

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

**17 JUNE 2021**

**DAY 411**



**Gauteng Transcribers**  
Recording & Transcriptions

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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**PROCEEDINGS RESUME ON 17 JUNE 2021**

**CHAIRPERSON:** Good morning Ms Rangata, good morning everybody.

**ADV RANGATA:** Good morning Chair.

**CHAIRPERSON:** Yes.

**ADV RANGATA:** Thank you Chair. Today Chair for me is a very quick one. On the 15<sup>th</sup> of June before Chair there was an application for cross-examination under SEQ17/2021 an application brought by Mr Buthelezi to cross-examine Mr  
10 Sacks and Mr Popo Molefe.

During the application Chair has made a proposition for the parties to consider a discussion as to how the matter can be resolved.

So Chair has directed that Advocate Ngalwana who appeared on behalf of the applicant to be in contact with Advocate Soni to engage as to the issues or the questions that were raised in Buthelezi's affidavit.

I am here to confirm Chair that yesterday on the 16<sup>th</sup> the two advocate confirmed that the agreement be reached.  
20 I am not sure if the letter should be read into the record or I can just confirm that the parties have agreed to – to all the two parties at a later stage so that the issues that were outstanding as raised by the applicant to be dealt with.

**CHAIRPERSON:** As I understand the position the evidence leader Mr Soni proposed that the two witnesses be recalled

and so that he could put to them Mr Buthelezi's version.

**ADV RANGATA:** Yes Chair.

**CHAIRPERSON:** And ask such further questions as he may deem necessary.

**ADV RANGATA:** Yes Chair that is correct.

**CHAIRPERSON:** And that will be after that exercise that Mr Buthelezi's legal team will decide whether they want to pursue the application for leave to cross-examine or not.

**ADV RANGATA:** Yes Chair that is correct.

10 **CHAIRPERSON:** Yes.

**ADV RANGATA:** That is correct.

**CHAIRPERSON:** Okay no that is fine. I am happy with that arrangement.

**ADV RANGATA:** Thank you Chair.

**CHAIRPERSON:** So that is what will be done.

**ADV RANGATA:** So in essence the application is postponed pending what the Chair has just mentioned.

**CHAIRPERSON:** Yes.

**ADV RANGATA:** Yes.

20 **CHAIRPERSON:** Ja. Ja

**ADV RANGATA:** Thank you very much Chair.

**CHAIRPERSON:** The application is postponed ja.

**ADV RANGATA:** Thank you. Can I be excused Chair?

**CHAIRPERSON:** You are excused.

**ADV RANGATA:** Thank you.

**CHAIRPERSON:** Thank you. Good morning Mr Myburgh.

**ADV MYBURGH SC:** Good morning Chairperson.

**CHAIRPERSON:** Before we start I just want to make some announcement.

The commission did not have hearings from I think the 2<sup>nd</sup> of June up to the 14<sup>th</sup> and its term is coming to an end at the end of June and I think there are a lot of people who wish to know what is happening with regard to the commission completing its work and what is happening with  
10 the return to the commission of the President.

So I think it is necessary that I make some announcement and explain where the commission is.

When the commission applied for the extension of its term from the end of March to the end of June I had made an assessment that we would be able to complete the hearing of oral evidence by end of March and that April, May and June would be used for the preparation of the report.

As it turned out we did not complete the hearing of  
20 oral evidence at the end of March and in part that would be because

1. When one hears evidence in a forum such as this there are witnesses and lawyers who need to be accommodated within certain reasonable limits and
2. One's assessment can never be absolutely accurate

and as one proceeds sometimes one becomes aware of some evidence or matters that one may not have been aware of.

So the fact of the matter is the assessment that was made was made in good faith but it just did not work out. The evidence that still needed to be heard at the end of – beyond the end of March was very important evidence.

It included the evidence of former senior executives of SOE's such as Transnet and Eskom.

10 It included the evidence I think of the former chairperson of the Denel board that was appointed in 2015.

It included the evidence relating to Parliamentary Oversight.

It included the evidence of the ANC that was given by its National Chairperson and former Secretary General Mr Gwede Mantashe and by the President of the ANC.

It included evidence relating to a former Minister of the Department of Public Enterprises Mr Malusi Gigaba.

20 It included the evidence relating to serious allegations of the looting of public funds in the State Security Agency which I as the Chairperson of the commission considered to be quite important for the commission to hear.

So it was necessary in that the commission should continue to hear that evidence. It heard that evidence in

April and May. Some of that evidence is still being heard and will be heard until the end of June.

During the time that the commission has not been sitting from beginning of June that time has enabled us to carefully look at the work that has been or the ground that has been covered by the commission in the various work streams and I am able to say that as things stand subject to one qualification we should have heard all oral evidence by the end of June that the commission considers to be  
10 important.

I said this is subject to one qualification. That qualification is that there are about four or six witnesses that the commission has identified as important to be called to the commission before the commission can properly conclude the hearing of oral evidence that is apart from the President because the President must still come back.

The President and the commission had previously tentatively identified the 29<sup>th</sup> of June and the 30<sup>th</sup> of June  
20 as the days when the President would return to the commission to complete his evidence in his capacity as the President of the ANC and to give evidence in his capacity as President of the country and former Deputy President of the country

But the five or six witnesses or implicated persons

that I have said the commission has identified will not be able to give evidence during June therefore it means that by the end of June we will still be needing some days to hear the evidence of those five or six witnesses and the evidence of the President before we can finally conclude all oral evidence.

We are going to be applying to the High Court to get more time so that we can complete the work of the commission properly. If the High Court grants us an  
10 extension we will be able to hear the evidence of those five or six witnesses in July as well as the evidence of the President hopefully before or not later than 15 July.

And once we have heard the evidence of those five or six witnesses and the evidence of the President then that should conclude the hearing or oral evidence of the commission which started in August 2018.

In the course of this morning I will sign the affidavit that must form part of the application papers that must be launched in the High Court where the commission will ask  
20 the High Court for an extension of time.

We are going to ask for an extension of time from the end of June up to the end of September. My assessment is that the preparation of the report should be complete by the end of August but I would like to have September just in case we do not complete the report at



the end of August.

A lot of work has been going on for quite some time of summarising and analysing the evidence that will facilitate the preparation of the report.

I know that some within the public have grown very impatient with the commission demanding that it should complete its work. Some of the people who say that do so in good faith but others do so for their own reasons.

I am very keen that the work of the commission be  
10 completed as soon as possible. I have a very dedicated team in the commission all of whom are working very hard to try and make sure that the work of the commission is completed as soon as possible.

In this regard I am speaking about the members of the legal team, I speak about members of the investigation team, I speak about the secretariat and all the staff of the commission. Everybody has watched and seen how everybody in the commission has been working very hard including sessions in the evenings and sittings on  
20 Saturdays and on public holidays because they are all very committed that the work of the commission be done and completed as soon as possible.

I am also grateful to very many members of the legal profession Advocates and Attorneys who appear on behalf of various persons who have given this commission

cooperation and have appeared in evening sessions. Everybody is working hard to try and assist the commission.

But the one thing that I will not do is this. I will not end the work of the commission in an irresponsible manner. I am going to repeat that. I will not end the work of the commission in an irresponsible manner just because I want to satisfy those who demand that the commission should finish its work.

10           When I started with this commission I made it quite clear that this commission would do its work properly. That remains important. In seeking to complete the hearing of the oral evidence we will act properly; we will act in a responsible manner; we will not seek to act in a haphazard manner or abruptly.

I have a responsibility to make sure that the work of the commission is done properly. I have a responsibility to do my best to ensure that there is fairness to people who are implicated and I intend to do my best to make sure that  
20 when we have finished the work of the commission we are able to look back and say we acted properly and we acted responsibly.

Having said all of that I am happy that where we are is very close to finishing. As I say by end of June we should be left – we will be left with about five or six

witnesses plus the President – other than that what will be left is the preparation of the report.

So I thought it is important just to update the public as to where we are and to also indicate that we will be launching I believe today our application in the High Court for the extension of the term of the commission so that the commission can finish its work properly.

That is the announcement I wanted to make. Yes Mr Myburgh.

10 **ADV MYBURGH SC**: Yes thank you. Chairperson today – this morning least has been scheduled for the continuation of the evidence of Mr Singh within the Transnet stream. Mr Singh is here I presume we need to...

**CHAIRPERSON**: Yes.

**ADV MYBURGH SC**: Re-administer the oath or the affirmation.

**CHAIRPERSON**: Please administer the oath and – or affirmation. Good morning Mr Singh.

**MR SINGH**: Morning Chair.

20 **CHAIRPERSON**: I have already greeted your legal team. Good morning. Thank you. I understand Mr Singh that we all hope that this is your last day here.

**MR SINGH**: Indeed Sir.

**CHAIRPERSON**: Ja.

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

**MR SINGH**: Anoj Singh.

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

**MR SINGH**: I do not. I do not.

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

**MR SINGH**: I do.

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

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

**CHAIRPERSON**: Thank you and just to make sure that there is clarity about what I announced. So the President is not going to appear before the commission before the end of June. Another date will have to be arranged. That is because it is proper that the President should be the last witness to give evidence. So – and there are other witnesses that must still come before him. So he is not  
20 going to appear before the commission on the 29<sup>th</sup> of – and 30<sup>th</sup> of June but we will wait for the High Court to deal with our application. If it grants us the extension then we will fix a date for the President and for the other witnesses and that will be announced in due course.

Of course if the High Court does not grant us some

extension that will be that.

Okay.

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

**MR SINGH:** Good morning Sir.

**ADV MYBURGH SC:** The last – at the end of the last sitting we had been dealing with the acquisition of the 1064 locomotives. You will recall that we dealt with the original business case, the alleged misrepresentation in  
10 relation to the increase in the ETC. We dealt with the role of Regiments and we had ended by dealing with the hurdle rate.

I just want to pick up and end off in relation to the role of Regiments and perhaps what I would like to do is just to show you some documents that may illustrate the role that they played.

You have already given evidence and summarised what they – what they did. Could I ask you please to pick out Transnet Bundle 4B. Transnet Number 4B – Bundle 4B  
20 has got a number of dividers in it. Could I ask you please to go to what I think should be the second last divider and that is BB4H. Are you there?

**MR SINGH:** I am there Sir.

**ADV MYBURGH SC:** All right so what you find at BB4H at page 795 is a supplementary affidavit of Mr Callard. Are

you there?

**MR SINGH**: It is black numbers?

**ADV MYBURGH SC**: Sorry.

**MR SINGH**: The black numbers?

**ADV MYBURGH SC**: Yes.

**MR SINGH**: Yes.

**ADV MYBURGH SC**: 795 black number.

**MR SINGH**: Yes.

**ADV MYBURGH SC**: Now I am not going to take you  
10 through the affidavit I want to actually show you the  
documents that are attached. Perhaps I could just for  
context take you to 799. What Mr Callard deals with  
paragraph 17 to 23 is the so called Regiments Price Walk  
and what he puts up is a number of documents emanating  
from Regiments running from February 2014 you will see  
that at paragraph 17 all the way through to paragraph 23 –  
these are slides that form part of the presentation to the  
board in May 2014.

But it is to the documents that I would like to take  
20 you Mr Singh. Could you please go to page 816. Now you  
will see in many instances what these documents comprise  
of are emails and then slide presentations.

Now at page 816 you see an email from a Mr or Ms  
Gabriel Salasi dated the 25<sup>th</sup> of February and it is sent to  
Mr Laher and Mr Smit. They were persons assisting you in

the post tender negotiations. Correct.

**MR SINGH:** That is correct.

**ADV MYBURGH SC:** And you will see that often these emails are cc'd to inter alia Mr Niven Pillay, you see that?

**MR SINGH:** That is correct.

**ADV MYBURGH SC:** And the attachment here is summary slides and if you go to page 817 you will see it is dated the 25<sup>th</sup> of February 2014 and the slides are headed Transnet Financial and Risk Analysis for the 1064 Procurement  
10 Negotiations. I take it that – was this a slide presentation that was then made to you by Regiments?

**MR SINGH:** I do not recall this exact presentation but I recall something like it.

**ADV MYBURGH SC:** All right. If I could then ask you to go to page 821 again from Gabriel Salasi now the 6<sup>th</sup> of March you will see at 822 another slide presentation dated the 5<sup>th</sup> of March, do you see that?

**MR SINGH:** I see that.

**ADV MYBURGH SC:** And then if I could ask you to go to  
20 826 this time from AJ Mystery from Regiments the 7<sup>th</sup> of March again to Messrs Laher and Smit. The email says in the second paragraph

“Find attached for your review updated executive summary slides of the 1064 project. The summary has been updated to

include the revised escalation drivers as requested.”

You see that?

**MR SINGH**: That is correct.

**ADV MYBURGH SC**: And that slide presentation then appears over the page. You see that.

**MR SINGH**: That is correct.

**ADV MYBURGH SC**: And then if you go to page 832 there is a further communication from Mr Mystery and another  
10 one at 833. And 833 reads:

“Find attached for up – for the updated executive summary slides for the 1064 project.”

Those slides you find at – commencing at page 834.

You see that.

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

**ADV MYBURGH SC**: And so we go on. If you go to page 839 there is an email on 28 May:

20 “Please find attached he deck with the changes to the two last slides as requested.”

And those slides appear at 840. And then there is a different document at 848. It is a – put up by Mr Callard – so called Regiments Price Walk where you see how the price evolved from February through to May, do you see



that?

**MR SINGH:** That is correct.

**ADV MYBURGH SC:** Then at 850 there is another slide presentation this time dated 12 February from Regiments and that is quite a lengthy deck as it is called. It goes all the way to 878. And then if you can go to 880 on the 17<sup>th</sup> of February another communication from Regiments to Laher and Smit.

10                   “Attached are the slides showing that there is actually a net cost if you pay big deposits for the locos”

And then there is slides attached to that. Do you see that?

**MR SINGH:** So you are at 880?

**ADV MYBURGH SC:** 880.

**MR SINGH:** Ja. Okay I am there. That is correct I am there.

20                   **ADV MYBURGH SC:** And then at 886 another communication from Regiments – another slide presentation at 887. Those slides are dated 21 February 2014. You see that.

**MR SINGH:** That is 886?

**ADV MYBURGH SC:** Sorry.

**MR SINGH:** You are at 886?

**ADV MYBURGH SC:** I am at 886 yes. And then if you go

to 891. Communication from Regiments dated 25 February 2014. Now this time it is addressed to you.

“Dear Anoj. My call earlier with Danie refers. Please find attached the excel workbook that includes the total cash flows per year for the diesel and electric locomotives for the respective bidders. The cash flows are based on a maximum 50 locomotives delivery schedule. I hope this is in order.”

You see that.

**MR SINGH:** I see that.

**ADV MYBURGH SC:** And then attached presumably is what is referred to as the excel workbook at 892 and 893. Do you confirm that?

**MR SINGH:** Yes I do.

**ADV MYBURGH SC:** And then if you go to 895 there is a further communication at the top of the page on the 5<sup>th</sup> of March. You see that.

20 **MR SINGH:** Yes.

**ADV MYBURGH SC:** And then of importance and this is really where I wanted to take you to. Could I ask you please to have a look at 898. Because what we know is that the board of directors approved the increase in the ETC at a meeting on the 25<sup>th</sup> of May 2014. And 898 you

see a communication from Regiments dated the 21<sup>st</sup> of May and the subject is Summary Slides for the Report to the Board. Do you see that?

**MR SINGH**: I see that.

**ADV MYBURGH SC**: And it says:

“Dear Yusuf. Please find attached the backup slides for your report to the board.”

