSON**: In this case it was to award?

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

**CHAIRPERSON**: Okay.

**MR SINGH**: If you look at 2245, Mr Chair.

**CHAIRPERSON**: Ja?

**MR SINGH**: Under paragraph you actually see what you just describe is recorded in the table.

20 **CHAIRPERSON**: Ja.

**MR SINGH**: It says scope of requirements, RFP response and whether Transnet has actually accepted that response or not.

**CHAIRPERSON**: Ja.

**MR SINGH**: And then you also look at the state of the

work, the pricing follows the same principle. You then have some prerequisites on 2247. 2248 covers some – the supply development commitment and that is between, as you can see there, Regiments and McKinsey. And then 2249 is a recommendation, Mr Chair, and that is basically signed by myself, Mr Peter and Mr Molefe.

**CHAIRPERSON:** That is 2248 on mine, the recommendation, you said?

**MR SINGH:** Ja.

10 **CHAIRPERSON:** On mine this 2248? I thought you said 2249.

**MR SINGH:** Well, I have 2249.

**CHAIRPERSON:** You mean that page, that has got you as the compiler and Mr Gary Peter.

**MR SINGH:** Yes, Mr Chair.

**CHAIRPERSON:** Who signed recommending and then Mr Molefe approving.

**MR SINGH:** Yes, Mr Chair.

**CHAIRPERSON:** Okay, on mine it is 2248.

20 **MR SINGH:** Okay, I think we just need to check the numbers.

**CHAIRPERSON:** Ja, 2249 is another document.

**MR SINGH:** Okay. Oh, I see that, Mr Chair. I think I have an extra page but it is fine.

**CHAIRPERSON:** Ja.

**MR SINGH:** But for all intents and purposes, Mr Chair, the document starting at 2249 is basically the document that then awards the work to McKinsey relating to Kumba Iron Ore contract. Mr Chair, the document that starts at 2249, Mr Chair, that you have there should be a document that says:

“Operating Division, Transnet Corporate Centre,  
TCC”

**CHAIRPERSON:** Yes.

10 **MR SINGH:** The name of project High Value Tender Confinement, the gateway review process in the second line.

**CHAIRPERSON:** GSM/14/04/10.38, that is what it says:

“Confinement description Kumba Iron Ore contract.”

**MR SINGH:** Yes, that is the one, Sir.

**CHAIRPERSON:** And:

“Period of review 10 April 2014 to 13 June 2014.  
Issue date 13 June 2014, report status, acquisition  
gateway report confinement.”

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

**CHAIRPERSON:** Ja.

**MR SINGH:** So, Mr Chair, the purpose of this document is this is Transnet internal audit document, Mr Chair, and Transnet internal audit was charged by the audit committee to review as the document says, all high value tenders.

Now high value tenders were defined, I think, at that time as been – I know at one time it was 50 million and then we increased it to 100 million but that was the definition of high value tenders. So any tender that was more than either 50 million or 100 million depending on the cut-off would have had to have internal audit review. The procurement process relating to that tender.

And, Mr Chair, one of the things that the audit committee insisted on is that these reviews did not happen  
10 retrospectively because if it happened retrospectively it did not have any weight. So they actually ...[intervenes]

**CHAIRPERSON:** Did that mean they should happen after the decision to award is made but before the entity is notified, the supplier, or they needed to happen after the supplier has been notified of the outcome?

**MR SINGH:** So, Mr Chair, it actually was designed to prevent exactly that, is that it was actually required to be real-time assurance. So as we were going through the process you needed an internal audit person to hold your  
20 hand to move from one process to the next so that when you actually issue this report at the end that the report is not in conflict with the award.

**CHAIRPERSON:** Oh, so as the process was progressing.

**MR SINGH:** Unfolding, yes.

**CHAIRPERSON:** Then somebody or a team were

supposed to be watching every step.

**MR SINGH:** That is correct.

**CHAIRPERSON:** So that if you do not do something right they can alert you.

**MR SINGH:** Indeed.

**CHAIRPERSON:** And you correct it while there is time.

**MR SINGH:** Yes, Mr Chair.

**CHAIRPERSON:** And then when you complete the journey their report is likely to say everything has been complied  
10 with properly.

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

**CHAIRPERSON:** Okay, alright.

**MR SINGH:** So if you look at the report classification, Mr Chair, on the top left hand corner of the document...

**CHAIRPERSON:** Yes, but it is – I cannot see what is written because it is black.

**MR SINGH:** I think – it is shaded.

**CHAIRPERSON:** Ja, it is shaded.

**MR SINGH:** But the word in the shaded block is actually  
20 satisfactory.

**CHAIRPERSON:** Oh.

**MR SINGH:** And you will see it in the document itself, Mr Chair, I will take you through that.

**CHAIRPERSON:** I see that something seems to be written but I cannot tell what it says. Okay. So but you are saying

that the outcome of this review was that the process had been done satisfactorily?

**MR SINGH**: That is correct, Mr Chair.

**CHAIRPERSON**: Okay.

**MR SINGH**: Okay. And, Mr Chair, you will also have regard for – I am just trying to find ...[intervenes]

**CHAIRPERSON**: The people who would do this review, would it be a particular committee with a particular name or would it be a particular individual or...?

10 **MR SINGH**: So, if you turn, Mr Chair, to my 2250, which is the next page.

**CHAIRPERSON**: Ja?

**MR SINGH**: You will see there, Mr Chair, that the report was issued to Mr Edward Thomas, executive manager supply chain management by Dr Andre Botha, who was a director of Transnet internal audit .

**CHAIRPERSON**: Would that mean he was the person who conducted the review? Would that mean he was one of a number of people?

20 **MR SINGH**: Ja, I am just ...[intervenes]

**CHAIRPERSON**: Who are doing the review, that is what I am looking for and whether they had a formal name, particular review committee or what?

**MR SINGH**: So, Mr Chair, if you turn to my page 2246, I think it is headed up Section 4, Distribution List.

**CHAIRPERSON:** I am sorry, did you say 2246?

**MR SINGH:** I am sorry, Sir, 2264. It is the same documents. Sorry, I apologise.

**CHAIRPERSON:** Okay. Ja, I am there.

**MR SINGH:** Mr Chair, this is – and if you look at – there is two blocks there, it says Transnet Corporate Centre and you see Transnet Internal Audit.

**CHAIRPERSON:** Transnet Corporate Centre at the top and then at the bottom, Transnet Internal Audit, yes.

10 **MR SINGH:** Yes and then you will see the respective individuals to whom this document would have been sent to Mr Chair and in your question you are looking for Transnet internal audit, you see there is – I think it is Ms Jele, who was the high value tender OD manager.

**CHAIRPERSON:** Ja.

**MR SINGH:** Ms Desai, who was the high value tender process owner and then Mr Andre Botha was a TIA director.

**CHAIRPERSON:** Ja.

20 **MR SINGH:** So these individuals were part of Transnet internal audit, Mr Chair.

**CHAIRPERSON:** Yes.

**MR SINGH:** At the time I think the Transnet internal audit – well, at the time it was – Transnet internal audit was outsourced to – I think at this point in time it was, if I

recall correctly, it was either Ernst & Young or KPMG, I am not sure. But those would have been the outsource partners that conducted these reviews on behalf of the audit committee of Transnet.

**CHAIRPERSON:** So ordinarily the function belonged to the Transnet internal audit.

**MR SINGH:** Who reports to the audit committees.

**CHAIRPERSON:** Yes.

**MR SINGH:** Yes.

10 **CHAIRPERSON:** Okay and then the actual review could be done by one person from that unit.

**MR SINGH:** One or two or three, depending on the size of the contract.

**CHAIRPERSON:** Okay, alright.

**CHAIRPERSON:** So, Mr Chair, this basically – and as I said, Mr Chair, our intention is to supply the documents relating to the other three confinements in the same manner.

**CHAIRPERSON:** Ja.

20 **MR SINGH:** So, Mr Chair, the conclusion on this matter is that the confinements did not in itself automatically result in awarding of work, there was a significant process that had been followed from the confinement stage right through to the awarding of the work, Mr Chair.

**CHAIRPERSON:** Well, what does that mean? Based on



my discussion earlier on, I understood that we were agreed that in the – in circumstances where Transnet would have thought or would have concluded that confinement was justified, all that – the only decision that needed to be taken for it to be said that there was confinement was to say this job is not going to be put to the open market for tender.

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

**CHAIRPERSON**: Once that decision is made then that job  
10 is confined.

**MR SINGH**: Yes, Sir.

**CHAIRPERSON**: And it can be confined to one entity, two or three or whatever but it is confined to specific entities.

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

**CHAIRPERSON**: Ja. Now you said that the fact that it is confined does not mean that various processes such as evaluation is not going to happen.

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

**CHAIRPERSON**: It will happen?

20 **MR SINGH**: Yes, correct, Sir.

**CHAIRPERSON**: So with that understanding, my question is, why is it important to say the award did not – was not the outcome of confinement or confinement did not result in an award? I am not sure that I follow because as long as a decision has been taken not to subject this to this the

open market, whatever award is given in the end, it will not be an award that involved the open market.

**MR SINGH**: No, no, I agree with that, Mr Chair. All I am saying is that the contention was that we approved four confinements in four days.

**CHAIRPERSON**: Ja.

**MR SINGH**: Which resulted in the McKinsey consortium being awarded the work in four days. That was not the outcome of the process because there was a whole host of  
10 evaluations that were done and so on that these documents actually helped outline.

**CHAIRPERSON**: Okay, so your only point really is various steps were taken.

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

**CHAIRPERSON**: That led to the award.

**MR SINGH**: That is correct.

**CHAIRPERSON**: Okay.

**MR SINGH**: And all the requisite individuals that needed to be involved in the award was ...[intervenues]

20 **CHAIRPERSON**: Ja, waiting for it.

**MR SINGH**: Yes.

**CHAIRPERSON**: Okay. Mr Myburgh?

**ADV MYBURGH SC**: Yes, thank you. I understand there is another document that was going to be paginated and added, maybe you can deal with that, Chair.

**MR SINGH:** Mr Chair, post 2266, which is the last page of the high value tender document, there is actually an agreement that then follows at 2267 through to 2306.

**CHAIRPERSON:** Are those the additional pages?

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

**ADV MYBURGH SC:** Does this then relate to all four of the contracts?

**MR SINGH:** No, no, this is just one.

**ADV MYBURGH SC:** Just one, right.

10 **MR SINGH:** For Kumba.

**ADV MYBURGH SC:** Okay, so after the award then it gets embodied in a formal agreement. So this is the kind of Kumba board pack.

**MR SINGH:** Yes, yes.

**ADV MYBURGH SC:** Okay.

**CHAIRPERSON:** And this is the agreement, the last document.

**MR SINGH:** That is the agreement that was signed between Transnet and ...[intervenes]

20 **CHAIRPERSON:** Okay, that is fine.

**ADV VAN DEN HEEVER:** Chairperson, as my client has already indicated, for each of these agreements, the four that my learned friend dealt with, three of them I think he indicated – he made reference to evidence that said it was done on a confidentiality basis.

**CHAIRPERSON:** Ja.

**ADV VAN DEN HEEVER:** We will provide the necessary documents in each - in respect of all four that followed the same process. I think that is the point that the client made. Just for time constraints today we did not have the time to do all of it.

**CHAIRPERSON:** Okay. No, that is fine.

**ADV MYBURGH SC:** Thank you. So, Mr Singh, I am not sure that we have actually – you have answered the  
10 question that I asked you to consider but we will come to that but let me just- if we go back to 2211, just so that I make sure I understand it, these are the four contracts you are dealing with.

**CHAIRPERSON:** 2211?

**ADV MYBURGH SC:** 2211. So these are four, coal line, manganese, MNPP and Kumba Iron Ore, right?

**MR SINGH:** That is correct.

**ADV MYBURGH SC:** And then the pack that you put up relates to Kumba Iron Ore.

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

**ADV MYBURGH SC:** Okay. I just wanted to take you to – perhaps we could call it award memo. That is at 2244. So this is compiled by you, is that right?

**MR SINGH:** I am recorded as the compiler, yes.

**ADV MYBURGH SC:** And you then send it to Mr Molefe,

correct?

**MR SINGH:** That is correct.

**ADV MYBURGH SC:** So if you go to the discussion at 2255 at paragraph 5:

“The review of the RFP was undertaken.”

I assume then you reviewed the RFP.

**MR SINGH:** 2255?

**ADV MYBURGH SC:** 2245, paragraph 5.

**MR SINGH:** 2245. Was undertaken, yes.

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

**MR SINGH:** I said the review of the RFP was undertaken.

**ADV MYBURGH SC:** Yes but you undertook it.

**MR SINGH:** No. No, Sir.

**ADV MYBURGH SC:** Well, you are the compiler.

**MR SINGH:** Yes, Mr Chair, but again I think the document I signed as the compiler but I did not physically sit and compile this document.

**CHAIRPERSON:** Where would the document be that would be written by those who actually undertook the review?

20 **MR SINGH:** Mr Chair, that would be part of the ...[intervenes]

**CHAIRPERSON:** Is it the one written by Dr Botha?

**MR SINGH:** No, Sir. He is a separate independent guy.

**CHAIRPERSON:** Ja?

**MR SINGH:** That would be overlooking what the team was

actually doing. The procurement team, the evaluation team would probably be the guys that actually have the actual physical evaluation that they have conducted and that document would have been presented to the Transnet acquisition council for them to consider.

**CHAIRPERSON:** Okay.

**ADV MYBURGH SC:** But, I mean, Mr Singh, surely you are reflected as the compiler, you are writing to Mr Molefe. Are you saying that you did not look at the RFP yourself?

10 **MR SINGH:** No, Sir.

**ADV MYBURGH SC:** So if we just go back to the actual question, can I ask you perhaps go to ...[intervenes]

**CHAIRPERSON:** I am sorry, Mr Myburgh. But how could you write – compile a document, a memorandum that says to the Group CEO, as I understand it, we are requesting your approval of this initiative or this job being given to so and so when you have not looked at the RFP because I imagine that in procurement matters where an RFP has been issued, that is a very important document because it  
20 is like the foundation document and those who respond to it must comply with its requirements.

**MR SINGH:** Yes.

**CHAIRPERSON:** And I would imagine that if you are going to write to somebody who must make a decision to award this tender, one of the things you must do is go back to the

RFP, read it and understand what it required in order for you to look at the response to the RFP and be able to say the response did deal or respond or comply with the RFP.

**MR SINGH:** Mr Chair, that is the reason why we have the procurement teams as well as the – how can I say, business representatives. In this case, Mr Chair, you would see that Group Commercial was involved, so Group Commercial would be the – this – okay, let me put it to you this way, Chair. As you can see, the heading for this was:

10           “Renegotiation, the Kumba Iron Ore contract.”

So basically, we wanted to renegotiate a contract that we had already signed and the owners of this contract or the revenue stream of Transnet is Group Commercial or Group Marketing, as you would normally have it in a company and they would be the people to understand how this should occur and what should be in the RFP as they understand it and those individuals, as I explained to you, in the go to market memo, was identified and they had given the inputs into the RFP.

20           Mr Chair, once the response to the RFP is made, the response to the RFP goes then to the evaluation team. The evaluation team could be the same people that have put together the RFP or it could be other individuals. In this case, Mr Chair, I do not have the documentation so I am not sure who the evaluation team was but they would

then evaluate the tender. Once – and that would be made up of again commercial people, finance people, procurement people, governance people from procurement, I am not sure who else but there would have been a cross-functional team that would have been put together to evaluate the tender.