Now that report to the board we know is what we referred to previously as the ETC memo, correct Mr Singh?

10 **MR SINGH**: That arised ETC?

**ADV MYBURGH SC**: Ja. And then it says:

“In the slides on cost escalation we have had made an assumption that you have negotiated a flat cost escalation (for CNR, CSR and Bombardier) as per the result of our model. Please do not hesitate to contact us should you need further information or clarification.”

Do you see that?

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

**ADV MYBURGH SC**: And this time this email is cc'd to Mr Eric Wood. You see that.

**MR SINGH**: That is correct.

**ADV MYBURGH SC**: And then the next day if you go to page 900 on the 22<sup>nd</sup> of May again to Mr Laher.

“We have attached the summary slides with all the proposed changes. Should you require to include further changes please send us your comments or suggestions as soon as possible.”

You see that.

**MR SINGH:** I see that.

**ADV MYBURGH SC:** Now those slides you find commencing at page 901 dated the 21<sup>st</sup> of May. You see  
10 that.

**MR SINGH:** I see that.

**ADV MYBURGH SC:** And then if I could take you finally please to page 909. And I am sorry I may have said that the – the meeting of the board of directors was on the 25<sup>th</sup> of May it was in fact on the 28<sup>th</sup> of May. And this email at 909 is on the 29<sup>th</sup> of May from Regiments Gabriel Salasi again cc'd to Mr Wood.

**CHAIRPERSON:** You said 29 May it is written 28 May, is that right – correct?

20 **ADV MYBURGH SC:** Yes I beg your pardon.

**CHAIRPERSON:** Ja.

**ADV MYBURGH SC:** So it is the same day as the board of directors meeting 28 May. I think where I said 9 is at page 909.

**CHAIRPERSON:** Okay.

**ADV MYBURGH SC:** Mr Singh are you there?

**MR SINGH:** Yes I am.

**ADV MYBURGH SC:** And what it says is:

“Dear Yusuf. I have had a discussion with Niven – or I had discussion with Niven a few hours ago about the changes you would like us to make on the slides.”

You see that?

**MR SINGH:** I see that.

10 **ADV MYBURGH SC:** So I assume that is Niven Pillay?

**MR SINGH:** That is correct.

**ADV MYBURGH SC:** And it is cc'd to Mr Wood. Is that right?

**MR SINGH:** That is correct.

**ADV MYBURGH SC:** Those are the two people who are alleged to have done the deal with Mr Essa in relation to the appointments of Regiments that he would take 50 cents to the rand. You know that by now, correct?

**MR SINGH:** That is correct.

20 **ADV MYBURGH SC:** Alright. When you engaged Regiments, did you engage them on a confidential basis that – were they required to keep the information that they gained as your transaction advisors confidential?

**MR SINGH:** I would assume so, sir.

**ADV MYBURGH SC:** And I assume that you would accept

that given this conflict of interest that we have discussed – of course, there is no way of knowing whether Regiments shared this information with Mr Essa.

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

**ADV MYBURGH SC**: And whether Mr Essa, in turn, shared it with CNR and CSR.

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

**ADV MYBURGH SC**: Well, you do understand that in effect Mr Essa was in partnership with Regiments and at  
10 the same time, simultaneously, on the evidence that has been led by Money-flows, he was in a partnership with CSR and CNR.

**MR SINGH**: On evidence that you have demonstrated.

**ADV MYBURGH SC**: Ja, alright. And you have quite candidly said that of course on this evidence, Regiments would have been highly disqualified from being your transaction advisors, obviously. No, I am sorry. I do not mean on this evidence. I mean on the evidence that I have just sketched to you, the conflict of interest.

20 **MR SINGH**: Had we known about it?

**ADV MYBURGH SC**: Yes.

**MR SINGH**: Yes.

**ADV MYBURGH SC**: They would have been highly disqualified.

**MR SINGH**: Yes.

**CHAIRPERSON:** Just so that the transcript clearly reflects. Your answer was yes?

**MR SINGH:** On ...[intervenes]

**CHAIRPERSON:** On ...[intervenes]

**MR SINGH:** ...had we known this ...[intervenes]

**CHAIRPERSON:** Ja.

**MR SINGH:** ...the time when they engaged.

**CHAIRPERSON:** Ja.

**MR SINGH:** Yes.

10 **ADV MYBURGH SC:** Now we know that on the 6<sup>th</sup> of December 2012 – we are now going back in time – an LOI was concluded between McKinsey and Transnet where we saw that Regiments replaced Letsema. Do you recall that?

**MR SINGH:** On the ...[intervenes]

**ADV MYBURGH SC:** 6 December.

**MR SINGH:** 2012?

**ADV MYBURGH SC:** 2012.

**MR SINGH:** [No audible reply]

20 **ADV MYBURGH SC:** And I had asked you – you remember – some questions about whether in the run up to that LOI you had any dealings...

**MECHANICAL INTERRUPTION:** [00:37:39]

**MR SINGH:** ...this would – may have come across via an interaction by McKinsey but I can categorically state that

this was in no way, shape or form due to the introduction by Mr Essa.

**ADV MYBURGH SC:** Okay, will you not speak up a bit, please. If you do not mind.

**MR SINGH:** Oh, sorry.

**ADV MYBURGH SC:** Or maybe just closer to the microphone.

**MR SINGH:** Yes. I am saying that this may have come across or actually would have come across via an introduction from McKinsey and my interactions with McKinsey at that time was primarily with Mr Sagar. So, I would assume that it would have come about as a result an introduction from himself but I can categorically state that at this point there was no interactions between myself and Mr Essa relating to this matter.

**ADV MYBURGH SC:** Okay, but then – so, you say there it came about as a consequence of an introduction by McKinsey?

**MR SINGH:** That is correct.

20 **ADV MYBURGH SC:** But it is headed: Meeting Re Pension Fund. What was that about?

**MR SINGH:** I do not recall, sir.

**ADV MYBURGH SC:** Okay, then let me ask you. Did you have this meeting with Mr Pillay?

**MR SINGH:** I do not recall the meeting, Mr Chair.



**ADV MYBURGH SC:** Alright. I mean, you know the history, I take it, in relation to Regiments and the pension fund? You know what happened afterwards?

**MR SINGH:** Sometime after that, yes.

**ADV MYBURGH SC:** Yes. I mean, Regiments – you must correct me if I am wrong – were appointed the administrator of the second and final pension fund and ...[intervenes]

**MR SINGH:** I do not know.

10 **ADV MYBURGH SC:** And what happened is. They disbursed for themselves R 250 million from the pension fund. There was litigation that ensued and they, in fact, paid it back. You know that?

**MR SINGH:** I am given to understand, yes.

**ADV MYBURGH SC:** Alright. So, your evidence is. You see the mail. It appears that you agreed to a ten o'clock meeting on 3 December, but you cannot remember the meeting?

**MR SINGH:** No, I do not recall it. Yes. Not off hand, no.

20 **ADV MYBURGH SC:** So, can you remember the first time that you met Mr Niven Pillay?

**MR SINGH:** No, sir.

**ADV MYBURGH SC:** Alright.

**CHAIRPERSON:** Are there other times, other than the first time, when you met?

**MR SINGH**: Sorry, sir?

**CHAIRPERSON**: Are there other times, other than the first time, when you met him? In other words. Mr Myburgh asked you whether you remember the first time you met him. You said no. I am wondering whether that means you never met him or that means you did meet him, but you do not remember the first time, but you do remember other times.

**MR SINGH**: Well, Mr Chair, subsequent to that through  
10 the transaction advisory work, I, obviously, met Mr Pillay.

**CHAIRPERSON**: Ja.

**MR SINGH**: But my first interactions with Mr Pillay would have come about as a result of the introduction by McKinsey as their supply development partner. Prior to that, I do not think I had any interactions with Regiments, Mr Wood or Mr Pillay.

**CHAIRPERSON**: Okay. Mr Myburgh.

**ADV MYBURGH SC**: Thank you. Let me then move to a different issue. I just want to ask your comments to one or  
20 two things before we move forward. Could you please turn up Exhibit BB-27? That is the Transnet POI Reference Bundle.

**MR SINGH**: [No audible reply]

**ADV MYBURGH SC**: And can you go to page 184, please?

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

**ADV MYBURGH SC:** Now, I see something that we have already dealt with, but I, in fairness, just want you to have an opportunity to comment on it. If you have a look at paragraph 5.9.12.6, the second paragraph at page 184. This is part of the Fundudzi Locomotive Report. The finding is:

10 “Molefe and Singh, therefore, mislead the BADC into believing that the ETC of R 38.6 billion excluded the relevant costs and it was Singh who instructed Mohamedi to change the business case to reflect that the relevant costs were excluded...”

Have you got any further comment to make on that?

**MR SINGH:** I think, Mr Chair, we have traversed this particular matter at the previous sessions at the Commission. Other than to say – other than to add to what has already been said, Mr Chair, in this regard. The issue of presenting the revised variants to the board did not only occur, Mr Chair, on the 28<sup>th</sup> of May 2014 as we would see  
20 here. The Board Acquisition and Disposal Committee, Mr Chair, was presented with the final estimated costs of the locomotive contracts in February 2014.

And at that meeting, Mr Chair, the revised costs of the locomotives were disclosed to the Board Acquisition and Disposal Committee. And at that stage, Mr Chair, if I

recall correctly from memory, this was a meeting that happened in February 2014. I think it was the 26<sup>th</sup> of February 2014 and the revised contract value of the locomotives at that time was R 52 billion.

So, the 38 to 55 escalation was disclosed to the board way before we concluded the contracts. And the reasons for the escalations were also disclosed to the Board Acquisition and Disposal Committee at the time. At that meeting, Mr Chair, there was no indication that the  
10 board had disagreed with the fact that we had misled them. They were fully aware of the increases and the reasons for the increases, as we discussed in terms of the escalations and the forex and the batch pricing as well as the R 52 billion, Mr Chair, that I have mentioned did not include the contingencies.

And even when we presented to the board in May, Mr Chair, the minutes will reflect that none of the board members actually queried or actually said that no we have been misleading them in any way, shape, or form. The –  
20 which corroborates the original intention that I mentioned before, is that the objective of the intention by including the words that we included was to convey the fact that the business case is subject to certain economic factors that will change over a period of time.

And that is – was the original intention and only

intention behind, including those words. It was not meant to mislead, or it was not meant to in any way, shape, or form for any other intended purposes.

**ADV MYBURGH SC:** Alright. So, you deny any misrepresentation?

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

**ADV MYBURGH SC:** Can I just take you to page 187 and ask you to look towards the foot of the page? The second last paragraph 5.9.12.21.

10                   “According to the spreadsheet found in Mr Gama’s emails, Callard calculated the ETC of R 38.6 billion...”

And he has given evidence about this.

                  “The table below indicates the breakdown of the R 38.6 billion...”

According to Callard and you will see in the table, there is an amount of R 1.7 million for forex and then over the page, R 2.775 million for escalation and R 2.232 million for contingency. Do you see that?

20   **MR SINGH:** I see that, sir.

**ADV MYBURGH SC:** And then you will under that table, as discussed earlier in the report, the ETC calculated by Callard included forex, escalation, contingency fees amounting to R 6.7 billion. Well, if you add up the three figures that I have just referred you to, you will get to the

six, seven. Correct?

**MR SINGH**: That is correct.

**ADV MYBURGH SC**: Then, could I please take you back to your Bundle 5(c)?

**MR SINGH**: [No audible reply]

**ADV MYBURGH SC**: And this time, if you could go right to the end to page 2337?

**MR SINGH**: [No audible reply]

**ADV MYBURGH SC**: Are you there?

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

**ADV MYBURGH SC**: Now, this is an email from a mister or miss Goma from the DPE, at the foot of the page, sent on the 31<sup>st</sup> of March, addressed to you.

“Good morning, A. While we await Transnet’s official response on the hundred locomotives, we have also noted that the Transnet media release on the procurement of 1064 indicated that the value of the transaction was about R 50 billion.

20 However, the department only approved R 38.6 billion as per the Section 54 PFMA application.

Why is there such a huge difference between what was approved and the actual transaction value and will Transnet be making a formal

submission to explain this difference to the  
Minster?...”

And you then respond, is that correct, on the same day?

At the top of the page.

**MR SINGH**: [No audible reply]

**ADV MYBURGH SC**: Mr Singh?

**MR SINGH**: Yes, sir?

**ADV MYBURGH SC**: You responded at the top of the  
page?

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

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

“Thanks for your email. Yes, indeed. The  
approval was for R 38.6 billion but excluded  
the impacts of foreign exchange and  
escalations...”

Well, that we know not to be correct.

**MR SINGH**: In the context, yes.

**ADV MYBURGH SC**: Ja, sure. And then the second last  
paragraph you say:

20 “Typically, the above items are not included in  
the ETC...”

But they were in this ETC?

**MR SINGH**: Yes, sir.

**ADV MYBURGH SC**: I see.

**MR SINGH**: But I think in the context, Mr Myburgh, we will

have to read the full sentence. The full sentence – the contents of the full sentence:

“Subject to the economic conditions at the time of contracting and are not avoidable and they are mere functions of the economic inputs at the time of contract...”

So, this again, goes to the fact that they may have been included in the business case but at an estimated value.

**ADV MYBURGH SC:** And then you go on to say:

10 “I hope this helps but would also provide to DPE a full report to the transaction once the BOD has approved same...”

**MR SINGH:** That is correct.

**ADV MYBURGH SC:** And we know then that it was – well, the increase in the ETC was approved on 28 May 2014. Correct?

**MR SINGH:** That is correct.

**ADV MYBURGH SC:** Two months or so later?

**MR SINGH:** That is correct.

20 **ADV MYBURGH SC:** Could I ask you, please, to go to Bundle 5(b), your other file, Transnet Bundle 5(b)?

**MR SINGH:** [No audible reply]

**ADV MYBURGH SC:** And could I ask you to turn to page 977?

**MR SINGH:** Nine, sir?



**ADV MYBURGH SC:** 977.

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

**ADV MYBURGH SC:** So, Mr Singh, this is the SAICA finding, The South African Institute of Chartered Accountant. It is a finding – it was made in respect of a – appearing in relation to you and the sanction that imposed is that you were excluded from membership of SAICA. Correct?

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

10 **ADV MYBURGH SC:** Now I just want to take you to paragraph 42 but I am not going to each one of these paragraphs and I am not going to come back to this but by way of illustration, we know that there were a number of findings made against you in relation to the 1064 transaction. You are aware of that?

**MR SINGH:** Yes, sir.

**ADV MYBURGH SC:** And here, the one that we are dealing with now, paragraph 42 at page 8.989.

20 “We, therefore, find Mr Sing guilty of improper conduct in respect of Charge 2 within the meaning of Bylaws 34.2 by conducting himself grossly negligent in failing to ensure that the business case accurately and clearly stated that the initial costs of R 38.6 billion included the potential effects on forex hedging, forex

escalation and other price escalations...”

Do you have any other comment? You have dealt with this already.

**MR SINGH**: I think my comments have been...

**ADV MYBURGH SC**: That is what I wanted to ask you though is. Why is it that you did not participate in these proceedings?

**MR SINGH**: Mr Chair, as I – I think I have been asked this question before and it was based on legal advice that we  
10 do not participate in these proceedings.

**CHAIRPERSON**: It was based on legal advice that...?

**MR SINGH**: That we do not participate in these proceedings.

**CHAIRPERSON**: H'm.

**ADV MYBURGH SC**: Alright. Is that legal advice that you are not prepared to share.

**ADV VAN HEERDEN**: I am going to object at this point, Chairperson. My learned friend knows as well as I do that whatever transpired between Mr Singh and his legal  
20 advisors after a breach(?) ...[intervenes]

**CHAIRPERSON**: Well, he has not demanded that he should share that he – he has asked whether he is prepared to share it and...

**ADV VAN HEERDEN**: But still, Chairperson, that is just another way of getting a witness without informing of the

consequences to waive his privilege and I do object.

**CHAIRPERSON**: No, no, no. He obviously knows these things and he just wanted to confirm that Mr Singh would say whether he is prepared to share it or not. What was the answer, Mr Singh?

**MR SINGH**: Sorry, sir? I did not hear ...[intervenes]

**CHAIRPERSON**: Are you prepared to share it or not?

**MR SINGH**: No, sir.

**CHAIRPERSON**: Ja, okay.

10 **ADV MYBURGH SC**: Fair enough. Could I then ...[intervenes]

**MR SINGH**: Ja, before we move off this point, Mr Chair. I would like to just direct the Commissioner's attention to paragraph 43 on page 989.

**CHAIRPERSON**: Yes?

**MR SINGH**: Basically, they conclude, which states – or paragraph 43 states:

20 “We, accordingly, make no findings in respect of Charge 1 although we do express a view that we would have a difficulty in concluding that Mr Singh was dishonest in misleading the BADC for the Transnet Board...”

**CHAIRPERSON**: Yes.

**MR SINGH**: Ja.

**ADV MYBURGH SC**: Now I am not going to take you

through. There is a serious of findings made against you here. You accept that? I mean, there are findings in relation to the - rail, et cetera, et cetera. There is no – I mean, the point is that your evidence is your evidence. So, insofar as there are findings made against you, you would take issue with them on the basis of the evidence that you ...[intervenes]

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

**ADV MYBURGH SC**: No point in us going through the  
10 findings ...[intervenes]

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

**ADV MYBURGH SC**: Alright.

**CHAIRPERSON**: You are obviously aware of the findings?  
You have read the ruling?

**MR SINGH**: Yes, sir.

**CHAIRPERSON**: Yes. I thought I must ask because somebody else just write that he had not read findings that had been made in another forum against him. So, at least ...[intervenes]

20 **MR SINGH**: No, sir I ...[intervenes]

**CHAIRPERSON**: You are aware?

**MR SINGH**: Yes, I am.

**CHAIRPERSON**: Okay, alright.

**ADV MYBURGH SC**: Chairperson, I see that it is quarter past eleven. Do you intend to take tea? This might be a

convenient ...[intervenes]

**CHAIRPERSON:** Yes, let me take the tea break. The tea break might be longer than 15-minutes because I need to attend to something but at the most it should be 30-minutes. I hope it will be less than that. Okay, we adjourn.

**INQUIRY ADJOURNS:**

**INQUIRY RESUMES:**

**MECHANICAL INTERRUPTION:** [01:29:31]

10 **CHAIRPERSON:** ...break maybe at half-past or about five minutes or so for me to complete what I need to complete.

**ADV MYBURGH SC:** So, you will tell me when...

**CHAIRPERSON:** Yes, I will.

**ADV MYBURGH SC:** Thank you.

**CHAIRPERSON:** Ja, okay.

**ADV MYBURGH SC:** Mr Singh, I would like to – I think we were still in the Bundle 5(b) file. Could I ask you – let me take you to page 694. That is the second money-flows report that we have already dealt with. This is something  
20 arising from Mr Pita's evidence that I would like your comment on.

**MR SINGH:** [No audible reply]

**ADV MYBURGH SC:** Now you will remember that the second money-flows report deals, amongst other things, with the confinement of those four contracts to McKinsey?

You remember that?

**MR SINGH**: Yes, sir.

**ADV MYBURGH SC**: And if you go to page 697, you see some reference to that at paragraph 8. Those are the contracts that we are familiar with. The Coal Line Contract, MNPP Contract, et cetera. Now the annexures to this report include the RFP submitted by McKinsey but I want to take you to Annexure 3. If I could ask you, please, to turn to page 743?

10 **MR SINGH**: 743?

**ADV MYBURGH SC**: 743. Annexure 3 comprises a few pages of emails and perhaps in the interest of time, I can just take you to page 745. You will see that this exchange of emails is between Hendren Pillay of Regiments and Janine Kamaar of McKinsey. And if you have a look at 745, at the foot of the page or the middle of the page, Kamaar writes: Hi, Hendren. And it is headed: RE: SD Commitment and this is in June of – 13 June 2014.

20 And what you see from these emails, Mr Singh is that this is a costing of the skills development component. That is what McKinsey and Regiments are interacting about. And she says:

“I hope you are well. I have noticed that the contract values you are using are different to the contract values I have on my side.

I have attached a spreadsheet highlighting the differences...”

Do you see that?

**MR SINGH**: Yes.

**ADV MYBURGH SC**: And then the last paragraph says:

“Once this has been done, please could you resend us the ST value summaries and your SD plan so that supply development plans, et cetera...”

10 And then at the top of the page, you will see that Mr Pillay responds. He says: Hi, Janine. And his response is:

“The numbers that I am using is based on the Anoj’s memos to Brian regarding these projects.

It does not include expenses...”

And you see that comes from him because if you turn to page 744, you will see at the foot of the page Pillay, 13 June to Kamaar. Do you see that?

**MR SINGH**: I see that, sir.

20 **ADV MYBURGH SC**: Now what I just want to ask you about is. When Mr Pita gave evidence, he, in fact, alerted us to this. He made the point, as I recall, that this is highly irregular that Regiments, in the form of Mr Pillay, had the memos between yourself and Brian, assuming that to be Brian Molefe, in relation to these projects. The

memos that we went through before. Would you agree that it would be utterly irregular for them at this point in time where they are looking to complete their RFP and to put in a tender, albeit on a confined basis, to have sight of those memos?

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

**ADV MYBURGH SC**: But perhaps I could just take you to those memos. If I could ask you to go to Volmink, Bundle BB-2.1(d)?

10 **MR SINGH**: [No audible reply]

**ADV MYBURGH SC**: And could I ask you, please, to turn to page – right hand side, PSV 1283?

**MR SINGH**: 1283?

**ADV MYBURGH SC**: Ja, 1283. There is – as I said there are four memos. Ja, but let us just – the one 1283 deals with coal. And you confirm that that is a memorandum from yourself to Brian, Brian Molefe?

**MR SINGH**: That is correct.

20 **ADV MYBURGH SC**: And I am not going to take you to all of them because I do not think this is contentious but there are similar memos, Mr Singh, in relation to each of the projects. Correct?

**MR SINGH**: That is correct.

**ADV MYBURGH SC**: And it was upon the adoption of these memos that McKinsey were then invited to put in an



RFP?

**MR SINGH**: That is correct.

**ADV MYBURGH SC**: Do you have any idea then how Regiments come to be in possession of these memos?

**MR SINGH**: I have no idea, sir.

**ADV MYBURGH SC**: And would you like Mr Pita consider it highly irregular that they, on the face of 745, were in possession of them?

**MR SINGH**: Yes, that would be so, sir.

10 **ADV MYBURGH SC**: I want then to go back to where we have ended off last time and that is in relation to the question of the justifiability of the increase in the ETC. Now what we know is that the increase was a large one. It acquitted to 41%, R 15.9 billion in just over a year. Mr Choubey – and we are going to come to your evidence and that of your expert but let me just summarise it so that we locate ourselves. Choubey at times that this increase was not reasonable.

20 According to him, 11% increase to R 42.8 billion would have been reasonable or an 18% increase to R 45.4 billion align for Transnet's engineering costs would have been reasonable. Put differently. At best, on his opinion, the increase was R 9 billion too high which equates to approximately 56% too high. So, you are familiar with his evidence?

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

**ADV MYBURGH SC:** Now in the interest of time, Mr Singh, what I intend to do or what I plan to do was to ask you, really, about four things. The first related – well, the first related to the hurdle rate, the second batch pricing, the third cost escalation, and the fourth contingencies. We have already dealt with the hurdle rate. I am not going to return to that.

So, I am not going to go through all the aspects of  
10 the increase. I am going to confine myself to leading you  
on the batch price, the cost escalation, and the  
contingencies. We know that those three things made up, I  
think, just over half of the R 16 billion increase. So, I am  
going to focus on those three things. If I may?

**MR SINGH:** That is fine, Mr Myburgh. Honestly  
...[intervenes]

**ADV MYBURGH SC:** Sure. Just on the issue of the  
hurdle rate. I do not know if that is what you wanted to  
address. I am not going – I do not intend to go back to  
20 that. Is there anything that you want to add in relation to  
the hurdle rate, the questioning previously?

**MR SINGH:** Yes.

**ADV MYBURGH SC:** Alright.

**MR SINGH:** Just, there was – Mr Chair, if I may? On the  
hurdle rate, you will recall that Mr Myburgh lead some

propositions in this regard in the previous hearing and the issue was the, let us call it, the allegation of the manipulation of the hurdle rate to justify the project. And you will recall, Mr Chair, this was the 18.56% versus the 15.2% versus the 16.3% issue.

Mr Chair, and one of the questions that Mr Myburgh had put to me was: Do we know if the project was actually an NPV positive project at a hurdle rate of 18.56%? Because that was the official hurdle rate at which  
10 the business case was approved.

Mr Myburgh then went on to say that on approaching Mr Choubey, Mr Choubey indicated that this would probably be a three-to-four-week exercise to be able to understand that. Mr Chair, that disturbed me a little bit and then I went on to do some investigations of my own.

So, if we have reference to the business case, the approved business case, Mr Chair, we will find that there are sensitivities relating to the hurdle rates and various other components and maybe, Chair, you will allow, maybe  
20 we can actually go to the business case, and I can demonstrate the effect of the 18.56% on the revised DTC.

**CHAIRPERSON:** Okay, let us go there.

**ADV MYBURGH SC:** The business case found in Callard, BB4B at page FQC402.

**MR SINGH:** 402, you say?

**ADV MYBURGH SC:** Ja, I think it starts 402.

**MR SINGH:** So, Mr Chair, you will recall that when Mr Myburgh put this proposition to me my first response was that the business case was prepared on a conservative basis and actually did not conclude what we had termed operational issues relating to the acquisition of additional locomotives. So if we had to look at the end state of the revised ETC of 55 billion and its impact on the original business case, we would then have to include these let us  
10 say operational efficiencies.

If we go to page – let me just get it here and I will give you the reference, if we have regard to FQC423.

**CHAIRPERSON:** 423?

**MR SINGH:** That is correct.

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

**MR SINGH:** If you then look, Mr Chair, at the bottom of the page you will see a heading called operational efficiency and then if you look at the fourth line in that paragraph and it says:

20 “Rightly and conservatively the fleet plan does not estimate unproven potential ...[intervenes]

**ADV MYBURGH SC:** Sorry, Mr Singh, will you not just read into the microphone? I beg your pardon.

**MR SINGH:** Oh, sorry. On line four, Mr Chair, you will see it says:

“Rightly and conservatively the fleet plan does not estimate unproven potential operational efficiencies that could be achieved from optimisation of flows based on new technology.”

And it goes on to explain what those new technologies are. So that basically confirms that the business case did not account for these operational efficiencies.

Mr Chair, if you then have to go to – I will give you a reference now – if you then have to go to, Mr Chair, page  
10 FQC452.

**CHAIRPERSON:** Yes?

**MR SINGH:** Mr Chair, there you will see a table, it is marked Exhibit 38.

**CHAIRPERSON:** Yes.

**MR SINGH:** And then you will see, Mr Chair, in that table there are blocks, one, two, three, four blocks. So we are looking at the fourth block and it is numbered 7 in a small circle. If you can see that?

**CHAIRPERSON:** Ja.

20 **MR SINGH:** Then if you move towards the right, Mr Chair, you will see that there is an NPV of 2.7 billion.

**CHAIRPERSON:** Yes.

**MR SINGH:** Then you will see an NPV of negative .8 billion.

**CHAIRPERSON:** Yes.

**MR SINGH**: And then you will see an NPV of 6.3 billion.

**CHAIRPERSON**: Ja.

**MR SINGH**: So, Mr Chair, the relevance of these numbers is as follows. So item 7, which is that block that I have referred you to, basically tries to understand what happens to the NPV if you have a 5% improvement in operational efficiency or you have a 5% decrease in operational efficiency and it measures it against the base case NPV, which was the 2.7 billion. Okay? Which was, as we know,  
10 is in the business case and that 2.7 billion, Mr Chair, is at the 18.56% hurdle rate.

So, Mr Chair, if you then move – as I said, the 2.7 billion is at 18.56, so that base case. If you then have a 5% deterioration in operational efficiency as a result of the new locomotives, that 2.7 billion becomes a negative .8 billion which is the second NPV number. But if you then have a 5% increase in operational efficiency, you would then have an NPV of 6.3 billion which means the 5% of operational efficiency captures and additional 3.6 billion in  
20 NPV value.

Now, Mr Chair, why is this so relevant? Because you would recall that in the board memo, that we submitted to them, we were fully transparent with the board to say to them that at the original hurdle rate of 18.56% at 55 billion the NPV would be 1.2 billion negative. So that was

contained in the board memo.

So what we are now saying is, if we had taken into account the operational efficiencies that the business case did not take into account, we would have had a 3.6 billion additional NPV at this table, that was included in the business case, which would be more than sufficient to offset the 1.2 billion negative NPV that we disclosed to the board.

10 So in summary, Mr Chair, if we had to rewrite the memo to the board we would probably have to say that the operational efficiencies were not included in the business case and in the original NPV characterisation due to us wanting to be conservative and we have disclosed that in the business case. Adjusting for that you would have had a R3.5 billion improvement in the NPV which would offset the negative NPV of 1.2 billion at the original 18.56% hurdle rate.

20 So, Mr Chair, the 15.2%, I have done investigation in regard that as well and the 18.2% hurdle rate, Mr Chair, actually is not of my making as Mr Laher alluded to in his affidavit. That 15.2%, Mr Chair, was actually calculated by Group Financial Planning which is a function within my area at Transnet as CFO at the time and there was a gentleman called Thabo Lebelo who was heading up that division at the time and he alluded to the fact that there

were very specific reasons as to why the 15.2% was calculated and shared with TFR, which was Transnet Freight Rail at the time, which was then used in arriving at the let us call it revised NPV.

But, Mr Chair, as I have demonstrated, whether you look at the original 18.56, which is the worst case scenario, the NPV of this project would still have been positive. If you look at the 15% it would have been even more positive and obviously at a 16%, it would have been  
10 positive still. So at any of these hurdle rates that one would choose, the business case for the locos still was positive.

**ADV MYBURGH SC:** So, Mr Singh, can I ask you to go please to page 727, this is the ETC memo. The same bundle, 727.

**MR SINGH:** Sure.

**ADV MYBURGH SC:** At paragraph 80. Are you there?

**MR SINGH:** 7...?

**ADV MYBURGH SC:** So it says:

20 “The updated entry B results in a positive NVP (sic) of 11.68 billion at the new hurdle rate of 15.2.”

Do you ...[intervenes]

**MR SINGH:** Sorry, Sir, 7...?

**ADV MYBURGH SC:** 727.

**MR SINGH:** 727.



**ADV MYBURGH SC:** But previously you accepted that that is an error, the 15.2, it should be 16.24. Do you change your evidence now?

**MR SINGH:** 727?

**ADV MYBURGH SC:** 727.

**MR SINGH:** I am there.

**ADV MYBURGH SC:** Paragraph 80. Previously you accepted that 15.2 was wrong and it should have been 16.24. Do you change your evidence?