Once they have evaluated the tender, Mr Chair, they would then prepare a memo to the Transnet acquisition council who would basically then endorse that  
10 recommendation. This memo then, Mr Chair, gets prepared from those documentations into saying listen, we have now evaluated the tender, this is the outcome of this evaluation, you are the delegated – or the Group Chief Executive is the delegation of authority to award this work so please, here is the Transnet requisition council, there is the Transnet internal audit report that basically said it has been a satisfactory process, summarise and submit to the Group Chief Executive the signature here. So that is how the process would work.

20 **CHAIRPERSON:** So what would have happened is that you would have received a memo from lower down from another committee or somebody else which would have summarised everything that had happened up to that point.

**MR SINGH:** Yes, Mr Chair.

**CHAIRPERSON:** And then asking you to do a memo to the



Group CEO asking for approval or maybe they would – would they even prepare this kind of document for you and if you are satisfied you just sign?

**MR SINGH:** Mr Chair that - Mr Chair, the evaluation team would prepare a separate memo for the Transnet acquisition council to either endorse or not endorse the recommendations that would have come to that. From those documents we would have prepared the summary.

**CHAIRPERSON:** Okay.

10 **MR SINGH:** And then that summary would have been elevated to whoever.

**CHAIRPERSON:** Okay.

**MR SINGH:** Even if needed to go to the board, Mr Chair, it would have followed the same process.

**CHAIRPERSON:** So are you saying because the people who would have looked at the issues before the matter came to you said everything had gone well you did not have to look at the RFP yourself?

**MR SINGH:** That is correct, Mr Chair.

20 **ADV MYBURGH SC:** So, Mr Singh ...[intervenes]

**ADV VAN DEN HEEVER:** Chairperson, just before my learned friend continues maybe it is important just to place on record, these documents that my client managed to find over the weekend, this is just portion of the documents that is relevant as Chairperson yourself might have seen now

and we respectfully point or wish to submit that these were documents that were supposed to be found by the investigators.

Documents that my client has not had within his position at this stage, we would suggest that you give a directive that those documents be found and also placed before you, so – because, as my client has pointed out, this has been a whole process, not just one document that you were referred to last week but all of these documents  
10 from part of the process and we think that those documents, all of them is important. We will provide what we can but insofar as there is documents missing, that my client has referred you to, we believe that the investigators should be able to find those.

**CHAIRPERSON:** Well ...

**ADV MYBURGH SC:** We will deal with that, Chairperson.

**CHAIRPERSON:** Ja, okay.

**ADV MYBURGH SC:** But right now I need to just ask some simple questions.

20 **CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** I mean – so do I understand it, you represented and presented this document on the basis that you compiled it when you actually did not compile it? It is as simple as that.

**MR SINGH:** But, Mr Chair, this is a normal process that

we would have been ...[intervenes]

**ADV MYBURGH SC:** Mr Singh, I have listened to you for a long time. You signed this document representing that you compiled it and you presented it on that basis when you actually did not compile it, correct?

**MR SINGH:** That is correct.

**ADV MYBURGH SC:** Perhaps my next question is, what are you actually doing even involved in this? Why did your signature have to be here? Why did you have to compile  
10 this document?

**MR SINGH:** Because as you started, Mr Myburgh, by saying that we went through a process of confidential confinement that did not require signatures.

**ADV MYBURGH SC:** Okay, so that is why you are involved because it traces back to the confidential confinement?

**MR SINGH:** Yes.

**ADV MYBURGH SC:** Oh then that makes sense to me. So let us go to confidential confinement. So – and I think that  
20 this has become clear through the questioning from the Chairperson, let us go to one of these confidential, just to make it – or confinements to make it practical. If you go to Volmink, EXHIBIT BB2.1(d).

**CHAIRPERSON:** Registrar, did you hear? What page?

**ADV MYBURGH SC:** Page 1289. Are you there, Mr

Singh?

**MR SINGH:** No.

**ADV MYBURGH SC:** So I think that is the last page of the coal confinement, 1289. So I think...

**CHAIRPERSON:** Yes, thank you, Mr Myburgh.

**ADV MYBURGH SC:** So I think it is – you have stated as much, if you look at paragraph 47:

“Going the confidential route enabled Mr Molefe...”

On your compilation.

10           “...to confine and award services in support of the internal team to McKinsey and Company and its BEE consortium partner.”

He could do that himself.

**MR SINGH:** Sorry, Sir, I did not hear the last bit?

**ADV MYBURGH SC:** By going to confidential route, he could make that decision himself.

**MR SINGH:** Yes.

20           **ADV MYBURGH SC:** So, in other words – and I think you have explained this, what that meant is look, it is going to be on confinement, you are not going to the open market but then there is a process that is followed. But it was his decision on your compilation that triggered the confinement process.

**MR SINGH:** Yes.

**ADV MYBURGH SC:** And not going to the market.

**MR SINGH:** That is correct.

**ADV MYBURGH SC:** Everything that happened after that did not revisit that decision, it followed from that decision.

**MR SINGH:** Well, Mr Chair, if you look at the high value tender process, the high value tender process would have started from here.

**ADV MYBURGH SC:** Yes.

**MR SINGH:** And does make reference to it.

**ADV MYBURGH SC:** Correct but I mean it followed from  
10 this process.

**MR SINGH:** Yes.

**ADV MYBURGH SC:** Alright, so then we go back to the question that I actually asked you to consider overnight because everything that you have told us, we accept entirely but if you then go to BB2.1A, that is the other Volmink file, the first one. Could you turn up page 64 please? Page 64.

**CHAIRPERSON:** Just mention the bundle first, Mr Myburgh?

20 **ADV MYBURGH SC:** That is BB2.1(a), Mr Volmink has got two files, it is the first file.

**CHAIRPERSON:** Oh, okay.

**MR SINGH:** 64?

**ADV MYBURGH SC:** If you go to page 64 and if you can go back to paragraph 148. So:

“The 2013 PPM stated that in circumstances where a confinement is confidential the GCE may approve such confinement with the confinement request being routed via other authorities.”

So we have seen that is what happened. But the question that I ask you to consider is why was this confidential because of course he can only do this himself, if it is confidential. Now that is not a question that I have seen you address. So what is the answer to that?

10 **MR SINGH**: Mr Chair, if you do look at the confinement documentation itself it does allude – yes, confinement document itself, it does allude to the confidential information that McKinsey or propriety information that McKinsey had in terms of for example the coal line, they had - I think it is somewhere here.

**ADV MYBURGH SC**: Well, let me take you to it. Perhaps we can go to the file, if it helps.

**MR SINGH**: Yes.

20 **ADV MYBURGH SC**: If we go to the other file and we go back to PSV1287. I think there, as you say, there is a reference. So this is - go to BB2.1(d).

**MR SINGH**: Ja.

**ADV MYBURGH SC**: And to page 1287. There it refers to, at 1287 – like we see under each one of these schedules there is a paragraph 29 in this case.

**MR SINGH:** Yes.

**ADV MYBURGH SC:** Is that what you mean? Additionally due to the confidential nature of the information?

**MR SINGH:** Yes. But, Mr Chair, I think we need to distinguish between two things here. The first is that the confinement was basically motivated on grounds (a) and (d) which basically is urgency and the fact that we have similar services and the specialised nature of the work that was being conducted ...[intervenes]

10 **ADV MYBURGH SC:** Mr Singh, I am sorry to interrupt, I am not asking you that now, I am just looking at how do you satisfy the requirements of the 2013 PPM at paragraph 148.

**MR SINGH:** Mr Chair it relates to the issue of – if you look at paragraph – if you look at the table on page 12 – 1286.

**ADV MYBURGH SC:** Ja.

**CHAIRPERSON:** Ja.

20 **MR SINGH:** If you see grounds there is the table there and there is A and then there is D.

**ADV MYBURGH SC:** Yes.

**MR SINGH:** And there is two D's, actually if you look at the first D.

**CHAIRPERSON:** Ja.

**MR SINGH:** And then you look at paragraph 23 – oh the

4<sup>th</sup> bullet point in the second table.

**ADV MYBURGH SC:** Yes.

**CHAIRPERSON:** Ja.

**MR SINGH:** These were the confidential nature of the information that related to the confidential confinement Mr Chair.

**ADV MYBURGH SC:** I beg your pardon, what bullet point?

**MR SINGH:** The bullet point 4, it says - under D, it says:

10 “McKinsey has proprietary coal demand and supply models, as well as key operating philosophies that Transnet can use.”

**ADV MYBURGH SC:** So why does it keep, a confidential confinement?

**MR SINGH:** Because of the confidential nature of this...[intervene]

**ADV MYBURGH SC:** Because McKinsey has got confidential information, is that what you saying?

**MR SINGH:** Yes, Mr Chair.

20 **ADV MYBURGH SC:** Because the service provider has got confidential information, this becomes a confidential confinement.

**CHAIRPERSON:** In other words, what Mr Myburgh is looking for Mr Singh, which is what I think I have been wanting to check with you also is in terms of these policies, when they say talk about confidential



confinement, leave out confinement.

**MR SINGH:** Yes.

**CHAIRPERSON:** The confidential ask, what must be confidential and confidential to whom – who must not know what?

**MR SINGH:** Well Mr Chair, in this case I believed it to be the fact that this information relating to the proprietary tools would be the confidential aspects relating to this confidential confinement.

10 **CHAIRPERSON:** Sorry, just repeat that?

**MR SINGH:** I said that in my view, the confidential and proprietary information that is related to the delivery of the services by McKinsey was what I regarded as confidential information.

**CHAIRPERSON:** Mr Myburgh.

**ADV MYBURGH SC:** Yes, so what I just want you to – we can move on because I suppose it is something that can be debated in time. But let me just give you an example - I mean, so in other words, the question I suppose to the  
20 DCJ's inquiry. Does the confidentiality relate to Transnet or does it relate to the service provider?

So a good example, I just want you to comment on, let us assume you want to install covert cameras, for some reason. Now, you do not want everyone to know about that, you want it to be done on a confidential basis

because if you go in normal confinement group, there is more layers of people involved. If you go the RFP route a lot more people may come to learn.

So there is a classic, confidential confinement, what you do is the CEO basically authorises it himself, but that is confidentiality in favour of Transnet. You want to comment on that?

**MR SINGH:** I can see your point, sir.

**ADV MYBURGH SC:** And you see, I think that is for next  
10 point, there is no confidentiality of that sort in any of these contracts.

**MR SINGH:** Well, as I say...[intervene]

**CHAIRPERSON:** In other words, Mr Myburgh is saying, if one approaches it in the way that Mr Myburgh is putting it to you the point would be the provisions relating to confidentiality, confidential confinement, for whose benefit were they put into the policy? And Mr Myburgh is suggesting to what he has put to you is that you must be -  
you are expected to be looking at using confidentiality in  
20 that context, to protect the interests of Transnet, do you understand?

**MR SINGH:** Yes, Mr Chair and maybe, Mr Chair, if I am allowed to elaborate on this issue of...[intervene]

**CHAIRPERSON:** Maybe before you say that, Mr Myburgh am I in line with what you have in mind?

**ADV MYBURGH SC:** Yes, it is and DCJ and I will remind you to a similar debate you had with Mr Molefe.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** It was really for whose benefit is the confidentiality.

**CHAIRPERSON:** Yes, yes.

**MR SINGH:** Mr Chair, if I may elaborate on this point Mr Chair around this proprietary information. Mr Chair, the issue relating to this is again, maybe a point that is needed  
10 to be debated or could be debated. The only way for Transnet to understand and actually get to evaluate the value of the proprietary information that McKinsey had or did not have, could only be done through a procurement process and the procurement process that was then adopted was this one. This confidential confinement process in terms of not getting all of the signatures that were required, for us to initially understand whether this proprietary information that they actually had would allow us to be able to engage through the process I just took you  
20 through.

**CHAIRPERSON:** No, but assuming Mr Singh that would not make sense would it, because you remember, you and I had an engagement earlier on and you agreed that in confinements, the decision not to go to open market happens first, you know and then various steps are then

taken with regard to the identified entity or entities.

So, but the decision to say, this will be a confinement is taken first and of course, it must be so that even whether it is going to be a confidential confinement, that decision is taken first and you cannot - on what you are saying you would be expected as officials of Transnet to make those decisions before you get all the information.

Whereas on the approach that Mr Myburgh is putting to you, when you make the decision, that it should  
10 be a confidential confinement, you would be having all the information because it is about Transnet. You can get whatever information you need to see whether in order to protect the interests of Transnet the confinement should be confidential or not.

**MR SINGH:** Well, hence, Mr Chair. I think the example that Mr Myburgh used is quite clear cut. In this case, Mr Chair, what I am saying is that we did not want to go into an entire process and then figure out that these confidential information - or this proprietary information  
20 that they ought to have was actually they did not have.

**CHAIRPERSON:** But you would be looking at the - you would be approaching the issue wrongly, on Mr Myburgh's approach, because as I understand what you are saying, you would be seeking to protect the suppliers, the intended supplier's interests. Whereas on this approach, you would

be looking at whether you need a confidential confinement, not to protect a supplier's interests, but to protect Transnet's interest, your own employer and obviously, if you need any information, that information is within Transnet.

**MR SINGH:** But Mr Chair, if we are looking at safeguarding Transnet's interests with all due respect, Mr Chair, I think the confidential confinement was a process that was adopted. But if you look at the process that then  
10 unfolded, I think that process basically safeguarded and demonstrates that we actually answers in that instance, that process. In my view, the confidential confinement Mr Chair is relatively a mood point, having gone through the process that we went through.

**ADV MYBURGH SC:** No it is not a mood point, because it enabled Mr Molefe to decide it himself on your compilation.

**MR SINGH:** And, Mr Chair, we went back to Mr Molefe with the outcomes of the process for him to then have the benefit of being able to say, should I award or should I not  
20 award.

**ADV MYBURGH SC:** So I think really the last point I want to make is what Mr **Forming** says, you see you using confidentiality twice. You are using it to justify confinement, and then you are using it to justify the confidential confinement and those are two very different

things.

**MR SINGH:** No, we do not use it...[intervene]

**ADV MYBURGH SC:** No you are, because the first one might go to the clients, to the service provider's confidentiality, but a confidential confinement I put to you must be for the – that confidentiality is for the benefit of Transnet.

**MR SINGH:** No, no I agree.

**ADV MYBURGH SC:** It is an extraordinary step that one  
10 would very seldom take, because it trims down the process quite radically.

**MR SINGH:** I agree with you, Mr Chair, but it does trim down the process but having demonstrated the process that we followed to award the business as I say to you the confidential confinement route, was probably a good process to have followed.

**ADV MYBURGH SC:** And the last question you confirm that you remained involved in the process, because you were the one who proposed a confidential confinement?

20 **MR SINGH:** No, sir it was because of the fact that I was required to sign the memo in terms of the PPA.

**ADV MYBURGH SC:** But you just said, if we can go to this memo. Your award memos I called it.

**MR SINGH:** Yes.

**ADV MYBURGH SC:** When I asked you why are you there,

why do you sign as the compiler? You said to me...[intervene]

**MR SINGH:** No, no.

**ADV MYBURGH SC:** Mr Singh, just let me retrace my steps and then you can then argue with me if you want. You said to me it was because you were the one who proposed this to Mr Molefe.

**MR SINGH:** No, where I was growing to with this - you concluded that Mr Chair.

10 **ADV MYBURGH SC:** Alright.

**MR SINGH:** Where I was going with that was to say, I am part of that memo, just like Mr Peter is part of that memo, just like – I am not too sure who else had sign them, is that the PPM requires us to sign it and therefore we signed it, unlike the confidential memo where the PPM says on the basis of, if it is a confidential confinement, you do not need to sign those things. So in this case, our signatures were there because the PPM required it to be.