10 **MR SINGH:** Mr Chair, based on my discussions with Mr Lebelo, he has indicated that the 15.2%, according to his recollection, was approved at some point in time but he has subsequently left Transnet, so he does not have access to his emails or any documentation, so he does not have the ability to be able to give us indications as to where this was approved.

**ADV MYBURGH SC:** But we have seen your policy that you signed.

**MR SINGH:** Yes.

20 **ADV MYBURGH SC:** And that reflected 16.24.

**MR SINGH:** Yes.

**ADV MYBURGH SC:** Alright.

**MR SINGH:** Yes.

**ADV MYBURGH SC:** So there is one error. And then you say the NVB (sic) would become negative, R167 billion at

the original hurdle rate of 18.56. You say that is wrong as well.

**MR SINGH**: No, no. So in arriving at this.

**ADV MYBURGH SC**: Yes?

**MR SINGH**: We actually had full transparency with the board to say that we have at 18.56 a negative NPV.

**ADV MYBURGH SC**: Yes.

**MR SINGH**: Okay? So in order to the deal with the proposition that this was a loss making project, I am  
10 suggesting that ...[intervenes]

**ADV MYBURGH SC**: No, I understand that.

**MR SINGH**: That it is not an error.

**ADV MYBURGH SC**: Well, what you are saying is that it should not read that. What should it read?

**MR SINGH**: Mr Chair, what we are trying to say is that if we have to compare the original 18.56 you would have a negative 1.6 billion NPV. Taking into account the fact that the business case did not accommodate the operational efficiencies that would accrue due to new equipment, if we  
20 adjust for that, you will have a positive NPV.

**ADV MYBURGH SC**: Alright, so that should have said it was positive even at 18.56?

**MR SINGH**: Yes.

**ADV MYBURGH SC**: So it is wrong. In one paragraph you have got two errors.

**MR SINGH**: I would not classify them as errors.

**ADV MYBURGH SC**: Alright, I see. But just so that you understand it, the – what is not dealt with in this paragraph is the officially approved by you hurdle rate of 16.24. Now we can – perhaps I can just put this to you and we put in an affidavit if it is contentious. We contacted Mr Callard to find out whether or not he could run the sums for us at the hurdle rate of 16.24% and Mr Callard still has access, as I understand it, to the McKinsey model because there was a  
10 model that was used in producing this kind of information and he is unable to run those figures, he is unable to tell us what the entry B, whether it would be positive or negative at 16.24. Apparently it is a very big job if you do not have the model. You say it is not so.

**MR SINGH**: Well, I have just done for you.

**ADV MYBURGH SC**: I see. Well, what have you done?

**MR SINGH**: I have demonstrated that this project is still NPV positive at 18.56.

**ADV MYBURGH SC**: Alright.

20 **MR SINGH**: So if you would look at the 16% hurdle rate it would be probably bigger, the NPV would be larger.

**ADV MYBURGH SC**: I see. Alright, Mr Singh, so you would not agree with what Mr Callard has to say. And Mr Choubey, when you said that I had said that it would take him three weeks, that was to run the 16.24. Of course he

does not have the same access to information perhaps as Mr Callard has but you are doing a sort of a broad analysis, you come to the conclusion that it would be positive even at 18.56.

**MR SINGH**: Based on the business case and information we have, yes.

**ADV MYBURGH SC**: Excepting your evidence that you have given about how you interpret that table.

**MR SINGH**: Well, that is the officially approved business  
10 case that was prepared by Mr Callard.

**ADV MYBURGH SC**: But the point is, that is not what you told the board. You come with that version now when the concern is raised.

**MR SINGH**: Well, Mr Chair, as I said, the concern should have been raised by the board at the time when they were presented with the R1.6 billion negative NPV project.

**ADV MYBURGH SC**: The concern should have been raised by the board?

**MR SINGH**: Yes.

20 **ADV MYBURGH SC**: You gave this – you presented this memorandum to the board.

**MR SINGH**: Yes, in full disclosure that there was a negative NPV.

**ADV MYBURGH SC**: Let us then – have you got anything else to say about the hurdle rate?

**MR SINGH**: No, Sir.

**ADV MYBURGH SC**: Do you have any explanation why you did not insert in your memo your officially approved hurdle rate?

**MR SINGH**: I think at this point in time this was obviously the numbers that were run that was included in here was done as of the contract signing date which was obviously the end of March and that is why in my affidavit we had the three columns which you pointed out at the end of the last  
10 session which was, you know, the middle column which was the 31 March 2014.

**ADV MYBURGH SC**: Yes, I think we went through that.

**MR SINGH**: Yes.

**ADV MYBURGH SC**: Have you got anything to add to that?

**MR SINGH**: No.

**ADV MYBURGH SC**: Alright. So can I ask you to go – perhaps we can just keep this document open to the ETC memo, as we call it, which you find at page 714.

20 **MR SINGH**: I am there, Sir.

**ADV MYBURGH SC**: And perhaps I could ask you to turn because the increases are conveniently set out in a schedule or table at 718. Now, Mr Singh, just again to summarise the position and then we will go into the versions, we are now dealing with batch pricing.

**MR SINGH**: Okay.

**ADV MYBURGH SC**: 2.7 billion of the 15.9 billion increase was attributable to batch pricing arising from a reduction in batch sizes to 40 and 60%. Do you agree with that?

**MR SINGH**: That is correct.

**ADV MYBURGH SC**: And what happened is there were two bidders for diesels and two bidders for electric locomotive respectively, correct?

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

**ADV MYBURGH SC**: And just for the assistance of the – for the information of the Chairperson, that appears from, Mr Chairperson, 718 you see there is a column on the right hand side and then to the left of the figures you see A, B, C, D. So that is note D, it says:

“Batch pricing adjustment for reduction of batch size to 40/60%.”

And the cost of that, Mr Singh, as you have confirmed, was 2.7 billion, correct?

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

**ADV MYBURGH SC**: Now what I am going to do on each occasion is to take you to Mr Choubey’s evidence just so that you know how I am going to deal with it. I will then take you to your own evidence and insofar as your expert also deals with it, we can go to your expert’s evidence and

then we will go to Mr Choubey's reply. So you can feel free to respond whenever you want to but you will certainly get an opportunity. So we will first deal with Choubey, then with you/your expert and then Choubey's reply.

You can perhaps keep this page open because you are going to come back to it. Now Mr Choubey, when I talk about his evidence, he produced a report that he testified about and that you find at EXHIBIT BB8(b.1). If you could turn – there are only one set of numbers in this bundle,  
10 they are red numbers, page 40.

Now, Mr Singh, you will appreciate in the interests of time, I am not going to go through everything, we have your affidavit, submissions will have to be made and the Chairperson will have to decide this question on them. I am going to highlight the things that I would like you to deal with and sometimes I am going to paraphrase things.

So at page 40, paragraph 9.5.11, Mr Choubey says – sorry, 9.54.11:

20 “There are two elements to consider, batch pricing and breakpoint pricing. Bidders ...[intervenes]

**CHAIRPERSON:** I am sorry, Mr Myburgh. I do have page 40 but the paragraphs you mentioned do not seem to be here so maybe we have got the wrong bundle. Is it BB8(b.1)?

**ADV MYBURGH SC:** Yes and 2 in the same bundle. So

BB8(b.1).

**CHAIRPERSON:** Yes and page 40 I have got but the paragraphs I have got are 16.30, 16.31 to 33.

**ADV MYBURGH SC:** I think your registrar has another bundle for you.

**CHAIRPERSON:** Oh, thank you. Yes, I have got it.

**ADV MYBURGH SC:** So at 9.54.11, Mr Choubey says:

10 “There are two elements to consider, batch pricing and breakpoint pricing. Bidders provided indications of what it would cost them in the event of a contract orders being terminated. The request for proposal stated that Transnet did not expect bidders to charge for changes in quantity. In the circumstances, batch pricing should not have been taken into consideration. I have therefore not allowed for a batch adjustment cost.”

20 Then if I could ask you to go to page 45. That, incidentally, was Mr Choubey’s summary at the beginning. If you go to page 45 he then deals with this further under the heading Batch Adjustment Cost and he says at paragraph 10.15:

“The RFP in section 3.1 defined breakpoint pricing as a premature termination of a locomotive order by Transnet. It outlined the period in which break pricing would apply which was the delivery period.



I interpret this to mean that break pricing could only apply once a contract was in place between Transnet and the OEMs. The batch price adjustment cost in the memorandum appears to be breakpoint pricing cost. The idea behind breakpoint pricing is that financial resources would have had to be committed by the OEMs to ensure that Transnet's order from the contract stage is met."

And then if you drop down to the next paragraph:

10 "The pricing schedule provided by bidders as per the RFP requirements were in respect of breakpoint pricing. Using the breakpoint pricing schedules provided by the bidders, a figure of 7.2 billion was obtained."

A figure that you have mentioned.

20 "Assuming OEMs were contracted and orders were terminated at the point where CNR and GE had supplied 232 and 233 diesel locomotives respectively instead of 465 and BT and CR had supplied 240 and 359 electric locomotives respectively instead of 599."

And then if you go over the page at paragraph 10.17:

"The RFP in section 3.1. Prior to requesting breakpoint pricing schedule stated that Transnet required flexibility to exercise options including

postponing, suspending or changing quantities and that Transnet did not expect to pay a price premium to exercise this option. Transnet exercised this option where it accelerated the delivery schedule and does not appear to have paid a premium for it. I concluded that because Transnet expected to pay a price premium in the event of a premature termination of orders after contracting and not on splitting of orders prior to contracting with OEMs.

10           The cost for splitting the orders was not warranted.”  
So that is what Mr Choubey says and perhaps I could just take you to the point that MNS makes in its report which it makes perhaps a lot more succinctly. Could you turn please to the POI bundle, EXHIBIT BB27?

**MR SINGH:** POI?

**ADV MYBURGH SC:** Ja, so keep that open.

**MR SINGH:** Yes.

**ADV MYBURGH SC:** EXHIBIT BB27. Could you turn to page 332?

20   **MR SINGH:** Black or red?

**ADV MYBURGH SC:** No, black.

**MR SINGH:** 332?

**ADV MYBURGH SC:** 332, yes. So right at the foot of page 332, MNS at paragraph 4.1.11, you see batch pricing and D, that is the D in the schedule. Quite usefully they

quote for us, Sections 3.1 of the RFP relating to the acquisition of 465 diesel and 599 electric locomotives reads as follows:

10           “Transnet requires flexibility in exercising options for the acquisition of the locomotives. These options may include suspending or postponing the delivery of the locomotive until a date later or change in quantities. Transnet, however, does not expect to pay a price premium should it exercise any of these options.”

Do you see that?

**MR SINGH**: I see it.

**ADV MYBURGH SC**: And then they go on to say:

          “Our understanding is that this flexibility was required to enable Transnet to adjust its orders within the seven timeframe and therefore Transnet expected the OEMs to price this option in. We have therefore not allowed for batch pricing adjustment price in our analysis.”

20 Really on their interpretation of 3.1 of the RFP. So, Mr Singh, can we now go to your version and let me take you please to bundle 5C and can I ask you please to go to page 1452?

**MR SINGH**: 1452?

**ADV MYBURGH SC**: Yes?

**MR SINGH**: Black? Red? Black?

**ADV MYBURGH SC**: Unless I tell you otherwise, they are always black.

**MR SINGH**: Okay. 1452?

**ADV MYBURGH SC**: Ja. And you deal with this ...[intervenes]

**CHAIRPERSON**: Or, Mr Myburgh, this might be the convenient time for that five minutes adjournment.

**ADV MYBURGH SC**: Thank you.

10 **CHAIRPERSON**: I am sorry about this, but I just need to fix something. We will adjourn for five minutes.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON**: Can I quickly make this order that I need to make?

**ADV MYBURGH SC**: Thank you, Chairperson.

**CHAIRPERSON**: To make an amendment so that we are done.

**ORDER**

20 With regard to the order that I made on 13 August 2020 in the matter of *ex parte* application of Ezias Petrus Leonard on behalf of those persons listed in annexure A of the application, I wish to make the following order that amends the order that I made on that day.

That order will be amended by the following

paragraph which I will say is to be read as – amending that order, the paragraph reads as follows:

10           “The original affidavit, as redacted, of witness 3 may be made available to the attorneys or to the legal team representing Mr Anoj Singh on a confidential basis. It will be made available to the evidence leader of the Commission in the Transnet work stream. It is recorded that the witness 3 has indicated that he has no objection to this amendment of the order.”

Have I captured it correctly?

**ADV MYBURGH SC:** I think so, yes, Chairperson.

**ADV VAN DEN HEEVER:** We are quite happy, Mr Chair.

**CHAIRPERSON:** Yes. Okay, alright, thank you.

**ADV MYBURGH SC:** Thank you.

**CHAIRPERSON:** Thank you, I think the registrar will just – or the legal team can make sure that later on the order is printed so that it is available in hard copy.

**ADV MYBURGH SC:** Thank you, Chairperson.

20 **CHAIRPERSON:** Ja, thank you.

**ADV MYBURGH SC:** So, Mr Singh, I think what I am – as I discussed with you in the break, what I will do, is I will paraphrase Choubey, I will then take you various parts of your affidavits where you deal with the question, maybe just give a thumbnail sketch of that and then you give you

an opportunity to respond.

So if I could take you to page 1452, you deal with batch pricing from paragraphs 90 to 101. At paragraph 94 you say:

“The RFP contemplated splitting. However, Transnet reserved the right not to pay a price premium or excising either the splitting or the break pricing options.”

95:

10 “I reject the finding of MNS and the opinion of Choubey regarding the batch pricing for the following reasons.”

And you go on then to give a definition of premium. You say at paragraph 100:

“It is all relevant time understood that Transnet move for price batching the RFP contemplated a reasonable cost. Transnet never contemplated paying a zero cost for batch pricing.”

20 And then if I could take you to page 185, you deal with it again.

**MR SINGH**: Paragraph?

**ADV MYBURGH SC**: Sorry, 1485, from paragraphs 233 to 239. You say at 233 that:

“Choubey seems to be confusing two concepts that are different. These are concepts of batch pricing

and break pricing.”

And then if I could ask you to go to 1489, you deal with the subject again in paragraphs 257 at the foot of the page to 261 and again you deal with the question of break pricing and batch pricing. But just so that – perhaps I can just make this point. What Mr Chaube’s evidence is, it is not clear to me that he misunderstood the distinction, what he says is the 2.7billlion figure he assumes that that came from ...[intervenes]

10 **CHAIRPERSON:** I am sorry, I see Mr Singh you seem to have run out of space for the files there, do you want some to be put behind you, or will you manage?

**MR SINGH:** I think these are relevant ...[intervenes]

**CHAIRPERSON:** Oh for now, okay, okay, alright.

**ADV MYBURGH SC:** So as I understood his evidence he was saying well he could do the sums and the 2.7million related to break pricing. So, essentially, though, it seems that the controversy relates to this paragraph or Section 3.1 in the RFP, which has been quoted, there is a whole lot  
20 of other things said, but what is your response to that?

**MR SINGH:** I think, Mr Chair, for us to navigate through the issue of batch pricing, I think it is important for us to understand the reasoning behind the need for - let us call it, the splitting and for that Mr Chair, we probably need to reference the business case and that will give a

background behind why we needed to split in the first place, and we can then take it from there and riding forward until we actually incur the cost.

**ADV MYBURGH SC:** Sorry could I just say this insofar as in the interest of time, from the legal team's point of view, we take no issue with the decision to split. It is really the issue of the cost in relation to that, because we know that the decision to split that was authorised by I think the BADC and the Board, and in fact I think you correctly point  
10 out that in Fundudzi files that there is nothing necessarily irregular about that.