20 **ADV MYBURGH SC:** Alright, so let us go to - I think when we finished if my memory says - we had started talking about the 100 locomotives and we had got through...[intervene]

**MR SINGH:** Let me just do some housekeeping.

**ADV MYBURGH SC:** Yeah, you can put some files aside, thanks. We had dealt with the confinement to Mitsui and

then the reversal and then the confinement to CSR. We had dealt with all of that and we actually begun to deal with the increase in the ETC, from the 3.8 billion to 4.8 and I think I might even have taken you to the memorandum to the Board of Directors.

**MR SINGH:** Yes.

**ADV MYBURGH SC:** Let me take you to that document because I think I mentioned it to you it appears in many places, but it is perhaps most convenient to deal with the  
10 version that is attached to Chabi because we will deal with his affidavit and then we are going to deal with your response to that.

So Chabi - what I need you to look for and turn to please is Exhibit BB8 [B28].

**CHAIRPERSON:** Please, repeat that Mr Myburgh, bundle?

**ADV MYBURGH SC:** Exhibit BB, so it is before we started with the bundles DCJ.

**CHAIRPERSON:** Oh.

**ADV MYBURGH SC:** It is Exhibit BB8[B] and then Mr  
20 Singh, what you will see is that hopefully that file should be divided into two parts you need to go to the second part, the slimmer affidavit.

**MR SINGH LAWYER:** Chairperson, your microphone is turned away from you, so we battling to hear you a bit.

**CHAIRPERSON:** Oh, okay.



**MR SINGH LAWYER:** Thank you.

**CHAIRPERSON:** Okay, I am sorry. Please repeat Mr Myburgh.

**ADV MYBURGH SC:** Okay, BB8[B] and it should be marked Alister Chabi on the spine.

**CHAIRPERSON:** What is the page number?

**ADV MYBURGH SC:** I have only got red numbers, so I would like to go to page 23 please. So it is divided into two parts and I have got the second parts.

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

**ADV MYBURGH SC:** Mr Singh are you there?

**MR SINGH:** Yes.

**ADV MYBURGH SC:** Okay, I think we had started to go through this. I want to fast forward a bit because I want to get to what Mr Chabi says and then give you an opportunity to deal with it. This memo, we know motivates for an increase just short of a billion rand. There is an executive summary at page 23, what you see there is the scope change accounts for R347million, 36%, correct?

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

**ADV MYBURGH SC:** And you see they had dealt with the paragraph for 36% of the ETC increase relates to the scope change, we are talking about in relation to the locomotives. Considering the discount negotiated, the cost of the scope change is reasonable and then if I can take

you to 14, at page 24.

“A contract to acquire 100 electric locomotives was concluded with CSR on 17 March, at a cost of 4.4billion, including the cost of future escalation and foreign exchange costs, thus resulting in an increase of ETC of the 969.”

And then if I could take you to the table, please at page 26. I have just tried to place what Mr Chabi has to say in context. What you see there is table one, price per locomotive as to Board submission 21 January 2014, the price per locomotive was 34.34 stated there, is that right?

**MR SINGH:** That is correct.

**ADV MYBURGH SC:** And then if you go one, two – four lines below that:

“Additional cost for variations for higher locomotive specs.”

So that is the scope change and additional duties as I have it, it is 347million per locomotive, correct?

**MR SINGH:** That is correct.

20 **ADV MYBURGH SC:** Is that right?

**MR SINGH:** Yes, sir.

**ADV MYBURGH SC:** And there were 100 locomotives, so that gets us close to the 347million, correct?

**MR SINGH:** That is correct.

**ADV MYBURGH SC:** And then table two refers to the rand

to yen and under that little A, it records, foreign exchange rates:

“The rand as appreciated by 10.74%, against the Japanese yen. This has impacted the expected price of the locomotives as per the business case and ultimately the estimated ETC as approved by the Board by approximately 10.74%.”

Correct?

**MR SINGH:** Correct.

10 **ADV MYBURGH SC:** And then ultimately, I think we went through this last time, there is their recommendation at page 36. Essentially a recommendation for the increase in the ETC of a billion recommended by you, recommended by Mr Gama and then recommended by Mr Molefe and as I understand it, then tabled and approved by the Board of Directors, correct?

**MR SINGH:** That is correct.

**ADV MYBURGH SC:** Now, I want to take you - and Mr Singh, let me say this in the interest of time, when it  
20 comes to the increase in the ETC, I am going to go - I am not going to deal with everything, I am going to go to what I think are the important parts, and then ask you to deal with it. Of course, if you want to add something, you are more than welcome, but I am not going to go line for line on every single issue.

Can I take you then to Mr Chabi's conclusion, and then we can work backwards. Mr Chabi's conclusion you find at page 100.

**MR SINGH:** 100, in the first part?

**ADV MYBURGH SC:** No, in the second part, we were just a few pages before this memo one, page 20. Sorry I might have said a 100 but they are all 100. So are you at page 20?

**MR SINGH:** Yes.

10 **ADV MYBURGH SC:** Okay, so I just want to read to you those two paragraphs...[intervene]

**CHAIRPERSON:** I am sorry, is it page 20 or a 100?

**ADV MYBURGH SC:** No, it is page 100-20, so it is actually page 20, DCJ and they only red numbers on what I have.

**CHAIRPERSON:** Oh.

**ADV MYBURGH SC:** So it is a few pages before the memo, that we have just been going through.

**CHAIRPERSON:** In the same bundle?

20 **ADV MYBURGH SC:** In the same bundle and the same divider, yes.

**CHAIRPERSON:** Ja, okay, I think - yes, okay I found it.

**ADV MYBURGH SC:** So, what Mr Chabi concludes at 5.33:

“In concluding having built up the price of a 20E

dual voltage electric locomotive provided by CSR as at 20 April 2012 to March 2014 allowed for design modification costs as at March 2014 to meet Transnet's 19E dual voltage locomotive requirements and mitigated for risk such as foreign currency and inflation, a reasonable/acceptable price, ETC for the transaction would be 4.1billion. The excess of 739million could not be justified on the basis explained above."

10 Then at 5.34:

"The submissions from CSR were in dollars, whereas the 100 locomotive business case and the memorandum, justifying the increase in ETC used a rand/yen basis. It is important to note that there are differences in economic conditions between Japan and the United States. The analysis on a rand/dollar basis produces a revised ETC of 4.478billion assuming that the ETC are 3.871billion is correct, this amounts to an increase of

20 R362million that cannot be justified."

So it is the first paragraph the 739 that he says cannot be justified using a different rate, he gets it to 362. Now, I want to go – perhaps you can leave this file open you may want to look at the memo. You deal with this in one of your affidavits at Bundle 5C. Can I take you please to page

1467.

**MR SINGH:** 14?

**ADV MYBURGH SC:** 1467, we use.

**MR SINGH:** Oh sorry, we using black numbers.

**ADV MYBURGH SC:** Are you in 5C?

**MR SINGH:** Yeah, I got black numbers.

**ADV MYBURGH SC:** Yeah, it is black numbers now.

**MR SINGH:** 1467, I am there.

**ADV MYBURGH SC:** Okay. So you have a heading at  
10 1467 increasing ETC from 3.8billion to 4.8billion and if I  
can pick up at 162:

“One of the largest differences in the comparative  
table on page 15 of the report is the base price per  
locomotive.”

You say at 163:

“MNS and Chabi used the CSR 95 locomotive price  
of 28.86million per locomotive as their base price  
adjusted for forex and escalations. The use of the  
95 locomotive price as the base price is untenable  
20 for commercial technical or logical reasons due to  
the following.”

You want to take us through that?

**MR SINGH:** The paragraphs that follow?

**ADV MYBURGH SC:** Ja.

**MR SINGH:** Okay, Mr Chair in terms of the base price, so,

what Mr Chabi does is he uses the base price of 28.86million for locomotives and adjust it for certain factors. Now, the 95 loco's Mr Chair is a 20E locomotive that is used for the general freight business, it is not a heavy haul locomotive that is what was required for the coal line and that is what the confinement sought to receive from CSR was a 19E equivalent locomotive which was the Mitsui locomotives that were deployed on the coal line.

10           So, Mr Chair, from a perspective of the comparison, you are not comparing apples with apples because my 34million starts with a Mitsui quote and a Mitsui quote is basically a 34million - is a 19E equivalent 26 axle ton locomotive. The 20E, Mr Chair is a 22 axle ton locomotive.

**ADV MYBURGH SC:** So just – I am sorry to interrupt you I just want to make sure I am clear, what Chabi did – correct me if I am wrong, as you say at 163, remember we now dealing with 100 locomotives before that we had the 95.

20   **MR SINGH:** Yes.

**ADV MYBURGH SC:** Which were awarded to CSR. He took the base price of that locomotive.

**MR SINGH:** That is correct.

**ADV MYBURGH SC:** As his point of departure.

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

**ADV MYBURGH SC:** You say, and I do not want to interrupt you, but what you say at paragraph 165, is you used the base price of 34.34million and as I understand it, that was the price that Mitsui had quoted.

**MR SINGH:** That is correct.

**ADV MYBURGH SC:** For the heavy haul locomotive as Mr Gama calls it, the beast.

**MR SINGH:** Yes.

**ADV MYBURGH SC:** So - and we know that CSR then  
10 replaces Mitsui, so that is how you get your figure.

**MR SINGH:** That is correct.

**ADV MYBURGH SC:** Okay, so carry on. So that is what you say at 165, is that right?

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

**ADV MYBURGH SC:** And then you deal at 166:

“The exchange rate used by MNS and Chabi to adjust the base price is also fundamentally flawed, in that they used the Japanese yen to adjust the CSR price that was based in US dollars, where  
20 there is no logical or commercial reason to do so.”

Is that right?

**MR SINGH:** That is correct.

**ADV MYBURGH SC:** So I mean there is a – I would not call it a fight but there is a crisp difference of opinion between you and Chabi. One, what is the base price and



two, are we talking rand/yen or rand/dollar.

**MR SINGH:** That is correct.

**ADV MYBURGH SC:** Okay, so can I then take you to what Mr Chabi says in response to these paragraphs, you find that at 1788, that is where his affidavit starts 1788 black numbers.

**MR SINGH:** Sorry one second sir, you are at?

**ADV MYBURGH SC:** Same bundle.

**MR SINGH:** Same bundle, 17?

10 **ADV MYBURGH SC:** 1788 and can you go to page 1790 and I would like to take you through paragraphs 14 to 25.

**MR SINGH:** 1790?

**ADV MYBURGH SC:** 1790, yes.

**CHAIRPERSON:** Mr Myburgh I do not want to forget this, could somebody in your team maybe tomorrow look at this bundle, it has got some documents such as Mr Singh's affidavits, one of his affidavits which do not have pagination, official pagination.

**ADV MYBURGH SC:** Alright.

20 **CHAIRPERSON:** I think they were slotted in after the pagination had been done. So there is nothing to say where they belong.

**ADV MYBURGH SC:** Certainly.

**CHAIRPERSON:** Ja, okay.

**ADV MYBURGH SC:** Mr Singh can I ask you whilst we go

through these paragraphs could you have open the memo that we went to attach to Chabi's affidavit right at the end, if you could have them side by side.

**MR SINGH:** So that is 23, I think.

**ADV MYBURGH SC:** So that is BB8[B1] – yes and I might take you to the table of 26, perhaps if you could have that open, I hope it will assist us. Are you there?

**MR SINGH:** Yes.

**ADV MYBURGH SC:** Alright, so...[intervene]

10 **CHAIRPERSON:** Okay, the memo is in which bundle?

**ADV MYBURGH SC:** That is in the Chabi Bundle BB8[B].

**CHAIRPERSON:** Okay, she must just find it for me, I think we took it back, 8B?

**ADV MYBURGH SC:** Yes, it is the second divider Chairperson, Page 26.

**CHAIRPERSON:** Second divider of which bundle or exhibits?

**ADV MYBURGH SC:** Well, I think you have got BB8[B1] and Exhibit BB8[B2], so it is two.

20 **CHAIRPERSON:** Oh, okay, got it.

**ADV MYBURGH SC:** Perhaps, if you could just keep that table open, Chairperson.

**CHAIRPERSON:** Okay, that is the table, table 1, page 26 and then table 2...[intervene]

**ADV MYBURGH SC:** 26.

**CHAIRPERSON:** 286? I think she must approach you Mr Myburgh to establish exactly where this memo is. No the page number he is mentioning is not that page number. No. This is the one I was mentioning. Go to Mr Myburgh. Okay it turns out I was on the right page.

**ADV MYBURGH SC:** Certainly. So we want to read that then together Chair with Mr Choubey's affidavit.

**CHAIRPERSON:** Ja.

**MR GIGABA:** At page 1790 of Bundle 5(c).

10 **CHAIRPERSON:** Ja okay.

**ADV MYBURGH SC:** All right Mr Singh paragraph 14. Table 1 of the 100 memo and the 100 memo is what we have in front of us make allowance for modification costs of R3.47 million to locomotives. You have seen that. These same modification costs of R3.47 million per locomotive broken down per the table below of verifiable in CSR's 20 February 2014 proposal title supply of additional 100 set of 20E dual voltage electric locomotives for Transnet Freight Rail and then you will see that there is a cost for other  
20 changes. Cost of steel and duty and that takes us to the – to R3.47 million. Is that correct?

**MR SINGH:** Correct.

**ADV MYBURGH SC:** Then at 15 the CSR proposal in its build up to the price per locomotive starts off with a base price of R28.86 million. 16 – paragraph 14 of the 100 memo

notes as follows:

“The contract to acquire 100 electric locomotives was concluded with CSR eloco supply dated 17 March 2014 at a cost of R4.4 billion.”

If we go to 18.

“It is therefore incorrect for Mr Singh in the 100 memo and in his affidavit to

- 10           1. Substantiate a contract price of R4.4 billion with CSR using a base price from Mitsui of 30. – 34.34 million per locomotive when CSR quoted a base price of 28.86million per locomotive and
- 20           2. Allow for modification costs on a base price of 34.34 million where the Mitsui locomotive required no modifications. The correct approach in evaluating or computing a reasonable ETC was to start with the 20E base price of 28.86 million per locomotive and retain the modification costs of 3.47 million per locomotive instead of 34.34 million per locomotive while still allowing – I presume that is 4 modifications to the tune of 34.47 million per locomotive. The latter is the approach held in 100 memo.”

So it seems to be quite a crisp point. Do you want to comment on that?

**MR SINGH**: The crispness alludes me but let us rather take it this way. The – the crux of this issue Mr Chair lies in the fact that we are – Mr Choubey and the memo that has been prepared seeks to achieve different objectives and outcomes.

In terms of the memo that we had prepared Mr Chair it is taking us from an approved ETC of 3.3 – 3.3 billion let us call it that – or 3 – ja 3.4 billion let us call it that based on a Mitsui quote that had been received in May 2013.

It then says Mr Chair that Mitsui quote that we received in 2013 which the board had approved in May 2013 has resulted in us acquiring locomotives at 4.4 billion on the 14 March.

The memo seeks to reconcile the difference between the 3.4 and the 4.4 which is the 969. Mr Choubey on the other hand attempts to arrive at what he calls a fair value for what he believes the locomotive acquisition should have been with no reference to the issue of the fact that a 3.8 billion number was approved by the board in May 2013.

So Mr Chair there is two fundamental different basis that Mr Choubey and I are trying to achieve. My objective is to say to the board you approved 3.4 billion – we concluded a contract for 4.4 and these are the reasons why

we have concluded the – this is the reasons why we moved from 3.4 to 4.

Mr Chair one of the fundamental reasons that we have that are different is as...

**CHAIRPERSON:** I am sorry. You have just said what your approach is.

**MR SINGH:** Yes.

**CHAIRPERSON:** You say your starting point is the board approved a certain amount.

10 **MR SINGH:** Yes.

**CHAIRPERSON:** At a certain time.

**MR SINGH:** Yes.

**CHAIRPERSON:** You are now coming with a certain amount.

**MR SINGH:** Yes.

**CHAIRPERSON:** And you seek to justify the difference.

**MR SINGH:** Exactly.

**CHAIRPERSON:** Is that right.

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

20 **CHAIRPERSON:** Then go to Mr Choubey what is his approach then?

**MR SINGH:** So Choubey is attempting to arrive at a fair value of what he believes the 100 locos should have cost from CSR okay. So it is a fundamentally different approach.

One approach is to give you a reconciliation of what

has happened which is what the memo attempts to do. The other approach is basically saying if I have to do this – if I have to buy these locos I would basically come up with this number as a fair value relating to these locomotive 00:07:12.

So one has got nothing to do with the other. They are two parallel processes and now when we compare the two we are trying to machinate the two into one outcome okay. And I will try and – to the best of my ability try and  
10 reconcile the two approaches for you Mr Chair.

**CHAIRPERSON:** But before you do so just purely from a lay person's approach is it not the better approach that says here is the product that you want as we speak now or that we are recommending. Here is the price that is reasonable or fair for this product. Irrespective of what you may have approved at some stage here is – here is this price is reasonable one or fair one when you have regard to ABCD – irrespective of whether at some stage you had approved something because what if you wrongly approved what you  
20 approved? Here is a fair or reasonable price having regard to all the legitimate factors that you should be taking into account in answering the question – is this a reasonable or fair price?

**MR SINGH:** Mr Chair as I was about to conclude I was going to say to you that to the best of my ability I will try

and explain to you how the two actually correlate.

**CHAIRPERSON**: Okay.

**MR SINGH**: Okay. Because I understand that they are two different basis.

**CHAIRPERSON**: Ja okay.

**MR SINGH**: And one as I said tries to explain the other one tries to justify.

**CHAIRPERSON**: Okay.

**MR SINGH**: Okay. And I will try and – to the best of my  
10 ability try and bring the two together.

**CHAIRPERSON**: Okay.

**MR SINGH**: Okay. Now as – before we get to the point of bringing them together Mr Chair you must understand the issues that take them apart okay. And as Mr Myburgh correctly says the base price is one thing that takes them apart.

The other thing that takes them apart Mr Chair is the use of the exchange rate as to whether we use a Yen exchange rate or whether we use a dollar exchange rate.

20 And then the third thing Mr Chair that takes them apart in terms of the let us say contentious 00:08:46 is the issue of whether modification price should be included or excluded.

So let us deal with them all in turn Mr Chair. If we – if we try and understand how we bring the two together in



simple terms Mr Chair. If we had to just go back to Mr Choubey's concluding paragraphs and I would take you to – what bundle is this? BB8(b)1. BB8(b)1.

**CHAIRPERSON:** BB8.

**MR SINGH:** Exhibit BB8(b)1. It is the previous file Mr Chair.

**ADV MYBURGH SC:** I have four pages before the table that you have open.

**CHAIRPERSON:** Oh okay.

10 **MR SINGH:** So it is page 20 Mr Chair.

**CHAIRPERSON:** Yes is that the page that has got contingencies?

**MR SINGH:** That is (speaking over one another).

**CHAIRPERSON:** And conclusions yes.

**MR SINGH:** Yes Mr Chair.

**CHAIRPERSON:** Ja okay.

**MR SINGH:** So Mr Chair the other point that I would like to also highlight and we – and we need to I think appreciate this principle as well is whether you dealing with 100 or  
20 whether you dealing with the bigger 1064 Mr Chair the – you will always be level with the fact that you will find that you will – the numbers are subjective – they are not absolute because they always include estimations and they always include assumptions and the like. So you will always get them – the numbers to be subjective.

As you can see Mr Chair if you look at Mr Choubey in terms of the paragraph headed Conclusion and he has two paragraphs that deal with that 5.33 and 5.34.

Now if you look at 5.33 he concludes that 739 could not be justified. If you look at the last line Mr Chair. So the last sentence in the paragraph.

“Latest of 739 could not be justified on the basis explained above.”

Alright and then on the next paragraph which is 5.34  
10 Mr Chair he says that in the last line there he says:

“Assuming that the ETC of 3.71 billion is correct this amounts to an increase of 362 million that cannot be justified.”

And then I have a number of 969. So again Mr Chair the – lies between some of these ranges and that is the point I am trying to make is that whatever we look at we always looking at subjectivity and it is not going to be an absolute number.

First – that is just a matter of principle. Now coming  
20 back to try to reconcile the two basis. Mr Chair if you look at – and again if you look at – so in arriving at the conclusion at 739 Mr – of 739 being in excess that cannot be justified in terms of paragraph 5.33 Mr Chair. Mr Choubey as I have reflected in my affidavit has considered the US Dollar to be more appropriate to be used rather than

the Japanese Yen.

But at 5.34 Mr Chair he says:

“The submission from CSR was in Dollars  
whereas the 100 locomotive business case  
and the memorandum justifying the  
increases used a Yen basis. It is important  
to note that – that there are differences in  
economic conditions between Japan and the  
United States. The analysis on a  
10 Rand/Dollar basis produces a revised ETC  
of 4.47 billion.”

Okay which results in a smaller difference of 362 Mr  
Chair. Now what we have to ask ourselves Mr Chair is in  
arriving at the – and this is the attempt to actually bring  
these two things together – the two basis. Right. So Mr  
Choubey says if we used the Yen he gets the R739 million  
difference. If he uses the Dollar he gets a 369 difference.

Now in our case Mr Chair we used both Yen and  
Dollar. Okay. Remember reason why we used Yen and  
20 Dollar is because we are taking a Yen quote that we  
received Mitsui at some point in time adjusting for economic  
factors to a point where we then have a Rand value then we  
have to adjust for the fact that we entering into a US Dollar  
contract with CSR and then move that forward until we get  
to a R4.4 billion number.

So the reason why we in our memo consider both Yen and Dollar is because of the fact that we start with the Mitsui quote which was always quoted in Yen or the biggest portion thereof was in Yen. And that was in May 2013.

So you have to bring that number forward to contract 00:15:22 and you do that by adjusting it using economic variables as we have said Yen economic variables from that date to contract date.

On contract date we then have a quote that we  
10 received from CSR that is now in US Dollar. Now we have to factor in the impacts of US Dollar on that Mitsui quote up to delivery date. And therefore we consider the economic effects of the US Dollar.

Now – and that is the reason why we use both variables in our memo. Mr Choubey in arriving at his let us call it economic – the fair value Mr Chair he had he used the Yen basis in determining the - the ETC he would have gotten to R3.6 billion – R362million debt on his own admission which is a smaller variance than the 969 – or the  
20 R739million variance that he has got in 5.33 – in paragraph 5.33.

So Mr Chair that is an attempt to – and again when he gets to this R362 million variance Mr Chair we again do not know whether he is allowing for modification costs or not in the 3.62 million that he gets to.

So Mr Chair in my view the modification costs in our build-up because remember we reconciled is allow for because the Harris Report that we covered and traversed previously required certain amendments to be made to the CSR technical proposal that required the – these modifications to be conducted so that it actually becomes inter-operable with the 19E locomotives. And that is the reason why the 347 is allowed for in our build-up to the R4.4 billion.

10 **ADV MYBURGH SC:** So Mr Singh can I just make sure that I understand it. The Mitsui base price of 34.34 per locomotive.

**MR SINGH:** Yes Sir.

**ADV MYBURGH SC:** There was no intention by Mitsui to modify to the tune of another 10%.

**MR SINGH:** You see Mr Chair there – the – if we had bought 19E locomotives from Mitsui then they would have been inter-operable with 19E locos.

20 **ADV MYBURGH SC:** Except they would have had to modify them.

**MR SINGH:** No.

**ADV MYBURGH SC:** Okay. And then let me just take you to – to what Mr Choubey has to say about Yen/Dollar exchange rate and I think you have already explained your – your position but let me take you to paragraph 20 at page

1791 – are you there? Mr Singh.

**MR SINGH:** 1791.

**ADV MYBURGH SC:** 1791.

**MR SINGH:** Ja I am there.

**ADV MYBURGH SC:**

10 “I have considered the content of paragraphs 166 to 159 of Mr Singh’s affidavit – it is disingenuous for Mr Singh to challenge the use of the Yen/Rand exchange rate considering that in 100 memo which he recommended or board approval he attributes the change in the expected price of the locomotives to the depreciation of the Rand against the Yen. Mr Singh in all his remarks he is silent on foreign currency applicable in the 100 locomotives transaction between CSR and Transnet. 21 I quote paragraph 24a of the 100 memo which notes as follows:

20 Foreign exchange rates. The Rand has depreciated by 10.47% against the Japanese Yen this has impacted the expected price of the locomotive as per the business case and ultimately the ETC as approved by the board by approximately 10.74%. Consequently the

addition 10.7 per a. in table 1 above is reasonable.”

And then table 2 of the 100 memo he says at paragraph 2

“In relation to index movements from May to March 2014 also makes mention of a Rand/US Dollar exchange rate impact. Mr Singh’s reference to the Rand/Yen impact in his 100 memo was concerning at the time of my assessment of a reasonable ETC for 100 locomotives transaction because CSR referred to Rand/Dollar impact on its base price of 28.86 million.”

24.

“It is for these reasons that my affidavit accounted for a reasonable ETC on two scenarios. A Rand/Yen scenario and a Rand/Us Dollar scenario. I therefore disagree with Mr Singh on his remarks that my chosen currency was the Yen.”

20 I think you have addressed – pointed out to the Chairperson that he has two different scenarios. Is that correct.

**MR SINGH:** Mr Chair I have pointed out that he has two different scenarios and in either – in either one of the two he does come up with two different variances as one

smaller than the other and if we then have to add modification costs to a smaller variance his variance actually disappears.

In terms of Mr Choubey's comments around the fact that the memo is silent on the US Dollar Mr Chair as I said the memo actually – is actually quite clear it says that the first part of the adjustment relates to Japanese Yen as I said because the quote received was based on the Mitsui quote and we got to a point where we were then contracting  
10 with CSR and CSR's was in US Dollar and all forward looking impacts relating to CSR would have had to be based on US Dollar movements and not Yen movements. And Mr Chair I can find that paragraph for you in my memo. If we go back to it.

**CHAIRPERSON:** Before you do that I just want to – do not forget your – what is the point you wanted to make for the benefit of the transcribers and those who read the transcript the page 1791 that Mr Myburgh referred to is page 1791 in Transnet Bundle 5(c). We had just used the other bundle  
20 Mr Myburgh.

**ADV MYBURGH SC:** I beg your pardon.

**CHAIRPERSON:** We had just used the other bundle. I just thought we must clarify that so whoever reads knows we are now..

**ADV MYBURGH SC:** Yes thank you DCJ.



**CHAIRPERSON:** On another bundle. Ja. Okay continue Mr Singh.

**MR SINGH:** Okay Mr Chair. I think in terms of paragraph 20 that Mr Myburgh read where he says Mr Singh is so silent regarding the foreign exchange currency it is because in the 00:22:50 transaction with CSR I think Mr Chair my response is that both currencies are applicable at different points in the transactions. The Yen portion of the exchange rate is applicable to restating the – the Mitsui quote from  
10 May 2013 until contract date and then the US Dollar portion Mr Chair is applicable from contract date until delivery date because we are then dealing with a US Dollar quote from – from CSR. And remember our objective is to reconcile from a period in – that the board approved to the actual final contract price Mr Chair.

**ADV MYBURGH SC:** All right And you said you were going to point that out for us.

**MR SINGH:** Oh sorry I am just looking for my memo. Where is my memo? At – Mr Chair you have to turn to page  
20 1797 in the same – in the same bundle.

So Mr Chair you would see that we – we used the term backward looking and forward looking.

**CHAIRPERSON:** Ja.

**MR SINGH:** And in terms of backward looking indicators and forward looking indicators. Backward looking would be

basically from let us say contract date backward and then forward looking would be from contract date into the future until delivery date or closure of the contract. So that is by and large the – the differentiation.

Mr Chair you will see that table 1 that Mr Choubey refers to that relates to the 10% of – the 10.7% depreciation of the Yen relates to – relates to the section of the memo that is looking at backward impact – or backward looking economic impacts. And this – and as I explained Mr Chair  
10 the first part of the reconciliation is to restate the Mitsui quote that we received in 2013 to contract date. Hence it is backward looking.

And that accounts for the 10.7 00:25:45. Mr Chair if you had to then look at the impact of the Dollar you would have to go to 1799 and 1799 Mr Chair you will see the heading there of the – of this portion of the memo looks at forward looking economic factors. And under forward looking economic factors Mr Chair you will see that table 3 and table 4 basically give you what the US Dollar versus the  
20 South African Rand had been doing in the – I think it is relative – I cannot see the numbers but it is over a period of time and what our prediction of what the exchange rate would be in the delivery period of the locomotives.

And Mr Chair the reason for us having an – having a look at what the estimation – estimated currency would be

is because you would – you would recall that – oh you – we actually entered into a 00:26:55 contract so Mitsui – CSR actually assumed foreign exchange risk associated with this contract.

So therefore we had to have a view of what the US Dollar was going to be doing over the contract period. So in our case Mr Chair both the Yen and the US Dollar was relevant in determining the movement from the 3.8 billion that was approved by the board originally to the 4.4 billion  
10 contract price that we agreed to with CSR.

**ADV MYBURGH SC:** All right. Can I turn now to finally to the 1064 locomotives. We will come back to Choubey so you can close that.

**MR SINGH:** I can close it.

**ADV MYBURGH SC:** Ja.

**MR SINGH:** This one.

**ADV MYBURGH SC:** Ja. You can close Choubey yes.

**CHAIRPERSON:** I am sorry we go to what page Mr Myburgh?

20 **ADV MYBURGH SC:** I would like to Chairperson deal with the initial business case and the 1064 locomotives. Where I would like to start at 5(b) page 422.

**MR SINGH:** 422.

**ADV MYBURGH SC:** Yes. Just have a look at the – the 10.3 – the – your first regulation 10.6 notice – second 10.6

notice page 422. You see at paragraph 1.5.1 and you were asked to deal with ...

**CHAIRPERSON**: Hang on Mr Myburgh.

**ADV MYBURGH SC**: This is 5.

**CHAIRPERSON**: 6(b).

**ADV MYBURGH SC**: 5(b) Mr Singh's bundle.

**CHAIRPERSON**: Page 422.

**ADV MYBURGH SC**: I just want to make sure that I...

**CHAIRPERSON**: Yes you may continue.

10 **ADV MYBURGH SC**: I understand what your – your answer is to this, at paragraph 1.5 and then 1.5.1, you were asked to address these issues. The representation to the board that the business case excluded the potential effects of forex, hedging and escalation. Do you see that?

**MR SINGH**: Yes, sir.

**ADV MYBURGH SC**: Now, if we go to your other file and that is 5(c). Could you ask you, please, to go to page 1445?

**MR SINGH**: [No audible reply]

20 **ADV MYBURGH SC**: You will see at 1445, you deal with, at paragraph 1.5.2. You do not deal with paragraph 1.5.1.