**MR SINGH:** Yes.

**ADV MYBURGH SC:** It is the question of cost that I would like to direct you to in particular, and it is the fact that it added on the 2.7billion. So I do not want to prevent you from going to the business case if you want to, but we do not take any issue with the splitting per say, it is the cost.

**MR SINGH:** Okay, Mr Chair the – in summary, okay, the reason for the rationale for splitting it emanated from the  
20 risk that was included in the business case if I recall on page 8 and 48 of the business case, there was a short - the business case identified a shortfall of about 50million tons and 150 locomotives.

The business case further identified, Mr Chair, the fact that the - in order to mitigate this risk that was



identified that no more than two OEM's per locomotive type will be awarded the contract to supply the locomotives, that is recorded in the business and we can go to it, but in the interest of time probably we can take it at face value for now, but it is recorded, Mr Chair and Mr Chair the business case further goes on to actually identify the impact that the splitting will have on the total cost of ownership of the electric locomotives and the diesel locomotives.

10           And the business case identifies that there is a bigger impact on the electric locomotives rather than the diesel locomotives in terms of the splitting. The business case further then in the procurement strategy of the business case section identifies, again, the fact that we would need to split the award.

          And I know Mr Myburgh is interested in the cost but in order to understand the cost, you need to understand the build-up for why that cost actually was incurred and this is the reasons therefore is contained in the business  
20 case, as I have just explained. The RFP Mr Chair, as quite correctly pointed out does contemplate these three options, splitting, breaking and terminate.

          It does contemplate the fact that we said we will not expect the price premium, as we have mentioned already, that in my understanding does not mean we are not paying

anything. It means that we will pay something but a reasonable cost. Mr Chair, in terms of the - dealt with RFPM dealt with the business case, Mr Chair, as Mr Myburgh has already alluded to the fact the Board was fully aware of the fact that the splitting - they actually approved the splitting.

The BADC had its meeting on the 24<sup>th</sup> of February, I think it was or 26<sup>th</sup> of February were given the financial implications of the split being the 2.7billion number that we  
10 talked about. So the Board was aware of that, before we had actually signed the contract.

The Fundudzi Report as we said, also concurs that the splitting was allowed by the RFP and in actual fact, they actually go on to say that the splitting was actually allowed for by the PPM, or the Procurement Procedures Manual of Transnet and therefore they did not find anything untoward into it. They actually went on further to say that the splitting of the award actually went on to save Transnet some 660million, Mr Chair.

20 So from that perspective, Mr Chair, the - if you look at all of these things that I have outlined, it is just a matter of consequence that the 2.7billion was a consequence of all of these decisions that have been taken up to that point in time.

**ADV MYBURGH SC:** So I just want to correct one thing,

the rationale is understood and the fact that I think the procedure manual allows for the splitting. I just must correct myself, there is an issue around the procedure in this regard, you know, that Mr Laher raised it with you – I will come to his evidence in a moment.

But so as I understand what you saying, it is you accepted the RFP said that Transnet does not expect to pay a price premium, you saying well, that we did not pay a premium.

10 **MR SINGH:** Yes.

**ADV MYBURGH SC:** You cannot expect to pay nothing; it is really a fight about premium.

**MR SINGH:** Exactly.

**ADV MYBURGH SC:** Okay, so can I take you to Mr Chaube's response to you, and then I will give you another chance to respond. You find his response at page 1827.

**MR SINGH:** Which one?

**ADV MYBURGH SC:** Sorry, it is your Bundle 5C.

**MR SINGH:** 18?

20 **ADV MYBURGH SC:** One, I beg your pardon, 1827 not 57.  
Are you there?

**MR SINGH:** Yes.

**ADV MYBURGH SC:** Now what Mr Chaube says is he quotes at 64 and 65, the RFP's and the words:

“That Transnet however does not expect to pay a

price premium.”

Do you see that, in the quotations in 64 and 65. Then he says at 66:

“Mr Singh is therefore not correct in submitting the Transnet reserve the right not to pay a price premium for excising the change in quantities splitting or break pricing options.”

At 67, he says:

10 “In line with the definition of a price premium noted by Mr Singh I submit the following.”

He says:

“The benchmark or ordinary price in question as per Table 2, of the memorandum on the increase in ETC.”

You know what the memo is:

“Labelled best and final offer per Board submission excluding hedging and escalation circa 29.4billion.”

Then sub 2:

20 “The price premium or sum added to the ordinary price above charge to Transnet for changing quantities as per Table 2 of the 1064 memorandum labelled batch pricing adjustment or reduction of batch size to 40/60% or circa 2.8billion. In percentage terms, this represents approximately 9% of the benchmark or relative price of 29.4billion.”

At 68:

“Mr Singh's submission that Transnet never contemplated paying a zero price premium or changing quantities is therefore unfound.”

Do you have anything to add to this or to what you have already said?

**MR SINGH:** No Mr Chair, I think in terms of the - we can continue splitting hairs about price premium and reasonableness of the price premium, Mr Chair, it is a  
10 fundamental and accepted commercial basis that fewer items of something cost more than a larger quantity of the same item. So if you buy a 1000 of something it cost you per unit less than if you buy ten of it, that is the concept that we actually discussing here.

The issue that the fact that this quantum was contemplated in the business case was the rationale put forward for it in the business case, there was contemplated in the RFP, the Board exercised the option understanding that there was going to be a financial consequence to the  
20 fact that this exercise - this option was exercised.

That quantum has been quantified at 2.7billion and Mr Chair, the reason why this 2.7 appears in the reconciliation for the Board is because, notwithstanding the fact that the business case contemplated as I have outlined all of the issues relating to batching and the

consequences of batching, it did not quantify a value for batching.

They contemplated the act of batching but it did not include a value for batching because it did not know, when the business case was drafted by Mr Keller, there was no way of quantifying that, exercising that option and therefore, the RFP was prepared in such a way that if we needed to assess this exercising of an option, there will be sufficient information available from the tenders to be able  
10 to identify and quantify what this impact would be. And that is why the RFP was structured in a manner that requested this information from the OEM.

**ADV MYBURGH SC:** Chairperson, I see it is just past 1 o'clock.

**CHAIRPERSON:** We can do one of two things in recognition of the stop, start, stop, start for which I am responsible for this morning. From my point of view, if it is convenient to continue maybe until half past one, we can do so but if we may, as well stop at one and then continue  
20 at two, that is fine, also.

So I am just checking with you in terms of what you have...[intervene]

**ADV MYBURGH SC:** I certainly would value the opportunity to see if I can carry on at least for another half an hour to see if I can at least finish this and maybe

another topic.

**CHAIRPERSON:** Yes, I think there should be no objection, ja, let us continue, ja.

**ADV MYBURGH SC:** Alright, so what do the words price premium mean? I mean, I understand what you say, when it says that the RFP that Transnet however does not expect to pay a price premium. What was contemplated there as far as you concerned - what was it not expected to do?

**MR SINGH:** Well, it was certainly not expected to not pay  
10 anything because as I have said, it is a normally commercially acceptable principle that if you are buying a 1000 of something, it would probably cost...[intervene]

**ADV MYBURGH SC:** But then what are those words mean Mr Singh that is I think what I am getting at? I understand your position, but what do the words mean?

**MR SINGH:** It would mean that we have to pay something.

**ADV MYBURGH SC:** Precisely, it said, it does not expect to pay anything. It does not expect to pay a premium.

**MR SINGH:** Yes, which means we would be expecting to  
20 pay something but not excessive.

**ADV MYBURGH SC:** So is that your interpretation?

**MR SINGH:** Yes.

**ADV MYBURGH SC:** You would pay something, but not excessive?

**MR SINGH:** Yes.

**ADV MYBURGH SC:** Now, I mentioned to you the evidence of Mr Laher again in the interest of time, I can take you to his affidavit, I can even take you to a transcript, which you probably seen. I mean, to paraphrase during the course of the negotiations, you would have seen that Mr Laher raised with you and I think Mr Gianni, his concerned about this.

And in particular, he said well look, if we are going to split these batches, should we not have done this and  
10 should we even go out to tender again because there might be some people who could actually meet the same price on a reduced batch. Do you recall that concern being raised by Mr Laher?

**MR SINGH:** No.

**ADV MYBURGH SC:** Okay, let me take you to his...[intervene]

**MR SINGH:** I am aware of his affidavit and I know what he said.

**ADV MYBURGH SC:** Okay, so you say that did not  
20 happen? **MR SINGH:** No.

**ADV MYBURGH SC:** Well, then I need to take you to portions of it.

**MR SINGH:** Yes, sure.

**ADV MYBURGH SC:** You can comment on that, let us go to BB4F, where you will find this, is this is in Transnet



Bundle 4A, are you there?

**MR SINGH:** I have got...[intervene]

**ADV MYBURGH SC:** Transnet Bundle 4A.

**MR SINGH:** Not BB4A?

**ADV MYBURGH SC:** No, so it is Transnet Bundle 4A not BB4A.

**MR SINGH:** Oh.

**ADV MYBURGH SC:** So it is one of the latter files.

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

10 **ADV MYBURGH SC:** So this is a file that is got a number of dividers, can I take you to the last divider, that is BB4F, are you there?

**MR SINGH:** Yes.

**ADV MYBURGH SC:** And can I ask you please to go to page YIL14. That is on the right and on the left hand side we can perhaps stick - it is 234. Are you there?

**MR SINGH:** No, I am there.

**ADV MYBURGH SC:** So at 51 Mr Laher says:

20 “During one caucus I raised with Singh and Gianni, the issue of the original bid price per unit must be retained by bidders even though the batch sizes were reduced. I pointed out that if not, it would mean that their prices may be higher than the other unsuccessful bidders who could have given lower prices for a smaller batch. Singh and Gianni

disagreed, and Gianni said that the bidders were not evaluated on smaller batch sizes. He said all bidders were requested to provide breakpoint pricing and were not evaluated on smaller batch pricing and that no bidders provided pricing for a smaller batch.”

And at 52:

“During the same caucus, I also asked Mr Singh and Gianni whether TRF should not have gone out to all bidder’s pre-award to ask for a price based on a 50% batch. Mr Gianni responded that it was not known that a batch size would be 50%.”

And he then refers to the recording. Do you accept that Mr Laher raised these concerns or queries?

**MR SINGH:** No.

**ADV MYBURGH SC:** Alright.

**CHAIRPERSON:** So you are saying no, you do not accept that he did raise these concerns?

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

20 **CHAIRPERSON:** H’m?

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

**CHAIRPERSON:** Yes, okay.

**ADV MYBURGH SC:** Then let me take you to the next file, this is Transnet Bundle 4B. The Transnet Bundle 4B it should be wherever you pulled out this file, it is the next

one. So it is Transnet Bundle 4 and you pulled out A, this time you must pull out little B. Could you turn to page 736 please?

So let me direct your attention to paragraph 17, this is another affidavit by Mr Laher:

“In addition to the evidence presented in my main state...[intervene]

**MR SINGH**: Sorry, sir this 736?

**CHAIRPERSON**: Yes.

10 **ADV MYBURGH SC**: 736, paragraph 17.

**MR SINGH**: I have got an FQC, is that wrong?

**ADV MYBURGH SC**: It is the left hand number 736 but if you got an FQC file, that is a Callard file. What you need to do is there is a series of dividers, you must go to the divider 4F3.

**MR SINGH**: 4F3?

**ADV MYBURGH SC**: But this file is consecutively paginated so you should if you in the right file, be able to find a page 736.

20 **MR SINGH**: Sorry, this is Exhibit B.

**CHAIRPERSON**: The bundle is Bundle 4B.

**ADV MYBURGH SC**: No, you in BB4B, you want to be in Bundle 4B.

**MR SINGH**: On which page sir?

**ADV MYBURGH SC**: Okay, 736.

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

**ADV MYBURGH SC:** Are you there, paragraph 17?

**MR SINGH:** Yes.

**ADV MYBURGH SC:** It says:

10 “Mr Laher in addition to the evidence presented in my main statement under this heading in para’s 51 and 52, which I read to you, I would like to add that during a caucus on 7 February 2014 I raised with Mr Singh and Gianni that we had not communicated to the bidders that the pricing per unit must remain the same, sorry, that we had communicated to the bidders that the pricing per unit must remain the same or be it that the batch sizes had been reduced. I pointed out to them, that it was important to retain the price because the mandate required the same price.”

Do you call Mr Laher having raised that or not?

**MR SINGH:** Mr Chair he did not.

20 **ADV MYBURGH SC:** But then if I can take you please to - you will see at paragraph 18, Mr Laher refers to the fact that Mr Callard had put up a transcript of the discussion in question. Now, that transcript you find at page – and fortunately it is in the same file, at page 914. Are you there? **MR SINGH:** 914?

**ADV MYBURGH SC:** So 914 is a transcript headed

negotiation team meeting at Transnet on 7 February extract from video recording. You will see present included Mr Laher and yourself and Mr Gianni. Do you see that?

**MR SINGH:** Yes.

**ADV MYBURGH SC:** Now...[intervene]

**CHAIRPERSON:** I am sorry; your answer was not audible. Mr Singh.

**MR SINGH:** Oh, sorry sir, I am at the page yes I see.

**CHAIRPERSON:** Ja, okay and you do see that according  
10 to that page, you were present.

**MR SINGH:** Yes.

**CHAIRPERSON:** Okay.

**ADV MYBURGH SC:** So let me take you to page 916 and let me ask you to have a look at line seven the right hand side, this is Mr Laher:

“Now that we are reducing the batches by 50% we want the same price and if we do not keep the price, then we got a big problem, the sort of deal breaker.”

20 So Mr Laher raises that issue, does he not? Oh, I take it that will accept that - you have read this transcript, Mr Singh?

**MR SINGH:** No.

**ADV MYBURGH SC:** Okay, well then let me take you through - alright. So at line 8, I read again, on the right

hand side:

“Now that we are reducing the batches to 50% we want the same price and if we do not keep the same price then we have got a big problem, a sort of deal breaker.”

You say:

“Well, I would have had a problem from Laher for obvious reasons, for obvious reasons and our mandate says we must get it, must get rid of this  
10 batch pricing because we must get the same price. I hope Brian has not signed off on it yet.”

You say:

“We have not given it to him, sorry, we have not given it to him, it hey.”

Gianni:

“No, I do not think but that is just a wish, you know. In fact, some would be laughing you off and think you are smoking something.”

Mr Laher:

20 “Yeah, but you see we have a big issue then because if we do not get that, sorry Taby, if we do not get that price sum.”

And then you go over the page to 917, Mr Laher carries on it line 9:

“The issue we have around that and it now comes

back to evaluations because they provided us if we have to go back on it, it is critical that they give us the right price because if it is not, some of the other bidders give us a better price on a smaller batch.”

So do you see that Mr Laher raises these issues that he set out in his affidavit, and then Mr Gianni says:

“No but Yusuf we have never had batches and I think we must not confuse this thing.”

And so it goes on, and then if you go to page 918 and if  
10 you look at line 11, 12, 13, 14, 15 Mr Laher:

“Just a question should we not have gone pre-award back to all bidders and said for 80% give us a price.”

Now Mr Laher gave evidence about this transcript and to the best of my knowledge he said that should be 50%.

**MR SINGH:** Sir, so where are you?

**ADV MYBURGH SC:** At line 15.

**MR SINGH:** 915?

**ADV MYBURGH SC:** 15, yeah page 918. So on the face  
20 of it Mr Laher appears to have raised these issues with you. Would you agree?