**MR SINGH**: [No audible reply]

**ADV MYBURGH SC**: And if I can the take you to page 1473?

**MR SINGH**: [No audible reply]

**ADV MYBURGH SC:** You now deal with, in the middle of the page, you are now dealing with Chaube, actually. And you have a heading: Business case included hedging and foreign forex costs. Do you see that?

**MR SINGH:** Yes, sir.

**ADV MYBURGH SC:** You say at 187:

“Chaube concluded that the estimate of the above costs were included in the R 38.6 billion and was an acceptable estimate.

10 I deny that this was an acceptable estimate...”

We will get to that but where is your case on whether or not the initial business case, in fact, included forex hedging and escalation costs? That, really, is the simple question.

**MR SINGH:** I must apologise, Mr Chair. I, actually, thought that we had addressed this matter.

**ADV MYBURGH SC:** Oh, no, I may be wrong. I am just trying – I was just trying to find out – and let me ask you, crispy, what is your answer to that? And then I will take  
20 you to the history and we can look at some other ...[intervenes]

**MR SINGH:** Well, Mr Chair, from my perspective for – and obviously, at the time, my view was that the business case did include the effects of forex hedging and escalations and to that extent, foreign exchange in general, Mr Chair.

**ADV MYBURGH SC:** Yes, but you see, that is why I was a bit – this term that you quote “business case included hedging and forex costs”. The real question is, whether you accept that it included forex hedging and escalation costs?

**MR SINGH:** That is correct.

**ADV MYBURGH SC:** Do you accept that?

**MR SINGH:** Yes. To an extent.

**ADV MYBURGH SC:** Sorry?

10 **MR SINGH:** To an extent.

**ADV MYBURGH SC:** Yes, absolutely.

**MR SINGH:** Yes.

**ADV MYBURGH SC:** And I suppose that is an important point that you make.

**MR SINGH:** Yes.

**ADV MYBURGH SC:** Because I do not want to be heard to say that that is cast in stone and could not change between the initial case in ETC and the time that it came for the recommendation of an increase. So that cuts out  
20 quite a lot of what I needed to deal with. I want to take you then to the resolution of the Board of Directors on the 25<sup>th</sup> of April and the actual business case that served before the board. I wanted – I am going to have to take you to Mr Callard and then to Mr Laher. So the business case is found in Callard at BB-4(b).

**MR SINGH:** BB-4(b)? [Speaker's microphone not switched on – unclear]

**ADV MYBURGH SC:** BD(sic)-4(b). Ja, one of the initial – one of the early files.

**MR SINGH:** [No audible reply]

**ADV MYBURGH SC:** And could I ask you, please, to turn to page 402? So that is FQC-402.

**MR SINGH:** [No audible reply]

**ADV MYBURGH SC:** So, Mr Singh, we know that there  
10 was a Board of Directors meeting held on the 25<sup>th</sup> of April. We will come to the resolution. Now, on the face of it, this says: Business case, date of submission, 25 April 2013 addressed to Transnet Board of Directors. And at the bottom, you will see it is a 115 pages. Can I ask you to go to the end of the document which you will find at page FQC-516?

**MR SINGH:** 516?

**ADV MYBURGH SC:** Now, the position is ...[intervenes]

**CHAIRPERSON:** I am sorry. That page is five  
20 ...[intervenes]

**ADV MYBURGH SC:** 516. 56.516, Chairperson.

**CHAIRPERSON:** Okay.

**ADV MYBURGH SC:** So this is the last page of this business case. Provision is made there for a recommendation by Mr Gama, by yourself and Mr Molefe.

Can you recall signing this document?

**MR SINGH**: No, sir. I do not recall signing this document.

**ADV MYBURGH SC**: Do you – I mean, this seems to be an important doc. Can you recall ever signing the business case?

**MR SINGH**: I would think that the business case would have to be signed, given the fact that it ...[intervenes]

**ADV MYBURGH SC**: Ja.

**MR SINGH**: ...that it served before the board.

10 **ADV MYBURGH SC**: Okay. Fair enough. So you do not recall signing it?

**MR SINGH**: No.

**ADV MYBURGH SC**: Let me take you – and I suppose it is difficult to remember every document that one signs but let me take you to page 405, if I can? At the beginning of the business case.

**MR SINGH**: [No audible reply]

**ADV MYBURGH SC**: So the last paragraph, the second sentence:

20 “Accordingly, it is recommended that the 1064 locomotive business case be approved with estimated total costs of the acquisition of R 38.6 billion as per the corporate plan...”

And then, of course, as you know, what has become contentious is the bracketed portion.



“Excluding the potential effects from forex hedging, forex escalation and other price escalation...”

Do you see that?

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

**ADV MYBURGH SC**: Now do I understand from the evidence that you have given already, that you accepted that is wrong?

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

10 **ADV MYBURGH SC**: So I suppose then the question is. How did this – or let me just leave it there and let me take you then to the resolution of the Board of Directors. You know that it mirrors this? Can I – perhaps you can leave the business case open and now go to the resolution of the board, which you will find in Mr Laher’s exhibit, BB-4(f). BB-4(f), page 23.

**MR SINGH**: Yes, sir.

**ADV MYBURGH SC**: So this is a certified excerpt, a draft minutes of Special Meeting of the Board of Directors on the  
20 25<sup>th</sup> of April 2013. It is the same case as the business case we are looking at.

**MR SINGH**: Yes, sir.

**ADV MYBURGH SC**: And what was resolved that the board approved the following.

“The business case for the acquisition of the

1064 locomotives for a TFR, general freight business, at an estimated cost of R 38.6 billion as per corporate plans...”

So you see that is exactly the same wording as in the business case in brackets.

“Excluding potential effects from forex hedging, foreign escalation and other price escalations...”

Do you see that?

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

**ADV MYBURGH SC**: So, I think except for the word “we”, it is verbatim recordal of the last part of the last paragraph on page FQC-405, correct?

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

**ADV MYBURGH SC**: So you attended this board meeting?

**MR SINGH**: Yes, sir.

**ADV MYBURGH SC**: And you accept that the business case was presented at this meeting?

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

20 **ADV MYBURGH SC**: So how did this error come about?

**MR SINGH**: I am not completely sure, Mr Chair, in terms of how this came about. I am, through the review of the – I think it is the Fundudzi report, I got to learn about this and in the Fundudzi report, Mr Chair, it is alleged that Mr Yusuf Mohamed, who was a General Manager in my

office, affected these changes to the business case and which, obviously, then flowed through the chain, if you want to call it.

Mr Chair, the report further goes to explain that Mr Yusuf Mohamed made these changes on verbal instruction of myself. Mr Chair, if indeed that was the case, Mr Chair, I can only presume that the formulation by Mr Mohamed, if indeed he affect these changes, captured the incorrect formulation of what the intention was relating  
10 to the – let us call it the qualification to the R 38.6 billion.

Mr Chair, as I have already highlighted. For all intense and purposes, if you had to review the business case, you look at the assumptions of the business case and you look at other content within the business case. Mr Chair, it is very blatantly clear that the business case includes escalations or a has a provision for escalations and has a provisions for hedging and has a provision for foreign exchange impacts.

So for me to blatantly say that it excludes it, would  
20 be – it would make no sense, Mr Chair. The formulation that Mr Yusuf Mohamed should have considered was that the business case included these or excluded the effects of these variables post approval of the business case which mean that the R 38.6 billion that was approved would change due to its economic variables post the business

case.

And Mr Chair, if you have regard for foreign exchange itself. I think it is page 8 or page 9 of the business case, that says that the business case or that says that the foreign exchange has already depreciated or that the USA Dollar has depreciated against the Rand by 15% in a year since the RFP's were issued. So, basically, the business case on the day that it started to be prepared was already out of date in terms of the R 38.6 billion.

10 And as you would see, history has proven that the R 38.6 billion would have changed and has changed for economic variables since the date it was approved to the time that it was contracted and to the time that actual delivery has occurred.

The quantum thereof, Mr Chair, we can debate whether it is 38, 45, 55 or 105 but the fact remains is that the economic variables to business case and the formulation of this qualification, Mr Chair, should have captured that aspect.

20 **ADV MYBURGH SC**: You said – I do not want us to get confused about what happened a year later, by when you recommended increase. I can understand entirely how things have changed but I suppose it is important for the Commission to understand. What was this suppose to say and how did we get it so wrong?

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

**ADV MYBURGH SC**: So perhaps you could help us with the formulation?

**MR SINGH**: Look, the ...[intervenes]

**ADV MYBURGH SC**: What should it have said?

**MR SINGH**: Well, let us understand why it is there in the first place. Okay? The reason why it is there in the first place is exactly to prevent the issues that we have seen on projects like NNP, more closely, related to Transnet.

10           Mr Chair, if you look at all projects in Transnet, there is a variance to the estimated total costs from business case date right through to completion date and those changes occur because of estimated risks and changes in economic variables. The delegation of authority, Mr Chair, allows for this to happen. The significance and reality(?) framework that we have on the shareholder recognises that this happens and what you try and do is you try, one, ensure that the various amount is negligible or not significant.

20           Or, two, you try and ensure that you identify the variables that may have a significant impact on those – on that amount on the day that you are entering into the contract or the day on which the business case is approved, so that people or users understand that this number has the propensity to change over a period of time

depending on these variables.

**ADV MYBURGH SC:** So, Mr Singh, I understand all of that but you are not answering my question. I really need you to tell us, how should it have been formulated? So there you have it. It says in brackets:

“...excluding potential effects from forex hedging, forex escalation and other price escalations..”

Now we know that is wrong. What should it have  
10 said?

**MR SINGH:** “Excluding the potential effects of forex hedging, forex escalation and other price escalations post business case approval.”

**CHAIRPERSON:** I am sorry. Did you say post?

**MR SINGH:** I would add the words “post business case approval”.

**ADV MYBURGH SC:** So, in other words, if things changed?

**MR SINGH:** If things changed post... For these factors.

20 **ADV MYBURGH SC:** If they change

**MR SINGH:** Yes.

**ADV MYBURGH SC:** Alright.

**CHAIRPERSON:** So, in other words, what you are saying is that as far as at the time of the preparation of the business case, if one looked at what the business case as

at that stage, say one could leave out all these words in brackets, as long as the board would understand that anything that would come after approval of the business case had not been taken into account. Otherwise, all of these factors have been taken into account up to the date when the business case memorandum was prepared.

**MR SINGH**: Well, Mr Chair, when you say taken into account, we have to qualify that as well because it is a view that was taken at that point in time.

10 **CHAIRPERSON**: Yes.

**MR SINGH**: Yes.

**CHAIRPERSON**: Yes.

**MR SINGH**: So if that view, subsequently, changed due to reality then that would have resulted in the change in a number.

**CHAIRPERSON**: Yes but what I am saying is. As I understand you. What you are saying is. If the memorandum setting out the business case were to be given to the person to make a decision within a minute  
20 after the memorandum had been completed, then there would be no need to put these words in the brackets, that are in the brackets because up to that point, all of those factors would have been included. So all that had been – had not been included is what would happen after approval.

**MR SINGH**: Yes, Mr Chair.

**CHAIRPERSON**: Ja.

**ADV MYBURGH SC**: Of course, the language could have been different. You could have said it included it and then qualified it.

**MR SINGH**: We could have said including ...[intervenes]

**ADV MYBURGH SC**: Yes.

**MR SINGH**: ...the virtual effects of forex hedging post and then we could say there would have – there is a possibility  
10 of these things ...[intervenes]

**ADV MYBURGH SC**: So could I – maybe I could ask you because I think it might be on which side of the coin we are because I think Mr Gama has saw it in a same but perhaps a different way. Can I ask you to go to Transnet Bundle 7, Mr Gama’s bundle?

**CHAIRPERSON**: And maybe while you are going to that bundle and that page, Mr Singh, another way that would have been correct, if one use “includes”, it would be to say including and say everything that is said there and say up  
20 to the date of the business case memo.

**ADV MYBURGH SC**: Yes.

**MR SINGH**: But Mr Chair, I think the point that we are missing here is that the business case included those things.

**CHAIRPERSON**: Yes.



**MR SINGH**: Right?

**CHAIRPERSON**: Yes.

**MR SINGH**: By actually saying it includes these things up to business case date, we are actually stating the obviously ...[intervenes]

**CHAIRPERSON**: Yes.

**MR SINGH**: ...because they already included it there.

**CHAIRPERSON**: Yes but ...[intervenes]

**MR SINGH**: The purpose of actually including that  
10 sentence was to – was not to say these things are excluded. The purpose of that sentence was to say: Guys, the business case includes all of these things up to this date but just understand that these factors are subject – these factors are economic factors and they are subject to change. Business case approval date, this R 38.6 billion will change in all of these factors.

**ADV MYBURGH SC**: But I... Sorry. Sorry, I did not mean to interrupt you.

**CHAIRPERSON**: Ja.

20 **ADV MYBURGH SC**: I cannot – I did not hear you. Carry on.

**CHAIRPERSON**: Ja, complete your point.

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

**MR SINGH**: So my – so the inclusion of this was actually a forewarning to the users to say: Listen, the

R 38.6 billion is the best estimate at this point in time but excluding the effects of these things that potentially could change post your approval.

**ADV MYBURGH SC:** But Mr Singh, I think ...[intervenes]

**MR SINGH:** That was the intention.

**ADV MYBURGH SC:** ...that was the intention.

**MR SINGH:** I think you accept that it would have been more accurate to that it includes them and then qualify.

**CHAIRPERSON:** To make sure there was no doubt.

10 **MR SINGH:** Okay, Mr Chair.

**CHAIRPERSON:** Ja, ja.

**MR SINGH:** I guess so. But as I said, originally it is an incorrect formulation.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** Yes ...[intervenes]

**MR SINGH:** ...from the get-go.

**ADV MYBURGH SC:** So let us just have a look at what Mr Gama said. It might be that you are saying the same thing but just in a slightly different way. He has a whole  
20 lot of pages after page 250. So you can try and find the page 250.171, Transnet Bundle 7?

**MR SINGH:** 250.171?

**ADV MYBURGH SC:** Ja.

**CHAIRPERSON:** Well, continue, Mr Myburgh. I think I follow one page ...[intervenes]

**ADV MYBURGH SC:** Certainly.

**CHAIRPERSON:** Ja, h'm.

**ADV MYBURGH SC:** So, Mr Singh, what you see. Page 251 and 71, it is quite a long paragraph. If I can ask you to go and 1,2,3,4,5,6,7,8 lines from the bottom of that paragraph?

**MR SINGH:** From the bottom?

**ADV MYBURGH SC:** Ja. So you will see some italic text ...[intervenes]

10 **MR SINGH:** Yes.

**ADV MYBURGH SC:** ...you will recognise them. Perhaps ...[intervenes]

**CHAIRPERSON:** Mr Myburgh, I am sorry. I wonder whether you could move your mic a little... Ja.

**ADV VAN DEN HEEVER:** We cannot hear, Chairperson. Thank you very much.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** I ...[intervenes]

**ADV VAN DEN HEEVER:** We are straining to hear.

20 **CHAIRPERSON:** Ja. Sorry, sorry. Yes?

**ADV MYBURGH SC:** So the caption which reads, Mr Singh:

“ETC for the acquisition is estimated  
...[intervenes]

**CHAIRPERSON:** On what page?

**ADV MYBURGH SC:** At page 250.171.

**CHAIRPERSON:** 250.171...

**ADV MYBURGH SC:** So it quotes the well-known portion, alright? He says it is ambiguous. He says:

“I have dealt with the ultimate increase in the contract value herein above and have made my position very clear which is that the cost components were in fact included...”