**MR SINGH:** It would seem right, sir.

**ADV MYBURGH SC:** So do you have any comment on his concerns?

**MR SINGH:** Bur, Mr Chair, this is Mr Laher...[intervene]

**ADV MYBURGH SC:** Mr Singh, sorry, will you not please just speak into the microphone, please, I know it is difficult because you have been looking at the files at the same time, I understand that.

**MR SINGH:** Sorry, Mr Chair, in response to this Mr Laher is raising issues that relate to procurement in that we should have - I would assume what he is trying to – the point he is trying to make is that we should have given everybody the opportunity to have bid on an equal footing,  
10 if we now reducing the bid size.

And Mr Chair, Mr Gianni was the – how can I call it, the procurement subject matter expert, that was from TFR at the time, he had run the procurement process up to that point in time and we would have taken our cue from him in terms of this matter. In addition to that, Mr Chair, Mr Laher having made or had the concerns that he had still continued with the negotiation process - went through the process, received the prices, received the break price input from the OEM's, which was quantified at the  
20 2.7billion that we have discussed and accepted the same eventually, and also participated in the BADC discussions on the 24<sup>th</sup> of February, when these matters were discussed, and did not raise any of these concerns at that stage either.

**ADV MYBURGH SC:** But what do you make of the content



of his concerns? I mean, what his evidence was, is he raised it with you, he got a sense that you and Gianni both did not agree with him and he considered you senior people, that was the thrust of his evidence, what is your comment to the to the merits of his objection?

**MR SINGH:** Mr Chair, as I have said, I think the main issue that Mr Laher was raising was an issue of fairness in terms of procurement and as I said, I would have deferred to Mr Gianni at the time in terms of whatever his view was  
10 in relation to the fairness of the procurement process, because that was his area of expertise.

In terms of the issue of the quantum of batch pricing, I think Mr Gianni even goes on to say that - in the transcripts you will see that, he says:

“That we gave an instruction to say we would rather not have an impact of break pricing.”

But as I have explained already, Mr Chair, the business case and the RFP contemplated a cost associated with batching and splitting. Our going in position into the  
20 negotiation was that we would like not to incur a cost and that is always you're going in position in a negotiation, you will probably never end up getting a zero cost because as I said commercially, it is not - it would not be viable for the bidders to bid on a 1000 locomotives and still supply you the same 1000 locomotives on a different batch size,

commercially it would just not make sense for them.

They would have to recoup that cost in some way, shape or form and Mr Gianni basically actually says that, I think to the extent that he says:

“You know, it would be difficult for us to achieve that and in some cases maybe someone will think that you are actually smoking your socks.”

**ADV MYBURGH SC:** Alright, then let me deal with the next issue and that is cost escalation. So if we go back to  
10 the schedule that is attached to the ETC increase memo and this is at Bundle BB4B you will see that that schedule or table at...[intervene]

**MR SINGH:** Just give me the page again?

**ADV MYBURGH SC:** BB4B, so this is the Callard, one of the original one, at 718.

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

**ADV MYBURGH SC:** You will see from that table that marginal letter E or note E reflects:

20 “That cost to fix escalation to end of contract that accounted for 6.7billion of the 16 billion odd increase.”

Correct?

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

**ADV MYBURGH SC:** Now, let me take you to Mr Chaube’s evidence. This you find in Exhibit BB8B.

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

**ADV MYBURGH SC:** And he deals with this at page 46.  
He says that...[intervene]

**CHAIRPERSON:** I am sorry Mr Myburgh what is the bundle?

**ADV MYBURGH SC:** The bundle is BB8[B.1].

**CHAIRPERSON:** Okay, and the page?

**ADV MYBURGH SC:** It is marked on the spine, Chaube.

**CHAIRPERSON:** Yes, and the page?

10 **ADV MYBURGH SC:** The page - this bundle only has the red numbering, Chairperson it is red number page 46, four six.

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

**ADV MYBURGH SC:** So what Mr Chaube says by way of summary at paragraph 10.19 is:

20 “This cost item is marked in Table 2 of the memo. We have dealt with the computation of this cost relied on the accelerated delivery schedule as per Table 1 of the memo the result of 3.5billion, let us to conclude that this cost was over estimated approximately 3.2billion.”

And perhaps I can just take you before we break to paragraph 10.21 which seems to be key to Mr Chaube’s opinion. He says:

“The South African Reserve Bank through its

Monetary Policy Committee, in achieving its primary purposes of ensuring price stability adjusts interest rates to achieve its inflation target of three to 6%. Our model assumes the upper bound of this target going forward likewise in the United States, and he deals with this because the OEM's they had local and foreign content, likewise, in the United States, the Federal Open Market Committee set an inflation target of 2%, a target to which the US Federal Open Market Committee had been struggling to raise inflation since the 2008 financial crisis, considering this I considered future inflation assumptions as at March 2014 of 6%, locally and 2% internationally to be reasonably conservative."

Then at paragraph 10.23 he says:

"Paragraph 58 of the memorandum notes that a forward looking inflation assumption of 6% per year, [18.54% over 3.5 years], is appropriate and that there should be no question over the 16.8% escalation applied. The concern here is that a rate of 7.35% per year as opposed to 6% per year is needed to arrive at an escalation cost of 6.7billion."

Do you see that?

**MR SINGH:** Yes, I see that.

**ADV MYBURGH SC:** Now if I could take you then please

to what you say in response to that and this you find in Bundle 5C page 1492.

**CHAIRPERSON:** Is it 1412?

**ADV MYBURGH SC:** 1492, Chairperson I see it is one thirty.

**CHAIRPERSON:** Yes, you want to complete the particular question or?

**ADV MYBURGH SC:** I am now going to take Mr Singh to his version, so...[intervene]

10 **CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** It is a convenient time to break.

**CHAIRPERSON:** Okay, alright, let us take the lunch break then we will resume at half past two, we adjourn.

#### **INQUIRY ADJOURNS**

#### **INQUIRY RESUMES**

**ADV MYBURGH SC:** Mr Singh I was going to take you to what you have to say about the cost escalation and I had asked you to have a look at Bundle 5(c) and to turn to page 1492. You deal with this commencing at 1492 paragraph  
20 268 through to 1494 paragraph 274 and amongst the points that you make, paragraph 271 at the top of page 1493 is that Choubey should have used industry specific inflation indicators for each different country.

**CHAIRPERSON:** I am sorry Mr Myburgh it looks like this bundle which is 5(c), I think that is the one you are using.

**ADV MYBURGH SC:** Yes it is.

**CHAIRPERSON:** It has got some pages that are not paginated. So I have been – I see that it moves from page 40 - 408.2 to 1564 pages in between.

**ADV MYBURGH SC:** Are they all missing?

**CHAIRPERSON:** Seem to be missing and I do not know what would have happened because that is a lot of pages. If you think I might be able to follow depending on how much you will be asking in relation to what I do not have  
10 while somebody is working on getting – oh I see you do not have a junior today. I think – I do not know whether the – the Registrar could do anything. Do you want us to adjourn so that we can go...

**ADV MYBURGH SC:** I think that we may subject to your guidance Chairperson – if we may be able to – I am not exactly sure of the extent of the missing pages but if it comes to this part.

**CHAIRPERSON:** Ja.

**ADV MYBURGH SC:** Of the examination all I am doing is I  
20 am paraphrasing.

**CHAIRPERSON:** Okay.

**ADV MYBURGH SC:** Mr Singh's.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** Version and I am going to ask him to explain it.

**CHAIRPERSON:** To respond.

**ADV MYBURGH SC:** If you are missing certain parts...

**CHAIRPERSON:** I am – I think I am missing in the region of 800 pages.

**ADV MYBURGH SC:** Well that – I think that would be – that is 00:03:14 I think then perhaps we need to try and sort that out.

**CHAIRPERSON:** Ja. Yes but I think somebody could work on it while you are continuing if you are going to be  
10 paraphrasing what...

**ADV MYBURGH SC:** Yes certainly.

**CHAIRPERSON:** Whatever.

**ADV MYBURGH SC:** So from when – so that someone can work on it what pages are missing DCJ?

**CHAIRPERSON:** From – the last page under 1000 is 408.2 and then the next page is 1564. I do not know whether it was in this work stream Mr Myburgh but I do know that recently I had occasion to deal with a bundle that had documents that were not paginated in it. So –

20 **ADV MYBURGH SC:** As I understand this DCJ this is not an issue of the pages not being paginated it is an issue of the pages being missing really from...

**CHAIRPERSON:** Ja the pages are missing here.

**ADV MYBURGH SC:** 408 until 1564.

**CHAIRPERSON:** Ja the - it is two issues but the more

serious one is pages that are missing. There are some pages that are not paginated of certain – of certain documents as well. So at some stage that can be looked at. But the – the page – page numbers that I gave you are pages that are missing. I think with regard to the other documents that I say are not paginated they actually include Mr Singh's affidavit.

**ADV MYBURGH SC:** Yes because this Bundle (c).

**CHAIRPERSON:** This is 5(c) and the affidavit of Mr Singh  
10 that I am ...

**ADV MYBURGH SC:** Okay we actually should be in 5(c) DCJ maybe there is a...

**CHAIRPERSON:** This is 5(c).

**ADV MYBURGH SC:** Yes.

**CHAIRPERSON:** Ja.

**ADV MYBURGH SC:** But you have everything after 1564.

**CHAIRPERSON:** Well I have not checked but I have got other – ja I have got other pages but I do not know whether everything is there. So somebody would need to just go  
20 through and check. On the face of it I mean I have got a lot of pages but somebody would just need to check whether the pagination is sequential – they are enormous in pages.

**ADV MYBURGH SC:** All right.

**CHAIRPERSON:** So I think we can continue on the understanding you have indicated and maybe in the



investigation team somebody could...

**ADV MYBURGH SC:** All right thank you DCJ.

**CHAIRPERSON:** Ja.

**ADV MYBURGH SC:** So Mr Singh at pages 1492 and 1493 you make the point that Choubey – this is at paragraph 271 should have used industry specific inflation indicators for each different country and at 272 you go on to contend that Choubey ignores the fact that a premium would be charged by the OEM's to assume the risk of future price escalations.

10           And then if I could take you please to page 1985 Chair which I hope you have 1985.

**CHAIRPERSON:** I should.

**ADV MYBURGH SC:** So before we get to 85 perhaps I can take you to 1982. That is the commencement of – of ...

**CHAIRPERSON:** Yes I have got 1982.

**ADV MYBURGH SC:** Commencement of a report that you have put up. Who does this report emanate from?

**MR SINGH:** Mr Kronit.

**ADV MYBURGH SC:** And who is he?

20   **MR SINGH:** He is the director of – one of the directors of Ulterior Consultancy.

**ADV MYBURGH SC:** And who are they?

**MR SINGH:** They are some of...

**ADV MYBURGH SC:** Sorry would you speak into the microphone please.

**MR SINGH:** Sorry. They are a firm of financial consultants.

**ADV MYBURGH SC:** Financial consultants.

**MR SINGH:** Yes.

**ADV MYBURGH SC:** And is it your contention that this person is an expert?

**MR SINGH:** Yes Mr Chair.

**ADV MYBURGH SC:** And that report runs from 1982 through to 1996, is that correct?

**MR SINGH:** That is correct.

10 **ADV MYBURGH SC:** Now this gentleman if I can take you to 1985 deals with cost escalation to end of project or contract – item F which we are dealing with and if you go to 1986 he makes the two points that you make – after the schedule he says:

“Using the assumed weightings above results in an historical industry specific inflation indicator of 4.2 for the US.”

And then he says at the last paragraph:

20 “Similarly an industry specific index can be constructed for the local component. I estimate this to be 7.7.”

So there he is using as you had said Mr Singh industry specific inflation indicators. One for the US, one for South Africa. Is that correct?

**MR SINGH:** That is correct.

**ADV MYBURGH SC:** And then if you have a look over the page at 1987 under the heading To Inclusion of Risk Premium the third paragraph he says:

“Estimating the cost using only local inflation measured by CPI implies that the risk premium was in excess of 1.5% per annum. I would estimate that 1.5% would be a reasonable allowance for this risk premium as the OEM’s would also aim to seek a profit  
10 from this transaction.”

And in effect this gentleman makes the – here the two points that I have – that you made in one of your affidavits. Correct.

**MR SINGH:** That is correct.

**ADV MYBURGH SC:** All right. You want to address us on that issue further or expand upon what I have paraphrased.

**MR SINGH:** Mr Chair if I am allowed. The paraphrasing by Mr Myburgh is relatively accurate in that we do not agree with Mr Choubey’s assessment that the – the forward  
20 looking escalations is overstated by 3.2 billion and Mr Chair the crux of the matter relates to the issue that Mr Choubey includes in paragraph 10.23 of his affidavit. If we could just reference back to that. Mr Chair that is in Exhibit BB8(b).1.

**CHAIRPERSON:** Hm

**ADV MYBURGH SC:** Did you say 10.

**MR SINGH:** 23.

**ADV MYBURGH SC:** 23 so that is at page 47 is it?

**MR SINGH:** That is at page 47.

**CHAIRPERSON:** Hm.

**ADV MYBURGH SC:** Please go ahead Mr Singh.

**MR SINGH:** Thank you Mr Myburgh. Mr Chair if you look at paragraph 10.23 effectively Mr Choubey is basically saying at paragraph 58 of the memorandum notes:

10            “That the forward looking inflation  
assumption of 6% per year 18.54 over 3.5 is  
appropriate and that there is – there should  
be no question of the 16.8% as per  
escalation applied. The concern here is that  
the rate of 7.35% per year as opposed to 6  
is needed to arrive at the escalation cost of  
6.7 billion.”

20            So what he is in effect saying Mr Chair is that the  
6% in his mind he believes is appropriate whereas we – or  
the memo purports that 7.35 would be appropriate to justify  
the full 6 billion. Okay. So in effect we dealing with a  
difference of 1.35%. Okay. So Mr Chair what we have  
explained is that in arriving at the – okay let us put it this  
way rather. This percentage Mr Chair whether it be the 6 or  
the 7.35 is made up of two components.

            Firstly it is made up of let us call it the underlying

factors that would result in an escalation. So you would have steel, you would have copper, you would have labour, you would have all of the components that would result in an escalation. The second part of this Mr Chair would – or the second component of this 6% or 7.35% would be a premium that the OEM's would charge you to assume that risk because what we have done here is that we have said to them, we do not want to take any escalation risk into the future. So we want you to give us a fixed price. So they  
10 are assuming escalation risk.

Now for that they would have to charge you some sort of risk premium. So those two components Mr Chair would make up the 6% or 7.35%.

So now that we know that we have the components now we can understand how does each one of these components actually get made up.

So if we take the first component Mr Chair where you look at the underlying factors that are...

**CHAIRPERSON:** That is basically the economic situation.

20 **MR SINGH:** Yes the economic situation.

**CHAIRPERSON:** Ja.

**MR SINGH:** Labour increases, steel increases and all of those types of things. Those Mr Chair would give you an indication of the first component. Okay.

Now Mr Choubey as we have said in our affidavit

takes a relatively simplistic approach and he says: Listen, US inflation would be X, South African inflation would be Y and as a result of that he believes 6% is an appropriate indicator.

Whereas in our case Mr Chair what we are saying is, the basket of components that make up a locomotive it is much more complicated than just looking at CPI or PPI which again is a basket of components that results in it.

What we are saying is we have to do what the OEM's  
10 would have done because they would have not simply looked at PPI – they would have not simply looked at CPI. They would have said here is my 10 000 items or maybe that is an – and here is my 3 000 items that make up a locomotive. Each one of these items will be affected by the following indices and then taken a view as how those indices would either increase or decrease over the period of time over the contract period. And then they would have come up with the numbers that they had given us.

That would in our view give us a more realistic value  
20 in terms of what the OEM's had done. Because Mr Chair I can assure you during the negotiation period that is exactly what happened and I think through the legal team we will submit to the commission two documents I think it is a – a Bombardier Transport and a GE document Mr Chair that is part of the signed locomotive agreements

But what it will show you Mr Chair is that the – remember there is no escalation. Part of the locomotive agreements there is no signed – there is no escalation formula because it is already in the price.

So you will not find in the locomotive agreements an escalation formula for the locomotive price itself. But what you will find in the locomotive agreements is an escalation formula for parts because the – the parts relating to the locomotives were not priced as part of the locomotive cost  
10 prices.

So in the schedules you will find that the – each of OEM's would have put escalation formulas relating to price. Those escalation formulas for parts Mr Chair will give you an indication of the complexity of these formulas that were used by the OEM's to project what these escalations would look like and they are not as simple as CPI and PPI's. They are relatively – I would not say mind-boggling but they are not as simplistic.

So that is why we actually then said we would – in  
20 order to predict what the escalation cost would be you would have to construct this as a composite index of what the OEM's would have viewed to project the cost and that is what our affidavit says and that is what Mr Kronit in his independent assessment had done.

Mr Chair then we look at the second part of the – of

the makeup of the 6 or the 7.3% which is the premium for having taken the risk.

**CHAIRPERSON:** One second Mr Singh. Yes continue Mr Singh.

**MR SINGH:** So Mr Chair the second part of the – of the equation would be to look at the percentage that we could ascribe to the OEM's assuming the risk – which is the risk opinion.

Now Mr Chair in – in our case we assumed that to be  
10 in the region of 1 to 3% and Mr Kronit has basically said he believes that 1.5% would be more appropriate for those – for that type of risk.

So Mr Chair if you look at paragraph 10.23 it is a case of reconciling the 6% versus the 7.35%. So the difference of 3 billion between what Mr Choubey says is justifiable and what we say is justifiable is represented by 1.3% and that could – and that in our view emanates from the fact that Mr Choubey as you would see..

**CHAIRPERSON:** 1.3 or 1.35?

20 **MR SINGH:** Oh sorry 1.35.

**CHAIRPERSON:** Ja.

**MR SINGH:** Right. And that 1.35% Mr Chair emanates from what we say is if you use industry specific...

**CHAIRPERSON:** The two components.

**MR SINGH:** Yes.



**CHAIRPERSON:** Ja.

**MR SINGH:** Being – if you use industry specific factors to determine the escalation rate as Mr Kronit has done he ended up with a composite index of 6.2%.

And then if you take the risk premium that you have to add to that which is let us say 1.5 you end up with a number of 7.8 or – ja 7.7 which compares to the 7.35 which we had included in the memo.

So that is how we believe that this number should  
10 have been calculated and therefore we believe that the 06.7 billion is justifiable Mr Chair.

And you will note Mr Chair that in 10.23 Mr Choubey does not refer to a risk premium. He is silent about a risk premium being added to the numbers.

**ADV MYBURGH SC:** So can I then take you perhaps just on that issue let me take you to what Mr Choubey says in reply. Could you turn please to page 1829 of Bundle 5(c). So at 1829 can I direct your attention please to paragraph  
73.

20 **MR SINGH:** Yes Sir.

**ADV MYBURGH SC:** And he deals with the point that you have just made. He says:

“I differ with Mr – from Mr Singh’s view that a risk premium was not allowed for in my appraisal of a reasonable escalation cost.”

And then let me take you to 75 at page 1830.

“Over the five year period immediately preceding March 2014 the rolling one year local South African producer price inflation rate averaged 4.1% well below the inflation rate of 6% assumed in my assessment of a reasonable ETC.”

If I could take you to the last three lines he says:

10 “Therefore the expected cost arising from PPI falling outside a Reserve Bank’s 3% to 6% target is minus 0.8%. An all inclusive escalation rate (escalation rate plus risk premium) of more than 6% is not warranted.”

It says at 76.

20 “The approach adopted by Mr Singh and Kronit is not in the interest of Transnet because it ignores the upside risk of inflation falling below 6% thereby taking the view that the minimum inflation will be 6% and allows for an additional 1 to 3% as a risk premium without substantiating the amount.”

At 77 he says:

“I maintain that the assumption of 6% adopted in my appraisal of the ETC is

conservative being the upper bound of the Reserve Bank's MPC target range of 3 to 6% and allows for a risk premium of circa 2%."

You want to comment on that?

**MR SINGH:** Thank you Mr Chair. Mr Chair I think in response to Mr Choubey's response.

**CHAIRPERSON:** Remember to face the mic.

**MR SINGH:** Oh sorry Sir. In response to Mr Choubey's supplementary I think affidavit or supplementary response  
10 Mr Chair Mr Choubey now wants us to believe that notwithstanding what he said at paragraph 10.23 which I referred you to which he said 6% was a reasonable number. He would now like us to believe that the 6% as actually split into two components. 4% being as I explained to you the economic factors and 2% being a risk premium.

Yet he does not mention that in his 10.3 – 23 paragraph neither does he mention it is any of his preceding paragraphs. Yet our memo to the board explicitly said that the 6% that we considered as escalation did not include a –  
20 a consideration for the risk premium that would have been charged. And at that stage we did not have a view of what the risk premium was but we said, listen it is in the region of a percent therefore the 7.35% looks reasonable. Okay.

Now Mr Choubey backed – or in my view attempts to backtrack and says, but I considered the risk premium in

the 6% and he says the risk – the – in paragraph 77 he says:

“Actually the risk premium was 2%.”

If you look at the line of paragraph 77. So in actual fact he is saying the 6% in his view was made up of two components being 4% economic factors and 2% being the risk premium. So we understand that now. And I am saying Mr Chair in my view Mr Choubey is being disingenuous by now backtracking to accommodate the risk premium in his  
10 original 6% assessment.

Secondly Mr Chair paragraph 75 says:

“The five year – five year period immediately preceding March 2014.”

Now Mr Choubey is fully aware that escalations are a forward looking issue because you are looking into the future. Five years worth of history is no way enough to predict what is going to happen into the future.

Mr Chair at that time we were actually in South Africa we looking at above inflation salary increases and we  
20 mention that in the memo. I think at that stage government settled on 6 or 7% or 8% as a wage increase.

That was the environment in which the OEM's were coming into and there was no way that they were going to say, okay we are going to accept 4%. That was historic.

So Mr Chair in this case we – we reject Mr

Choubey's view again in that he tries to come back and say no the risk premium was included and also the fact that the – the forward looking escalation should be more in the region of 4%.

**ADV MYBURGH SC:** All right. And then can I take you to one other passage. Mr Choubey as you know also puts in a response to Mr Kronit – could I ask you turn to page 204 in the same file. Sorry not 204 – 2004 – 2004.

**MR SINGH:** 2004 I am there Sir.

10 **ADV MYBURGH SC:** Now I just want to pick up on the two points that you have addressed. The industry specific inflation and the risk premium. At 6.8 he says:

“Mr Kronit argued for industry specific inflation factors and proposed factors and weights in modelling the composite inflation rates in his assessment of the reasonability of the 6.7 billion cost for future escalation.”

Mr Kronit's approach presents with challenges for the following. First sub-paragraph.

20 “The 1064 memo does not provide for a full basket of factors (or components) to consider when determining a composite inflation rate.”

He provides examples of such factors. And then if you go to the next sub-paragraph.

“The 1064 memo does not provide weights for the factors in question.”

Then at 6.9.

“The inflation modelling approach proposed by Mr Kronit is complex (and not brief as per the principle of parsimony) makes assumptions that are highly subjective and as a result does not generalise well across the four OEM’s.”

10 That is what he says about industry specific inflation factors. And then at 6.10 Mr Kronit’s argued for a risk premium over and above his inflation assumption. He estimated 1.5% to be a reasonable risk premium and did not provide reasons to substantiate his estimate. And then at 6.11 Mr Choubey makes the point that he has made in his answer to you and then at 6.12.

20 “I submit therefore said Mr Choubey that in an all inclusive escalation rate – escalation rate plus risk premium of more than 6% on the basis that the five year historical adduce a price inflation averaged 4.1 and the Reserve Bank’s upper bound for inflation of 6 is not warranted. A rate of 6% in assessing the cost of future inflation does not only cover the OEM’s for the risk of

inflation exceeding expectations but also passes the benefits of inflation falling below expectations to the OEM's."

Have you got any additional comments or submissions that you wish to make in relation to that?

**MR SINGH:** Well Mr Chair if you look at paragraph 6. And 6.9 the only compelling reason that Mr Choubey gives against using a composite index or an industry specific index as we call it is the fact that it makes the calculations  
10 highly subjective and – and as a result does not generalise across – well across all for OEM's.

And he is also inconsistent in that applied in the modelling of the business case. Now Mr Chair Mr Kronit did – was not in the similar advantageous position that Mr Choubey was in. Mr Choubey had access to all of Transnet's information at all material times. If as I said to you the objective of this exercise is to put ourselves into the shoes of the OEM's as to how they would have done what they did and if producing an industry specific or  
20 composite index would result in us being able to predict what that value would have been Mr Choubey would have been in a better position to have done that. Because he had access to all relevant information at all relevant times.

Mr Chair there are engineers at TFR that actually sat and looked at these formulas because Mr Chair I do not

know what escalations actually result in an increase in the locomotive pricing.

So when the OEM's came and said this is a number as I explained to you previously the engineers had to sit and make sense of the fact that these factors firstly if it was copper – so the copper index that was chosen was the relevant one that the amount of copper that was going into a locomotive was reasonable because that also then determines the – the price of the locomotive and the  
10 predicted escalations.

So people at TFR know this. People at Transnet know this – they have gone through this. So for Mr Choubey to say that this process is highly subjective Mr Chair in my view is unacceptable. He says it will – that it would generalise across all four OEM's – it would not because each single OEM came up with their own formulas that was tested by Transnet. This information exists within Transnet because Mr Laher, Mr Smit even Regiments as we saw this morning all of them had access to this information.

20 Mr Kronit in an efforts to get to an understanding of whether the numbers were reasonable or not we provided him access to the issues – the parts schedules that I mentioned previously that we can 00:33:45 the commission which he then used to understand for which would be the let us say the big [?] items relating to how you would construct



this index. So that is how he has come to this conclusion  
Mr Chair.

In terms of paragraph 6.10 where Mr Choubey says  
that Mr Kronit does not give reasonable reasons to provide  
– to substantiate his estimate Mr Chair.

Mr Chair in my view Mr Kronit's assessment of 1.5%  
is below the risk premium that Mr Choubey himself accepted  
of 2% as I just explained to you previously.

So why Mr Kronit would have to justify this I do not  
10 see the reason for especially when it is below Mr Choubey's  
own assessment of 2%.

Mr Chair in terms of 6.11 I think I have already dealt  
with that issue in terms of the historic not being a predictor  
of the future.

**ADV MYBURGH SC:** All right. Then can I turn Mr Singh to  
the last component that I said I was going to lead you on  
and that relates to contingency. Could I ask you to go back  
to Callard and to the table at page 718 that is Exhibit  
BB4(b). We going to come back to the file that you have  
20 been dealing with now but do you have the table at 718?  
Are you at 718?

**MR SINGH:** I am Sir.

**ADV MYBURGH SC:** You will see that at marginal letter G.

**MR SINGH:** Yes Sir.

**ADV MYBURGH SC:** At approximately a further 10% at

least to cover this cost and that is what we refer to as contingencies and the amount is 4.9 billion, is that right?

**MR SINGH:** That is correct.

**ADV MYBURGH SC:** And that is a 10% contingency?

**MR SINGH:** That is correct.

**ADV MYBURGH SC:** Could I then take you to what Mr Choubey has to say and hopefully this is the last time that we have to play gymnastics with all of our files. So Choubey as you know is BB8(b)1. And if I could ask you  
10 please to turn to page 49 and there you will see a heading Contingencies and it commences at paragraph 10.29. Are you there?

**MR SINGH:** Yes.

**ADV MYBURGH SC:**

“Contingency costs at 2.23 billion made up 7.4% of the capital costs of the locomotives in the business case. In computing this cost I adopted a conservative approach by retaining the 2.232 billion. This equates to  
20 a contingency cost percentage of 7.6% of the capital costs of the locomotives. I then added an additional contingency for the costs of capital spares, options and variations to keep in with the assumptions in the memorandum. This increased the

contingency costs to 2.8 billion.”

10.30.

“The memorandum used a 10% contingency rate to ostensibly allow for an additional contingency cost on escalation, foreign currency, TE scope and batch price adjustment. I was of the view that a contingency reserve need not have been held for:

10                    Escalation and foreign currency risk because Transnet was already charged to have the escalation and foreign currency risk transferred to the OEM’s.

                  Batch pricing adjustments because as this cost was not justified.”

And then 10.31.

20                    “The DE scope although allowed for in our costs is still to be investigated. Should this cost be found to be reasonable contingency reserve might be required etcetera.”

                  So that is what Mr Choubey says. If I could take you to – back to your affidavit. This is Bundle 5(c) and ask you please to turn to page 1497 where you answer those paragraphs. 1497.

                  So you deal with this commencing at 284 at page

1497.

“I deny that the contingency value should be 2.8 billion as concluded by Choubey.”

And then you go on to say at 286.

“I would respectfully request that the Chairperson reads paragraph 72 to 75 of the BOD memorandum the same would clearly indicate to the Chairperson the extent to which Choubey incorrectly states facts and thus arrives at an unsubstantiated conclusions and or unsubstantiated opinions.”

10

Paragraph 72 to 75 sets out the reasons for contingencies being as follows:

Capital spares beyond warranty period.

Variation orders and options and relocation costs.

You say at 288.

“Choubey in his assessment only allows an amount of 533 per locomotive in respect of the above costs which in my view is relatively low.”

20

You say at 289 in paragraph 10.30.

“Choubey states that the memorandum to the BOD allowed for a 10% due to forex adjustments, escalations, batch pricing

adjustments and the role of TEE this is categorically denied as the contingency reserve was for the reasons stated above.”

So that is – that is what you say and then perhaps I can just take you to Mr Kronit. He does not deal with this in much detail or if at all but let me take you to what he does say. In the same bundle at page 1988. You will see there Mr Singh at the foot of 1988 there is a heading Contingency and Mr Kronit says:

10           “Paragraph 18 of the memo confirmed that contracts were signed to the value of 49.5 billion. Purchase value did not include the contingency amount of 10% which was requested as a buffer for the purposes set out in paragraph 72 to 75 of the memo. I am satisfied that the requested contingency amount did not cover any items already catered for (ie future escalation and currency hedging). The 10% value is  
20           determined with reference to the contract value. Its quantum is a value judgment by management and the board of directors and I cannot express an opinion on this given the information at hand.”

So that paraphrases really the – the evidence of – or

the view – the opinion or Mr Choubey, your view and the view of the Mr Kronit. What would you like to say on this topic?

**MR SINGH**: Mr Chair Mr Myburgh has done a good job of paraphrasing the – the issue at hand. Mr Chair the issue at hand here again very simply Mr Choubey says X we say Y. The difference between X and Y is around 2.1 billion. Now we can again go through the nuts and bolts between Mr Choubey and myself and Mr Kronit but the crux of the  
10 matter is what makes up 2.1.