And then he says:

10 “Albeit at estimate and assumed values which proved inaccurate and were thus underestimated...”

Does that capture the same thing that you say?

**MR SINGH:** ?As it relates to the issue of components were, in fact, albeit the estimated and assumed values which proved inaccurate and were thus underestimated.”

**ADV MYBURGH SC:** So then that accords what you are saying?

20 **MR SINGH:** Yes but not in terms of the fact that the statement is ambiguous. I think the – at the outside, Mr Chair, I have said that the statement is an incorrect formulation. The intention behind the formulation of that qualification, if you are going to call it, have the intention to state that these issues – these factors are very sensitive factors to the business case and you are approving the

R 38.6 billion on the basis that these are very sensitive factors. The change in these factors could significantly affect the R 38.6 billion. And the words ...[intervenes]

**CHAIRPERSON:** H'm. And for what?

**MR SINGH:** ...is going for(?). And the words, in my view, post business case approval should have been added to that sentence to remove ambiguity and portray the correct interpretation of what I was trying to formulate.

**CHAIRPERSON:** H'm.

10 **ADV MYBURGH SC:** Then you were at the meeting. Why did you not pick this up?

**MR SINGH:** H'm ...[intervenes]

**ADV MYBURGH SC:** I mean, it seems, however you put it, it is a serious error.

**MR SINGH:** Well, Mr Chair, I think in terms of my understanding and what I was trying to convey, Mr Chair, I think the board understood what was meant by that because when I went to the board again in May or when Mr Molefe and I had gone back to the board in May, it was  
20 understood that these factors contributed to the increase in the business case from 38 to 54.

**ADV MYBURGH SC:** So I am not sure – I now have just asked you – I mean, you are – this is a very important decision that the board takes and the formulation is important. This business case is the product of years of

work, really. There should have been no doubt. There should be no ambiguity.

**MR SINGH**: Well, as I said, Mr Chair. In my mind there was no ambiguity in terms of what was being conveyed...

**CHAIRPERSON**: Well, I do not know whether you intend to, Mr Myburgh, but I do not seem to remember that when Mr Molefe gave evidence he gave the same understanding.

**ADV MYBURGH SC**: Mr Molefe, it was clear, it is simple to him that these costs were simply included.

10 **CHAIRPERSON**: Yes, yes.

**ADV MYBURGH SC**: And I read Mr Gama's evidence.

**CHAIRPERSON**: H'm.

**ADV MYBURGH SC**: I want to take you to – you mentioned the Fundudzi Report and reference to... Can we go to that?

**MR SINGH**: [No audible reply]

**ADV MYBURGH SC**: So that is in Transnet Bundle 6. I do not think we have referred to it yet today. It is the one with all the ...[intervenes]

20 **MR SINGH**: [Indistinct]

**ADV MYBURGH SC**: ...reports in.

**MR SINGH**: Sorry, Mr Myburgh. What page are you?

**ADV MYBURGH SC**: I want to take you to Fundudzi, the first Fundudzi report on that 1064 locomotives. At page 177, please.

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

**MR SINGH:** Yes, sir.

**ADV MYBURGH SC:** So you have referred to Mr Yusuf Mohamed. At 177, right at the foot of the page, paragraph 5.9.9.5:

“We further determined that the changes to the business case were affected by Yusuf Mohamed who tracked the changes he made to the business case.

10 We determined that Mr Mohamed deleted the words “borrowing costs” and inserted the words “the potential effects from forex hedging, forex escalation and other price escalations after the ETC of R 38.6 billion”.

Below are the changes affected by Mr Mohamed...”

Then we have them. The next subparagraph:

20 “We further determined that the initial business case indicated that the ETC was R 38.6 billion excluding borrowing costs.

The deletion of the caption “excluding borrowing costs” is a clear indication that the ETC of R 38.6 billion was amended to create an impression that the ETC excluded the potential effects from forex hedging, forex

escalation and other price escalations.

During our consultation with Mr Mohamed admitted that he changed the business case figures to indicate that the amount of R 38.6 billion excluded the potential effects of potential effects from forex hedging, forex escalation and other price escalations.

10 Mohamed further indicated that prior to him changing the business case figures, the business case indicated that R 38.6 billion was inclusive of potential effects on forex hedging, forex escalation and other price escalations excluded borrowing costs.

Mr Mohamed indicated that Singh verbally instructed him to change the business case to reflect that the 38.6 billion did not include potential effects from Forex hedging, forex escalation and other price escalation.”

Any comment on that?

20 **MR SINGH:** Mr Chair, as I have already indicated that this is where I actually picked this up from and, Mr Chair, as I already indicated that this is the first – when I read this, this is the first time that I actually understood that this was an issue and I understood that Mr Mohamed had effected the changes as described in the report and, as I said,



originally, in my view Mr Mohamed actually incorrectly formulated the sentence. Mr Chair, if you look at the paragraph that was originally included – actually, Mr Chair, if you look at paragraph 599.8 on page 178 it starts off by saying:

“The risks that are inherent in a procurement event of this nature have been identified and mitigating strategies are in place.”

So, Mr Chair, this again accords to the fact that the  
10 changes that were proposed was to highlight the fact that these issues that we are highlighting are very sensitive and could materially change the business barring the fact that we did not include the words post-business case approval. That was the intention. That was the only intention.

Mr Chair, if we had to have the – if we had to believe the formulation as it was, Mr Chair, the board would have certainly questioned how are we actually buying locomotives which everyone believes that we were  
20 going to buy them from – there were no local manufacturers of locomotives, how would it be that a business case be prepared without the effect of foreign exchange because it is common cause that everyone understands that it is coming in US dollars, because there is no local manufacturers of locomotives. Every single

potential OEM was going to be an overseas supplier.

**ADV MYBURGH SC:** Alright, let me then move to another topic and that is the increase in the ETC but let us go through the – how it came about before we get into the increase itself. If I can ask you please – have you still got Mr Callard’s bundle there? BB4(b).

**MR SINGH:** Just give me a minute to do some housekeeping here?

**ADV MYBURGH SC:** Chairperson, I do not know if it is  
10 your intention to take a short evening break?

**CHAIRPERSON:** Maybe we should take it at eight or immediately.

**MR SINGH:** Eight is fine. Thank you.

**CHAIRPERSON:** Ja, let us take it at eight, ja.

**ADV MYBURGH SC:** Alright, so BB4(b), Callard’s second file and if I could ask you to go to page FQC714.

**MR SINGH:** 714?

**ADV MYBURGH SC:** 714, FQC.

**MR SINGH:** So this is to the board – to the BADC from Mr  
20 Molefe and perhaps we can just confirm the date, Mr Singh? If you go to the end of the document at 731 you will see that, as I have it, Mr Gama signed on the 21<sup>st</sup>, you signed on the 22<sup>nd</sup> and Mr Molefe signed on 23<sup>rd</sup>.

**MR SINGH:** That is correct.

**ADV MYBURGH SC:** Now this memo that we have here is

to the BADC. Could I just ask you to confirm that on the same day you made same recommendation to the board of directors.

**MR SINGH**: That is correct.

**ADV MYBURGH SC**: That memo, for what it is worth, is in Mr Choubey's papers but the two – you would accept the two memos are exactly the same?

**MR SINGH**: For all intents and purposes ...[intervenes]

**ADV MYBURGH SC**: Save for the wording of the  
10 recommendation.

**MR SINGH**: Yes.

**ADV MYBURGH SC**: Right. We know that Mr Laher assisted you in the formulation or the drafting really of this memorandum. I think we have gone through that before, is that correct?

**MR SINGH**: That is correct.

**ADV MYBURGH SC**: And just to track the chronology and that is that on the 26 May you and Mr Molefe then attend the BADC meeting where the increase is approved and  
20 then on the 28 May you and Molefe attend the board of directors meeting where the increase is approved, does that accord with your recollection?

**MR SINGH**: BADC would recommend, Sir, not approve.

**ADV MYBURGH SC**: Okay. So BADC would recommend to the board.

**MR SINGH:** Yes.

**ADV MYBURGH SC:** Okay. So we have this memo then we have a memo to the board of directors, we have the BADC meeting on the 26 May, we have got the board of directors meeting on the 28 May. Fundudzi says that Mr Gama was not present at the BADC meeting and nor was he present at the board of director meeting. Have you got any reason to dispute that?

**MR SINGH:** I do not have any recollection.

10 **ADV MYBURGH SC:** Okay.

**MR SINGH:** But I guess the minutes of those meetings will reflect it.

**ADV MYBURGH SC:** Ja. Now what I just want to take you to connected what we had discussed just now is to page 715, paragraph 14, says:

“The acquisition of the 1064 locomotives was approved by the board of directors in April 2013.”

So just incidentally, we are now a year forward, correct? So we had the original business case.

20 **MR SINGH:** Yes.

**ADV MYBURGH SC:** And the original ETC. That was in April 2013 and we are now in the next year, correct?

**MR SINGH:** Yes.

**ADV MYBURGH SC:** At a cost of 38.6 billion and then it says:

“This excluded the following costs. The costs of hedging, for foreign exchange movement, the costs of future inflationary escalation.”

So I take it you would accept that insofar as the business case formulation and the resolution of the board of directors in April 2013 was incorrect, this too is incorrect.

**MR SINGH:** Well, to the extent that we do say it that the cost of changes in economic conditions, forex and inflation between approval of the business case and award of the  
10 contracts, that is effectively what I tried to capture in the essence of the incorrectly formulated qualification.

**ADV MYBURGH SC:** Yes. But what is wrong is that this excluded the following costs. Go to:

“(b) The costs of hedging.

(c) The cost of future inflationary escalations.”

That is wrong.

**MR SINGH:** To the extent that they were under-provided for.

**ADV MYBURGH SC:** Yes.

20 **MR SINGH:** Yes.

**ADV MYBURGH SC:** So you accept that that is wrong?

**MR SINGH:** Okay, yes, to the extent, as I said, that were under-provided for in the business case.

**ADV MYBURGH SC:** Alright. Now I want to deal with something we have explored briefly but I want to deal with

it in a bit more detail and that is the role of Regiments in relation to this recommended increase in the ETC. So what we have seen is that – I think it is on the 4 or the 5 February 2014, McKinsey withdrew as your transaction advisers, correct?

**MR SINGH**: Sorry, give me that date again?

**ADV MYBURGH SC**: 5 February 2014.

**MR SINGH**: Yes.

**ADV MYBURGH SC**: And that was during the final stages  
10 of the 1064 procurement, correct?

**MR SINGH**: That is correct.

**ADV MYBURGH SC**: And then, I think we have gone through this, according to Dr Fine, Regiments then stepped in and we know that on the 17 March the locomotive supply agreements were concluded, correct?

**MR SINGH**: That is correct.

**ADV MYBURGH SC**: And you have accepted that Regiments assisted you in formulating the increase in the ETC.

20 **MR SINGH**: Regiments assisted Transnet in assessing the economic impacts relative to the submissions from the OEMs. The economic impacts were also verified by Transnet itself and to the extent that it was foreign exchange and escalations. Transnet treasury department was involved, to the extent that it needed inputs from the

Transnet engineers, Mr Chair, the Transnet engineers were involved and, Mr Chair, the reason for this is that if you look at the escalation formulas relating to locomotives, they are not exactly a simple one plus one is equal to two, it is actually quite a significant, from what I recall, it is actually quite a significantly complicated process that the engineers would first have to agree that the formulas are relevant and applicable because remember, the formulas, the escalation formulas would be proposed by the OEMs.

10           The OEMs proposed the formulas because they need to be sure that the price effects that impact the price of the locomotives going forward would be taken into account, so they would pay particular attention to the escalation formulas to ensure that their, how can I say, their rights are taken care of.

          Once that is then proposed by the OEMs, that has then to be received by Transnet. Now Transnet needs to make sense of that. Now the only people that can actually make sense of that is again the engineering counterparts  
20 on the Transnet side.

          Transnet engineers would have to make sense of these formulas that we received from the OEMs. Once the Transnet engineers have made sense of the formulas and if they are happy with the formulas, they would then interrogate the inputs into the formulas and this could be

copper, labour, steel, I do not know, there is a whole host of these things, Mr Chair.

They would elicit help from Transnet treasury to understand what is the outlook for these factors over a period of time depending on the delivery schedule, it could be three years, five years, seven years, depending on the delivery schedule. In the 1064 case I think it ended up to be three years on average and once that is then reviewed they would then basically either accept or reject that so it  
10 was a basis for negotiation, Mr Chair.

Regiments' role was to then also receive the same and I understand again, whether that made sense or, for both the escalation elements as well as the forex elements, both retrospective as well as prospective, okay, because it has used the same words backward looking and forward looking, as we defined them previously.

So, Mr Chair, that is how I understood the process to actually having taken place during the post-tender negotiations.

20 And, Mr Chair, we have attached in one of our affidavits and maybe at the break we can find it, a note that was attached to Mr Laher's affidavit relating to a note that was signed off by Mr Danie Smit who is a treasury official that basically said listen, the foreign exchange rates as well as the escalations were reviewed by treasury



as well as Regiments and therefore they are comfortable to accept the value that they accepted and this was a handwritten note that was signed off by Mr Smit at the time.

**ADV MYBURGH SC:** Chairperson, I see it is eight o'clock.

**CHAIRPERSON:** Okay, let us take a ten minutes adjournment. We adjourn.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

10 **CHAIRPERSON:** Okay, let us continue.

**ADV MYBURGH SC:** Sorry, sticking with Regiments' role and now moving to the memorandum itself at FQC714, may I take you please to paragraph 5? It says that:

“Regiments Capital, using an international expert, benchmarked the capital acquisition costs of the locomotives at the best and final offer stage of this transaction and the results indicated that the price being offered by the bidders is reasonable.”

20 Would you just explain exactly what Regiments did and what international expert they used?

**MR SINGH:** Sorry Mr Chair, I do recall that there was some sort of benchmarking that was done, I do not really recall offhand exactly the detail relating thereto.

**ADV MYBURGH SC:** And what was benchmarked?

**MR SINGH:** The locomotive prices at the best, as we say at the best and final offer stage.

**ADV MYBURGH SC:** Well, and benchmarked against what?

**MR SINGH:** International locomotive transactions that would have been concluded for similar locomotives.

**ADV MYBURGH SC:** And their conclusion was that the price being offered by the bidders was reasonable, is that right?

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

**CHAIRPERSON:** Would there have been a document that showed what the prices or similar locomotives were internationally?

**MR SINGH:** I think Mr Chair, that if I recall there was some sort of recommendation that was made available to us at the time, but I do not recall offhand, yes.

**CHAIRPERSON:** Yes, and do you recall who would have been responsible for comparing the prices internationally?

**MR SINGH:** At Regiments themselves?

20 **CHAIRPERSON:** Yes.

**MR SINGH:** Either Mr Wood or Mr Pillay, Mr Chair.

**CHAIRPERSON:** Okay.

**ADV MYBURGH SC:** Just going back to that, I think it is something that I have asked you, but as I understand it the people that worked on this assignment, the people that

worked and Rand calculations and alike, those, that did not include Wood and Pillay.

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

**ADV MYBURGH SC**: Wood and Pillay were not on the scene advising you on a day to day basis.

**MR SINGH**: No, not that I recall.

**ADV MYBURGH SC**: To what extent, and I might have asked you this already, you must forgive me if I have, to what extent did you deal with Mr Wood and Mr Pillay in the  
10 context of the post tender negotiations?

**MR SINGH**: I think if memory serves they had deployed I think two or three individuals that worked together with Mr Smith and Mr Laher.

**ADV MYBURGH SC**: Ja.

**MR SINGH**: On a let us call it, mainly on a daily basis, if that. My interactions with either Mr Pillay or Mr Wood on these matters would probably have been a weekly interactions, I would say at least.

**ADV MYBURGH SC**: Alright. Just going back to  
20 paragraph 5, so the results indicated that the price being offered by the bidders was reasonable and here it says:

“Given that the forex escalation, economic factors and batch pricing impact is subject to market conditions, it can be deduced that the final contract price is also reasonable.”

Is that correct?

**MR SINGH:** That is correct.

**ADV MYBURGH SC:** So in other words you said the price on offer is reasonable and then there are these changes, they are all market conditions and market related, therefore the final contract price is reasonable.

**MR SINGH:** That is correct.

**ADV MYBURGH SC:** Now the point of departure was the Regiments assessment that the price on offer was  
10 reasonable.

**MR SINGH:** Yes, and I think the more important point of departure was actually the adjudication process that got us to that point, because that was reflective of what the market was willing to offer at the time and that to me was actually more an indicator than, I think the Regiments Capital assessment was, let us call it a level of, more a level of comfort rather than the process, because the process up to that point in time Mr Chair, had been, was an open market tender.

20 It was evaluated according to the evaluation criteria that was set by TFR, the evaluation, the cross-function evaluation teams that evaluated them had to come up with a best and final offer price at that stage, which was reflective of the market.

**ADV MYBURGH SC:** Yes, but this is paragraph 5 of your

memo.

**MR SINGH:** Yes.

**ADV MYBURGH SC:** And it is an important step.

**MR SINGH:** Yes.

**ADV MYBURGH SC:** I mean you cannot, you are not suggesting otherwise.

**MR SINGH:** No, no.

**ADV MYBURGH SC:** Alright. Then if I could take you to page 722, there is another reference to Regiments, historical regression analysis conducted by Regiments Capital indicates that the ZAR currency is on a trend of devaluation, as indicated in table 5 above.

**MR SINGH:** That is correct.

**ADV MYBURGH SC:** And then if you go over the page to paragraph 43, the cost to hedge this exposure was obtained from banks by the suppliers, this was vetted by Transnet Treasury and Regiments Capital for reasonability. Is that correct?

**MR SINGH:** That is correct.

20 **ADV MYBURGH SC:** So that s the hedging costs.

**MR SINGH:** Yes.

**ADV MYBURGH SC:** And then we deal with escalation, over the page, and you will see at 59 in reference to Regiments:

“Escalations of input costs have been

verified by Transnet by using publically available data and by Regiments Capital using the intellectual property methodology and techniques.”

Is that correct?

**MR SINGH**: That is correct.

**ADV MYBURGH SC**: Then if you go to page 730 under, or at paragraph 107 it says:

10 “Data quoted in this memo above has been sourced from...”

And then one, two, three, the fourth, fifth bullet point:

“Regiments Capital Transaction Advisory Services.”

Do you see that?

**MR SINGH**: That is correct.

**ADV MYBURGH SC**: Now I would like to go back please, to paragraph 18 at page 727. It says that:

20 “The updated NVP results in a positive NPV of R11, 68 billion at the new hurdle rate of 15.2% and 22, 71 billion at the TRF WACC of 12.6. The NPV would become a negative 1, 67 billion at the original hurdle rate of 18.56%.”

Do you see that?

**MR SINGH**: That is correct.

**ADV MYBURGH SC:** Perhaps Mr Singh, for us if you can decode what this means in simple terms.

**CHAIRPERSON:** Before he does that, for the transcript, in paragraph 18 it is NPV, NPV, NPV, with regard to the first one it came across as if you were saying NVP, Mr Myburgh.

**ADV MYBURGH SC:** Alright, NPV.

**CHAIRPERSON:** So I am just correcting that. NPV, yes.

**ADV MYBURGH SC:** Yes, thank you.

10 **MR SINGH:** Mr Chair, NPV stands for Net Present Value and the acronym WACC stands for Weighted Average Cost of Capital. So Mr Chair, what would happen is, so you have locomotives that you are procuring and these locomotives obviously you are procuring with the view that they will add to the profitability of the business and will be self-sustaining and would basically generate cash to be able to pay for themselves.

20 So what, Mr Chair, this paragraph seeks to do is to say over the life of these locomotives, remember they are now going to last for the next 30 years and if we do modifications they could last 50 years, now but you are obviously sitting here today, so what you are trying to do through this Net Present Value Mr Chair, is to predict the cash flows of these locomotives over the life, but then you are saying but these are [indistinct] values, so they, you

know they include escalations, inflation and all of these things, but what is that value today?

So you need the present value then back to today and that is that 11, 68 billion says basically in simple terms if you take all of the cash flows that these things will generate less all of a sudden the costs, less all of the capital costs associated with the acquisition, you will end up with R11, 68 billion worth of profit in today's terms, right, but you will appreciate Chair, that in order for you to  
10 bring something from the future to today that future number will be bigger than the number today, so today's number will be smaller.

So in order for you to bring it back to today you have to discount it, so you project it first and you discount it back to present. Now that discounting factor, Mr Chair, is either the hurdle rate or the Weighted Average Cost of Capital, so it is a factor that basically says when you project something into the future use a discount rate to discount it back to today's present day.

20 **ADV MYBURGH SC:** Alright, so just to break it down, the updated NPV results in a positive NPV of 11, 68 billion, as you say, at the new hurdle rate of 15.2 and then the last sentence says the NPV would become negative 1, 67 billion at the original hurdle rate, okay.

So when we talk about the original and updated, or



sorry, the original and the new hurdle rate, was the original hurdle rate in the initial business case?

**MR SINGH:** I would assume so sir, yes.

**ADV MYBURGH SC:** So on that hurdle rate you would not make a profit, you would make a loss.

**MR SINGH:** Well, the NPVs will become negative, yes.

**ADV MYBURGH SC:** Ja, so a negative, as I understood it you were saying that on the one you would make a profit, on the other you would make a loss.

10 **MR SINGH:** Yes.

**ADV MYBURGH SC:** So it would be a positive 11, 68 billion versus a negative 11, 67 billion.

**MR SINGH:** Yes.

**ADV MYBURGH SC:** Alright. Now this updated or new hurdle rate of 15.2, where did that come from?

**MR SINGH:** Mr Chair, as we see in paragraph 81 it says the WACC and hurdle rates are updated annually for changes in economic conditions and are approved by the Transnet, reviewed by external audit during yearend audit  
20 processes, so Mr Chair, these rates are, get reviewed and looked at annually, but I think they are actually approved biannually by the Transnet ExCo, so they get reviewed annually and the changes occur and they then get reviewed at a review of the ExCo every two years. So Mr Chair, this  
15 ...[intervenes]

**ADV MYBURGH SC:** 15.2, Yes.

**MR SINGH:** Yes, the 15.2% that was used in the compilation of this memo Mr Chair, would have come through some sort of review process that was happened in Transnet at the time.

**ADV MYBURGH SC:** Okay, so just to date this, this is something that you stated when you signed it on the 21<sup>st</sup> of May, correct?

**MR SINGH:** Yes, sir.

10 **ADV MYBURGH SC:** Now could I take you please to some new documents that you find at, commencing at page, this is Transnet bundle 5(C), commencing at page 2023.

**CHAIRPERSON:** Is that in the same bundle?

**ADV MYBURGH SC:** Transnet bundle 5(C), Chairperson.

**CHAIRPERSON:** Okay.

**MR SINGH:** The page, sir?

**ADV MYBURGH SC:** I would like to take you, let us start at page 2023, 2023. Are you there?

**MR SINGH:** Yes.

20 **ADV MYBURGH SC:** So on 2023 we have a document Weighted Average Cost of Capital and Hurdle Rates Policy, do you see that?

**MR SINGH:** That is correct.

**ADV MYBURGH SC:** And the effective date of that, on the face of it, was 1 August 2012, correct?

**MR SINGH:** That is correct.

**ADV MYBURGH SC:** Could I ask you please then to turn to page 1032?

**MR SINGH:** 1?

**ADV MYBURGH SC:** I beg your pardon, 2032.

**MR SINGH:** 20?

**ADV MYBURGH SC:** 2032, Sorry. We were on 2023, we now need to move to 2032.

**MR SINGH:** 2032, Ja okay, I am there.

10 **ADV MYBURGH SC:** And what you see there is a series of two schedules at the foot of the page, you will see there is a heading for the ...[intervenes]

**CHAIRPERSON:** Do not lower your voice, Mr Myburgh.

**ADV MYBURGH SC:** You will see there is a heading before the first schedule that reads Greenfields, do you see that?

**MR SINGH:** That is correct.

**ADV MYBURGH SC:** And then you go to TFR and you see the hurdle rate is 18.56.

20 **MR SINGH:** Yes.

**ADV MYBURGH SC:** So that is what is referred to as the original hurdle rate in your ETC memo.

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

**ADV MYBURGH SC:** So perhaps if you could just explain the concept to us at Greenfields.

**MR SINGH:** So a Greenfields project Mr Chair, is basically a, it is a project that is relatively new and probably has not been undertaken before. It is characterised by a project that has significant, could also be characterised by a project that has a significant amount of risk attached to it.

**ADV MYBURGH SC:** Alright, and then if I could ask you please to go to page 268. What you see there is a similar document, Weighted Average Cost of Capital and Hurdle  
10 Rates Policy, WACC Policy, do you see that?

**MR SINGH:** Yes.

**ADV MYBURGH SC:** And here it records the effective date as 31 March 2014, do you see that?

**MR SINGH:** That is correct.

**ADV MYBURGH SC:** And it says signature, and that is your signature, is that right?

**MR SINGH:** That is correct.

**ADV MYBURGH SC:** Under Group Chief Financial Officer.

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

20 **ADV MYBURGH SC:** And just help us with that date, Mr Singh.

**MR SINGH:** It seems like it is the 20<sup>th</sup> of May 2014.

**ADV MYBURGH SC:** 20 May 2014?

**MR SINGH:** That is correct.

**ADV MYBURGH SC:** So that is the day before you signed

the ETC increase memo.

**MR SINGH:** That is correct.

**ADV MYBURGH SC:** And then if you go over the page to 2070 you will see that it is signed by the Group Financial Planning General Manager and then it is signed by you again. What is that date, the same?

**MR SINGH:** The same date.

**ADV MYBURGH SC:** 20 May?

**MR SINGH:** Yes.

10 **ADV MYBURGH SC:** But we see that there is no signature reflecting the final approval. Do you see that? In other words, name of committee, group chief, Group Executive Committee, there is no signature there.

**MR SINGH:** Neither was the one in 2012 either.

**ADV MYBURGH SC:** Okay. So that takes us to 20 May 2014, now let us go then to page, if I could ask you to go to page 2079.

**MR SINGH:** 2071?

**ADV MYBURGH SC:** 2079.

20 **MR SINGH:** 2079, Yes?

**ADV MYBURGH SC:** So what you see similar to the 2013 policy is you have got a heading Greenfields, do you see that towards the foot of that page?

**MR SINGH:** Yes.

**ADV MYBURGH SC:** And again if we track to TFR we get

the Greenfields hurdle rate of 16.24%, do you see that?

**MR SINGH:** Yes.

**ADV MYBURGH SC:** We know in the ETC memo you used a new hurdle rate of 15.2.

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

**ADV MYBURGH SC:** Where does one find reference to 15.2 in this document?

**MR SINGH:** Mr Chair, as I have indicated that the 15.2 would have been the WACC rate that was prevalent at  
10 some point in time during the period during which this process was being undertaken. Mr Chair, the reason why we state that is that this document is a document that evolves, let us call it from, well actually the auditor's review, the WACC rates, sometime in September, October of each year because of the audit that they, not the audit, but the review that they conduct for Transnet results and they would have had to review the WACC to understand whether it was still applicable or not, given the changes in economic conditions, but it is not a very in-depth exercise,  
20 but when they do then come for the yearend audit, which starts sometime at the end of March, there is quite a significant in-depth exercise that is done by External Audit in actually auditing the WACC and in order for them to audit the WACC, Mr Chair, we need to propose something for them to audit.

So that process, Mr Chair, starts in and around I would say March, April and it would probably conclude in sometime, probably sometime thereafter. They would, Mr Chair, not accept a WACC that is not approved by Transnet, because they have to have an official view of what the Transnet WACC is for them to then audit and Mr Chair, this 12, what was the number, 15.2 ...[intervenes]

**ADV MYBURGH SC:** Ja, that is what you said.

**MR SINGH:** The 15.2 number Mr Chair, would have been  
10 a number that was being considered by Transnet at a point in time during this review process, which ultimately led to the final approved document actually coming out at 16.24%, which was the actual document that was then signed off.

Where Mr Laher obtained the 15.2% from Mr Chair, he alleges that he obtained it from me. Mr Chair, I do not recall having given him a 15.2 number, that number seems rather exact, so at that stage Mr Chair, each of the operating divisions would be engaging with Transnet  
20 Financial Planning, or Group Planning as they were called, to understand what the individual WACC numbers would be, because the individual WACC numbers would then obviously impact the audit at their specific operating divisions.

So we did not allow for each operating division to

come up with their own WACC, it was actually calculated centrally, audited centrally and that information was then passed onto the operating division and Mr Chair, just also to give context Mr Chair, the memo had been prepared in April, but it effectively captured all the economic effects up to contract signing date.

So as we have seen, the memo, the WACC document was actually approved on the 14<sup>th</sup> of, no 20<sup>th</sup> of May 2014 with the 16.24% reflected but Mr Chair, the  
10 15.2% would have been the equivalent of the 16.24% during a period of time during the evolution of this document.

**ADV MYBURGH SC:** Yes. Well, all of that may be correct, but the point is that as at the 21<sup>st</sup> of May when you signed this document the hurdle rate, the new hurdle rate was not 15.2%, it was 16.24%, correct?

**MR SINGH:** That is correct.

**ADV MYBURGH SC:** Ja, and we know that this document was then put forward to the BADC on the 26<sup>th</sup> of May and it  
20 was put forward to the Board of Directors on the 29<sup>th</sup> of May.

**MR SINGH:** That is correct.

**ADV MYBURGH SC:** On both of those days the new hurdle rate was not 15.2, but 16.24.

**MR SINGH:** That is correct.



**ADV MYBURGH SC:** So that is quite a large difference, is it not, more than a percent?

**MR SINGH:** Yes.

**ADV MYBURGH SC:** It is 1.4%. Now what would the effect of that have been on the profitability of this venture?

**MR SINGH:** Well, as I say if you look at the memo, if you will recall the memo did say if we had the original hurdle rate of 18% it would result in a negative NPV of 1, 68 billion if I recall, given the fact that this is 16% I  
10 would hazard to say that ht NPV would not be negative, notwithstanding ...[intervenes]

**ADV MYBURGH SC:** Sorry, you would not ...[intervenes]

**MR SINGH:** Would not be negative.

**ADV MYBURGH SC:** You would venture to say?

**MR SINGH:** Well, I have not really calculated it, so I can only assume that it would not be.

**ADV MYBURGH SC:** You can only assume it would not be.

**MR SINGH:** Okay, then I would say it would not be.

20 **ADV MYBURGH SC:** But Mr Singh, you understand this is a very important issue.

**MR SINGH:** Yes, and I am responding by saying that the 16.24% versus the 15.2% would not result in a negative NPV.

**ADV MYBURGH SC:** And is it a simple mathematical

calculation that can be undertaken?

**MR SINGH:** No, I do not think it is.

**ADV MYBURGH SC:** Because we asked Mr Chouby if he could do this for us, he said it would take three weeks.

**MR SINGH:** It is not ...[intervenes]

**ADV MYBURGH SC:** So you are really guessing.

**MR SINGH:** Well, you are asking me and I am saying to you it would not, it would not. It would not take three weeks, not three weeks, that is an exaggeration. Mr Chair,  
10 the other reason why ...[intervenes]

**ADV MYBURGH SC:** Mr Singh, sorry, I cannot hear you and I need to understand precisely what you are saying here, because what is represented to the BADC and what is represented to the Board is that this is a profitable venture at the wrong hurdle rate. Now if it was 16.24, are you saying it could be one way or the other, it is marginal, or what are we talking here?

**MR SINGH:** Well Mr Chair, talking on the point of misrepresentation, if I wanted to misrepresent to the Board  
20 I would have not included the fact that at 18.24% the business venture would have been negative.

**ADV MYBURGH SC:** But are you... I know it is late in the evening now, are you able to, this is going to be another sitting, are you able to run this figure for us by the next sitting?

**MR SINGH:** Well Mr Chair, if we are going to the point of saying let us understand what the NPV of this project is, then we need to go back to, I think it is page 9 or 11 of the business case and that also says that all the potential impacts of operational efficiencies of the new locomotives have not been included in the business case and the reason for that was to ensure that we had a conservative business case that we put forward, so if we want to recalculate the NPV of this business case then we should  
10 go and assess what the operation efficiencies of these locomotives would be, include it in the business case and then apply the new WACC and then you will get an answer.

**ADV MYBURGH SC:** Well, my question is; could you do that by the next sitting?

**MR SINGH:** No Mr Chair, we cannot do that by the next sitting, as TFR can only do this, they can only assess the operation efficiency of those new locomotives.

**ADV MYBURGH SC:** Alright, so what I need to do then is to go and search where you got this 15.2% from. Now as I  
20 understand ...[intervenes]

**MR SINGH:** No Mr Chair, I did not get the 15.2, I did not give Mr Laher 15.2.

**ADV MYBURGH SC:** Oh, so this is a Laher mistake.

**MR SINGH:** We have given an affidavit to that extent.

**ADV MYBURGH SC:** Okay, but just, I do not want to

quarrel with you, I just need to understand what happened. So do I understand you to say this is not your figure, you did not give Laher 15.2%?

**MR SINGH:** I did not give 15.2%.

**ADV MYBURGH SC:** Do you know where this 15.2 comes from?

**MR SINGH:** No, sir.

**ADV MYBURGH SC:** So do I understand you to be saying, and correct me if I am wrong, that it is Mr Laher that put  
10 this in here?

**MR SINGH:** That is correct.

**ADV MYBURGH SC:** Alright. So let us carry on with these hurdle rate documents. Now if you go to page 2110 ...[intervenes]

**MR SINGH:** 2110?

**ADV MYBURGH SC:** Ja. So you will see that this is an e-mail from Yusuf Laher to Mr Gama.

**MR SINGH:** That is correct.

**ADV MYBURGH SC:** And it says:  
20 "Hi, Siya. In a nutshell, the NPV became negative..."

Sorry, let us just, and it is also importantly on the 25<sup>th</sup> of March 2014.

"Hi, Siya. In a nutshell, the NPV became negative because the assumptions have

changed since, i.e. the price per loco, et cetera. Further to Francis' e-mail below..."

That we know is Francis Callard.

"If a hurdle rate is adjusted to the latest Transnet issued hurdle rate, then the NPV will become positive again. Francis will rerun the numbers based on the latest hurdle rate."

10 Next paragraph:

"The Transnet hurdle rate changed very recently from 18% to about 15% (it changed last week, I think)."

Do you see that?

**MR SINGH:** Yes, sir.

**ADV MYBURGH SC:** Now we are going to come to Mr Laher's evidence. Mr Laher's evidence is that you told him that.

**MR SINGH:** So then why did he not say that, that  
20 according to our notes this had change? He does not say that.

**ADV MYBURGH SC:** No, he does not say that.

**MR SINGH:** Yes.

**ADV MYBURGH SC:** But that is his evidence.

**MR SINGH:** That is why I am saying I disagree with him.

**ADV MYBURGH SC:** Okay, alright. Now just so that we understand it, is this a policy, this Hurdle Rate Policy, it is something that falls very much within your domain.

**MR SINGH:** That is correct.

**ADV MYBURGH SC:** I mean, we see that you approve it, this is your baby really.

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

**ADV MYBURGH SC:** Let me take you then, if I may, to the minute of a Capital Investment Committee meeting on the  
10 18<sup>th</sup> of March 2014 and that you will find at page 2122. You will see it says 'draft minutes of Transnet Capital Investment Committee meeting 14/3 held on Tuesday, 18 March at 09:00' and there present, Mr Singh, you were the acting Chairperson of the Capital Investment Committee. Is that correct?

**MR SINGH:** Based on the minutes, yes.

**ADV MYBURGH SC:** Now can I take you please to page 2132, the WACC Policy and hurdle rates, because we know there was an amendment in the pipeline. It was  
20 discussed at this meeting.

**MR SINGH:** That is correct.

**ADV MYBURGH SC:** You see that at paragraph 7.5, correct?

**MR SINGH:** Yes, sir.

**ADV MYBURGH SC:** At 752 it was noted that:

“The recommendation was not a policy change, but changes to the hurdle rates. It was agreed that the submission be revised accordingly. It was further requested that consultations be held with OD Executive Committees to discuss the suggested revised rates as well as the regulatory matters.”

Now what does OD stand for?

10 **MR SINGH**: Operating Division.

**ADV MYBURGH SC**: It was resolved, you will see, that the Committee recommends the proposed revised hurdle rate as contained in the table WACC Policy, subject to consultations with OD Executive Committees, as well as the regulatory matters before tabling at Group Executive Committee, correct?

**MR SINGH**: That is correct.

**ADV MYBURGH SC**: So then let us go to page 2135. These are now the minutes of the Group Executive  
20 Committee held on the 25<sup>th</sup> of March 2014, you will see it reflects Molefe being present, under that Mr Gama being present and then you as well. I see that is in alphabetical order. Do you see Singh? Do you confirm you were there?

**MR SINGH**: Yes, sir.

**ADV MYBURGH SC**: And then if I could take you please

to paragraph 5.9 at page 2140, again Hurdle Rate and Weighted Average Cost of Capital Policy is discussed, do you confirm that?

**MR SINGH:** 2140?

**ADV MYBURGH SC:** 2140.

**MR SINGH:** Oh yes, 5.9 yes.

**ADV MYBURGH SC:** Paragraph 5.9, ja.

**MR SINGH:** Yes.

**ADV MYBURGH SC:** If I could take you over the page to  
10 2141 and direct your attention to paragraph 5.9.4, the  
Committee was requested to approve the nominal post tax  
WACC of 12.7%, there will be a better understanding of  
WACC post the delta process. The Chairperson, now that  
Chairperson is Mr Molefe, correct?

**MR SINGH:** Yes.

**ADV MYBURGH SC:** Yes.

20 “The Chairperson stated that there has  
always been a disagreement over the WACC  
issue since he assumed office. He  
requested that a memorandum be submitted  
to this office that clearly articulates the  
proposed amendments.”

Do you see that?

**MR SINGH:** That is correct.

**ADV MYBURGH SC:** Yes.



“Mr Valiu stated that based on the WACC computation, TE provided the least risk in the company. Mr Gardener stated that WACC becomes a sensitive discussion item during contract negotiations. He sought clarity on the most suitable WACC to utilise and requested guidance on the company’s reasonable cost of equity. Mr Singh stated that the challenges in contract negotiations were real WACC and hurdle rate.”

Do you see that?

**MR SINGH:** Yes, I do.

**ADV MYBURGH SC:** Then at 5.9.6:

“Mr Singh indicated that the submission will be presented to the OD/SU for consideration.”

What does SU stand for?

**MR SINGH:** [Indistinct].

**ADV MYBURGH SC:** And then just above paragraph 5.10 you see:

“The Committee noted the Hurdle Rate and Weighted Average Cost of Capital of Policy.”

So no acceptance there, correct?

**MR SINGH:** That is correct.

**ADV MYBURGH SC:** Then if I can take you please to

page 2159. So what you find here is an e-mail from Yusuf Mohamed to various persons, copied to you and it is March ExCo feedback, we are dealing with the March ExCo now and it records these notes following:

“The Hurdle Rate and WACC Policy was not approved. Redo the memo to explain the changes delta view. Please get a slot in each OD ExCo in April to explain the OD specific WACCs and the changes year on year to the...”

10

Do you see that?

**MR SINGH:** That is correct.

**ADV MYBURGH SC:** And then what we have found is at page 2161, now this is on the 12<sup>th</sup> of May and this seems to be after an approval from Thabo Abello to Yusuf Mohamed, it says:

“The table and explanation below depicts TRF WACC and hurdle rate.”

And then you will see there is 2012/13 approved rate, there you see the 1856 and then at the bottom you see 2014/15 approved rate and there you see 16.24, do you see that?

20

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

**ADV MYBURGH SC:** And then that accords with the policy that you signed on the 20<sup>th</sup> of May, correct?

**MR SINGH:** That is correct.

**ADV MYBURGH SC:** Now could I please take you to, make reference to your affidavit?

**MR SINGH:** Just before we move off this page, can I just make a comment on 2161? Mr Chair, if you have reference to 2161 you will see that on Monday 12 May 2014 Mr Mabello sends to Mr Mohamed the WACC rates as Mr Myburgh has outlined, but Mr Mohamed then also sends it to Mr Laher on the 12<sup>th</sup> of May 2014 at 12:31, as you can see at the top of the page.

10 **CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** Sorry, I have just, I am just missing you. What page are you on?

**MR SINGH:** I am saying 2161, we have just ...[intervenes]

**ADV MYBURGH SC:** The last e-mail?

**MR SINGH:** Yes.

**ADV MYBURGH SC:** 2161. So your point is? I am sorry, at the top it says Yusuf Mohamed, okay.

**MR SINGH:** Mr Mohamed sending to Mr Laher the TFR WACC and hurdle rates on the 12<sup>th</sup> of May 2014, so  
20 Mr Laher was in possession of the WACC rates, the final WACC rates from Mr Mohamed.

**ADV MYBURGH SC:** Alright.

**MR SINGH:** And as you previously pointed out in the previous e-mail, out to Mr Gama, he was also in possession of the 15% from somebody at Transnet Group,

so he was obviously in communication with understanding the evolution of this WACC rate during this period of time.

**ADV MYBURGH SC:** Mr Singh, I am not going to debate that with you, the evolution. Let us have a look at your affidavit. Can you go please to 1486?

**MR SINGH:** I am sorry, in which bundle are you, the same one?

**ADV MYBURGH SC:** I think it might be the same, it may be the same file. 1486.

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

**ADV MYBURGH SC:** Okay, so I just want to take you through this. You deal with unprofitable projects and hurdle rate reduction. You say:

“I was open and transparent to the Board of Directors regarding the impact of the increase ETC on the original NPV and WACC rate in that it resulted in a negative NPV for the project.”

Correct?

20 **MR SINGH:** Yes.

**ADV MYBURGH SC:** Yes.

“I deny the fact that the project was loss making, as alleged by Chabu. I deny that the hurdle rate had to be changed to make the project profitable again. I deny that

there was no approved policy to support the change in the hurdle rate as claimed.”

And then you say at 245:

“The reasons for each of the above conclusions is contained in my response to Yusuf Laher’s supplementary affidavit which deals with the subject of the WACC and Hurdle Rate Policy.”

Now where do you respond to Mr Laher’s supplementary  
10 affidavit?

**MR SINGH:** I think in one of our affidavits, I am not ...[intervenes]

**ADV MYBURGH SC:** Now I see, I am just, I see at 1518 you do respond to a statement by Yusuf Laher.

**MR SINGH:** 1518?

**ADV MYBURGH SC:** 1518. Is that what you are referring to?

**MR SINGH:** Yes, I think so. I think this is the one.

**ADV MYBURGH SC:** Perhaps I could just finish off, I see  
20 it is almost 21:00, by asking you something that I could then think about before we reconvene. At 246 you say:

“The table below summarises the status of the NPV and various hurdle and WACC rates, and as can be seen, even when the approved WACC and hurdle rate are used

that would not result in the project being unprofitable.”

Now you refer to 31 May 2014 and there whatever got the 16.24, then you have got a column in the middle, 31 March 2014 and there is the 15.2. Where did you get that from?

**CHAIRPERSON:** I am sorry Mr Myburgh, I went to 1518, but I think you have moved beyond that.

**ADV MYBURGH SC:** 1487. Sorry, I am going, I went, I am going back there.

10 **CHAIRPERSON:** 1487.

**ADV MYBURGH SC:** 1487.

**CHAIRPERSON:** Okay.

**ADV MYBURGH SC:** So there is a schedule in the middle, so March 13 is 1856 that we have seen.

**MR SINGH:** Yes, I can see that.

**ADV MYBURGH SC:** 31 May 2014 and 16.24, that we have seen. Where do you get the 31 March 2014, 15.2 from? I understood your evidence to be well, Mr Laher put it in there, you do not know where it came from.

20 **MR SINGH:** I will have to go back and check where I did get that number from.

**ADV MYBURGH SC:** Alright, perhaps Chairperson, this may be a convenient time to take the adjournment.

**CHAIRPERSON:** Ja.

**MR SINGH:** Oh, so this, I recall, so this is basically taken

from the Board memo.

**ADV MYBURGH SC:** The what?

**MR SINGH:** From the Board memo.

**ADV MYBURGH SC:** The Board memo?

**MR SINGH:** Yes. If you will recall, basically we said that the revised hurdle rate you had a 16.02 NPV and at the 12.6 WACC you had the 22.71 NPV. I just, I just ...[intervenes]

**ADV MYBURGH SC:** Is that from the memo?

10 **MR SINGH:** Yes, I just referenced it back to the ...[intervenes]

**ADV MYBURGH SC:** Okay, the ETC increase memo?

**MR SINGH:** Yes.

**ADV MYBURGH SC:** Thank you.

**MR SINGH:** The date 31 March was referenced by and large to the period of time when we actually signed the Locomotive Supply Agreement on 17 March.

**ADV MYBURGH SC:** Thank you.

20 **CHAIRPERSON:** Unfortunately we are not able to finish. I will have to try and find time that we do not have somewhere. What is your estimate of how much time we might need?

**ADV MYBURGH SC:** We are certainly during the end at least.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** I think probably half a day.

**CHAIRPERSON:** Half a day, okay alright. I think in probably tomorrow or in the next few days we will try and sort that out.

**ADV MYBURGH SC:** Half a day or an evening.

**CHAIRPERSON:** Or an evening, ja, ja. For what it is worth, counsel for Mr Singh, are you able to indicate that maybe from now up to when your evenings are reasonably flexible, without being specific?

10 **ADVOCATE:** Chairperson, we are not available at all this week or next week, not in the day, nor in the evenings, both my attorney and myself we have got previous commitments and that we cannot, we already had to deal with tonight to make ourselves available.

**CHAIRPERSON:** Okay, alright. I will have a look and then fix the date and time. Okay, thank you to everybody. Thank you, Mr Singh and your legal team. Thank you, Mr Myburgh and your team and the technicians and the staff, thank you to everybody.

20 For the benefit of the public, tomorrow the Commission will not sit in the morning, but we will start at 15:00 to hear some evidence relating to PRASA initially and then later we will hear the evidence, other evidence relating to Transnet, Mr Gary Pita. I will also hear evidence from one of the investigators of the Commission.



We adjourn.

**INQUIRY ADJOURNS TO 1 JUNE 2021**