Mr Chair you will understand and have cognisance of the fact that a contingency is what it means. It is for unforeseen circumstances.

In this case Mr Chair the memo outlines the circumstances for which the contingency was premised. Parts, modifications and so on.

The – let us deal with the 2.1 billion difference. Mr Chair in my view the 2.1 billion difference is relatively easy to explain. We do mention that the part of the contingency  
20 was to allow for the relocation of the OEM's and if I – if I recall correctly Mr Chair the value that was ascribed to that was I think was in the region of about 1.5 billion or so.

So Mr Chair 2.1 billion of the difference can be quite easily explained by 1.5 billion that then leaves you with a value of 750 million as which makes up the 2.1 billion

difference between Mr Choubey and myself.

And again Mr Chair with the – with the contract as large as this the contingency amount is not an amount that is actually contracted. So there is no-one that is writing out a cheque for that amount to the OEM's. That contingency amount has to go through another Transnet process for that amount to actually be committed to an OEM for any particular reason.

Mr Chair again you will see that in these two  
10 schedules that we will provide to the commission relating to the parts and tools you will see Mr Chair the parts and tools scheduled actually was not known the day on which the locomotive contract was signed. Parts pricing and the parts schedules and the extent of the parts would only be confirmed at a later date which was called design freeze date.

Now that in itself would say that the date on which we signed this agreement we had no idea of what the quantum of parts, tools, modifications or the like would  
20 have been required for these locomotives and hence we believe that a 10% contingency would be better placed than the 7.5 % contingency which again is the difference of the 2.1 billion that exists between Mr Choubey's assessment and our assessment.

**ADV MYBURGH SC:** So let me then take you as I have

before to what Mr Choubey says in response. Could I ask you to turn in the same bundle 5(c) to page 1821.

**CHAIRPERSON:** I have not picked this up Mr Myburgh but probably it is somewhere. Does Mr – is it Kronit.

**ADV MYBURGH SC:** Kronit.

**CHAIRPERSON:** Yes does he qualified himself somewhere in the report?

**ADV MYBURGH SC:** No not that I can see – I have seen Chairperson.

10 **CHAIRPERSON:** Yes because obviously for as far as I am concerned in these matters one would expect that he would be somebody who has the expertise. I raise the issue with Mr Choubey as well so – but if – if he has not done so he probably can do so it would be good if we can get something that qualifies him.

**ADV VAN DEN HEEVER:** Chairperson to the best of my recollection we did obtain it from him. There must – might have been some miscommunication between us and the evidence leaders or the people that we communicated to but  
20 it was one of the aspects that we made sure we did obtain. So I will – we will place our fingers on it and make sure that it comes to the commission itself.

**CHAIRPERSON:** Yes. Okay. Okay no that is all right. I just saw his academic qualifications which appear legal and I am sure he – but there is something else so – so that



would be helpful. Okay. Yes.

**ADV MYBURGH SC:** Thank you.

**CHAIRPERSON:** Thank you.

**ADV MYBURGH SC:** So at page 1821 are you there Mr Singh?

**MR SINGH:** 1821.

**CHAIRPERSON:** What is the page?

**ADV MYBURGH SC:** 1821 in Bundle 5(c) Chairperson.

**CHAIRPERSON:** 1828.

10 **ADV MYBURGH SC:** 1821.

**CHAIRPERSON:** Okay. Mr Singh perhaps I could just take you to paragraph 36.

“The contingency amount of 2.8 billion from my assessment of a reasonable ETC explicitly allowed for capital spares to the tune of circa R600 million and implicitly allowed for the remaining and unforeseen cost items in the balance of circa 2.2 billion.”

20 Paragraph 37.

“Having considered the costs associated with the expense items noted in the 1064 memo and raised by Mr Singh in his affidavit I maintain that a contingency of 2.8 billion at the time sufficed. The table below provides

a split of the recommended contingency costs of 2.8 billion.”

And then he sets out in a table costs in relation to capital spares, option, CSR relocation costs, unlocated – unallocated – I beg your pardon and that comes to 2.8 million. He says at 39:

10 “Having allowed for the cost of capital spares, options and the CNR relocation costs an unallocated amount of circa 1.1 billion remains with a BT relocation cost, costs of variation orders and unforeseen costs. I maintain...”

He says at 39.

“That the 4.95 billion as a contingency cost was excessive.”

You wish to address – well perhaps what I could do is I can then take you to page 2008 where he responds to Mr Kronit.- 2008.

20 And you will see there he deals with contingency at paragraph 8 and as I have it Mr Singh he essentials says the same things he has got the same table. Do you want to respond to that please?

**MR SINGH:** Mr Chair again in terms of his assessment of capital spares or 545 000 Mr Chair that amount would equate to in the region of about 500 000 per loco.

Mr Chair I do not exactly know what one wheel on a locomotive would cost but I would think it would be more than 500 000. So in my view the 500 000 is only in – inadequate per locomotive.

And Mr Chair you will see that he has opposed script 1 which he obtains that from the memorandum on the 15<sup>th</sup> of January 2014 memorandum results of best and final offer responses Mr Chair.

Now this is again before he locomotive agreements  
10 actually finalised. Now Mr Chair you will recall that I always took the commission back to the contractual commitment that we have with the OEM's.

This was best and final offer we did not have a contractual commitment with the OEM at the time. So by the time we actually got into the contractual commitment with the OEM schedule 6 which is a schedule that I have been talking about in terms of parts and schedules and tools was a schedule that was actually then put into the actual locomotive agreement and those schedules indicated  
20 that we would only be able to assess this once the design freeze stage of the procurement process had been achieved.

So again I would think that this would be an amount that is understated at this stage. Mr Chair in terms of the options I am again not too familiar with the options but

again the options in terms of Schedule 6 again stated that we would be able to confirm that at design freeze stage not at the date the 15<sup>th</sup> January 2014 memo stage.

Mr Chair the CNR relocation costs of 9.5 million as you know and I think there is significant amount of evidence has been led relating to that and I think Mr Myburgh may still go there I am not too sure but again that is wholly understated at the 9.5 million. I think that number was more like 00 million and then BT's relocation costs is  
10 actually not included here either which is another 600 odd million.

So Mr Chair from that perspective I would still maintain that Mr Choubey's assessment is relatively conservative.

And I think Mr Chair maybe it is also worthwhile to indicate that Mr Choubey for the better part of his assessment in terms – has maintained that this is a Greenfields project which would require that you would look at it with a – with a project that – that has a higher risk  
20 associated with it.

Now if you look at it as a Greenfield's project Mr Chair you would assume that there is a risk premium that needs to be allocated to the contingencies in this regard and that is the reason why we went for a 10% contingency and not a 7.5 or a 5% contingency.

Notwithstanding the fact that we have taken care of the forex risk as well as escalation.

**ADV MYBURGH SC:** All right I would like now to – to turn to two procedural issues and maybe I can relieve you of the burden of having to have so many files open at once.

I want just to revisit firstly the conclusion of the LSA's before obtaining the approval of the board and I think we have discussed this previously.

**MR SINGH:** Yes.

10 **CHAIRPERSON:** Tell me if there are some that I can get rid of here in terms of files Mr Myburgh.

**ADV MYBURGH SC:** I think you could probably get rid of all of them.

**CHAIRPERSON:** Oh.

**ADV MYBURGH SC:** DCJ.

**CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** And I am sure that I have – as soon as I say that then I will be asking you to get one back. But we certainly not going to need multiple files open now.

20 **CHAIRPERSON:** yes.

**ADV MYBURGH SC:** Quite – which one we are going to go to I suppose one would have to see.

**CHAIRPERSON:** You will let us know as and when.

**ADV MYBURGH SC:** Yes.

**CHAIRPERSON:** Ja.

**ADV MYBURGH SC:** So Mr Sing I do not know if you want to just take the opportunity to close these various files because it – if you need one just now I suppose it would be easier to pick it out from. All right.

So on this issue of the conclusion of the LSA's before the board obtaining approval for the increase in the ETC I think previously we agreed on the chronology and that is that the board approved the increase in the ETC we know on the 28<sup>th</sup> of May 2014 but the LSA's had been  
10 signed about two months or so before that on the 17<sup>th</sup> of March 2014.

And I think I had put the proposition to you before that if it was necessary to get board approval for the increase in the ETC on 28 May 2014 had it not been necessary to do that then before the LSA's were concluded. I think you have had addressed that. I cannot recall offhand what your answer was.

**MR SINGH:** Well I think we – I think we just got into addressing it and I do not know if we completed it.

20 **ADV MYBURGH SC:** Okay well let us then deal – I do not want to unnecessarily re-traverse things but there are one or two things I want to put to you if I may.

Can I ask you to go to Bundle 5 but this time not (c) Bundle 5(b) the first part of your documents and can you turn please to page 1010.

**MR SINGH:** 1010.

**ADV MYBURGH SC:** Ja 1010. This is a part of the procurement procedures manual. I just want to get your comment on one provision if I may.

At paragraph 19.5 there is a heading Approval to Award Business After the PTN – Post Tendered Negotiations. If you drop down to 19.5.3.

10 “In instances where the relevant AC that stands for Acquisition Council has authorised PTN – Post Tender Negotiations from a short list of preferred bidders the ultimate award of the business whether awarded to one or more than one short listed contender i.e. a split award should again be presented to the relevant AC which approved the preferred bidder/short list.”

I just want to – to get your comment on whether that happened before the contracts were signed.

20 **MR SINGH:** Mr Chair as I think we mentioned before the – the short listing of the bidders was approved by the board I think on the 24<sup>th</sup> – 24<sup>th</sup> or 26<sup>th</sup> of – sometime in January 2014 and at the same stage I think Mr Chair they delegated to the Group Chief Executive to take all necessary steps to conclude the contract if I am not mistaken Mr Chair. Or they referred us back to the BADC which we then did in February

before concluding the contract.

**ADV MYBURGH SC:** All right. So let me just understand this. So the board we know – we go back to January. I am try – if we need to go back to the documents we will but we know that in January both the BADC and the board approves this short list of candidates.

**MR SINGH:** Yes.

**ADV MYBURGH SC:** Right. Before the contract would sign did you go back to the board to get approval?

10 **MR SINGH:** No.

**ADV MYBURGH SC:** No. Okay and you say just so that I understand that – please if I have got it wrong tell me that I have and we can revisit it. You say well there was no need for that and you mention two things.

Firstly you say that the board delegated authority to Mr Molefe.

**MR SINGH:** That is correct.

**ADV MYBURGH SC:** And secondly you say in any event we went back to the BADC.

20 **MR SINGH:** I think that is what I mentioned. In that January meeting.

**ADV MYBURGH SC:** Ja.

**MR SINGH:** If we had – if we could refer back to the resolution.

**ADV MYBURGH SC:** Ja. Let us go to that because I think



the wording is in..

**MR SINGH:** Yes.

**ADV MYBURGH SC:** Now that you find in Bundle BB4(f)1. Remember Mr Laher's got a whole lot of sub-bundles. BB4(f)1 and that will be in Transnet Bundle 4A. So Mr Singh this file comprises various sections. It is the last tab.

**MR SINGH:** Ja I have got that.

**ADV MYBURGH SC:** And – my notes are correct you should find the resolution at page 379. Are you there?

10 **MR SINGH:** Yes.

**ADV MYBURGH SC:** So the recommendation and perhaps just for the sake of the record if you go to 371 this is a memorandum to the board of directors.

**MR SINGH:** That is correct.

**ADV MYBURGH SC:** From Mr Molefe 17 January 2014. This is the memo you had in mind I take it.

**MR SINGH:** This is the memo yes.

**ADV MYBURGH SC:** Okay. At 379 the recommendation:

20 "It is recommended that the Transnet board of directors the third bullet point approved the recommendation of the short list of tenderers as a result of the tender and evaluation process for negotiations and award of business."

And then under that:

“Delegate all necessary powers to the Chief Executive to sign and approve and conclude all necessary documents to give effect to the above resolutions.”

**MR SINGH**: That is correct.

**ADV MYBURGH SC**: Now those resolutions were to approve the recommendation of the short listed tenderers and evaluation process for negotiation and award of business.

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

**ADV MYBURGH SC**: Do you read this to mean that the power to conclude the contract was delegated to Mr Molefe?

**MR SINGH**: That is correct Sir. Because it does say and award of business.

**ADV MYBURGH SC**: Yes. But approve the recommendation of the short list of tenderers as a result of the tender and evaluation process for negotiations and award of business.

**MR SINGH**: Yes and...

20 **ADV MYBURGH SC**: So there was going to be – there were going to be negotiations and an award of business.

**MR SINGH**: Yes.

**ADV MYBURGH SC**: You say that Mr Molefe was delegated the power to conclude the contract.

**MR SINGH**: Yes.

**ADV MYBURGH SC:** Irrespective how much it was for.

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

**ADV MYBURGH SC:** So up until now the only business case that had been approved by the board was for 38 million.

**MR SINGH:** 38 billion ja.

**ADV MYBURGH SC:** Sorry.

**MR SINGH:** I beg your pardon. Yes.

**ADV MYBURGH SC:** So he could do as he pleased.

10 **MR SINGH:** Well within the – the confines of the process. So he could not for example go and buy 01:04:16 for 1064 locos for example.

**ADV MYBURGH SC:** But what he could do is – contracted a 41% increase in ETC.

**MR SINGH:** Yes Sir.

**ADV MYBURGH SC:** Now if you have a look at the procurement procedures manual did that not have to go back to the board before he could do that? I mean but for this delegation you accept that one would have to go back  
20 to the board before the LSA's were signed?

**MR SINGH:** No Sir. Because the PTN that you quoted from basically says you – the PTN basically – the Post Tender Negotiations was approved by the acquisition council.

**ADV MYBURGH SC:** Right.

**MR SINGH:** Right. It then envisaged that once this PTN

was concluded it would then need to go back to the AC.

**ADV MYBURGH SC:** Yes.

**MR SINGH:** The acquisition council. In this case the acquisition council was the board. But as you can see the resolution that was 00:05:15 basically was not for the – they approved the recommendation of the short listed tenderers as a result of the tender and evaluating processes for the negotiations. If it stopped there we would then need to go back.

10 **ADV MYBURGH SC:** Yes but can I just ask you – are you sure...

**CHAIRPERSON:** I am sorry My Myburgh please do not forget your question.

**ADV MYBURGH SC:** Yes.

**CHAIRPERSON:** The clarification or answer you give now appeared to me – appears to me to be not the same as the one you gave a few minutes ago. I may have misunderstood something.

**MR SINGH:** Sure.

20 **CHAIRPERSON:** Mr Myburgh said earlier on to you is your position that this resolution gave Mr Molefe the mandate to negotiate and award the business and – for higher than the amount that had been mentioned and you said yes.

**MR SINGH:** Yes.

**CHAIRPERSON:** And he asked you whether he could do as

pleased - you said within the confines of the process. And then he said to you; you agree that but for this resolution he would have had to go back to the board and I understood you to be saying no. But what you are saying now is if the resolution had stopped after negotiations he would have had to go back, is that right?

**MR SINGH**: That is correct.

**CHAIRPERSON**: So are the two not inconsistent? Am I missing something?

10 **MR SINGH**: So maybe – maybe I misunderstood Mr Myburgh.

**CHAIRPERSON**: Oh. Oh so in the earlier proposition you would have said he should go – he would go back.

**MR SINGH**: He should have – yes.

**CHAIRPERSON**: Okay.

**ADV MYBURGH SC**: All right.

**CHAIRPERSON**: Okay. Mr Myburgh was your understanding the same as mine?

20 **ADV MYBURGH SC**: No that – well that is what I thought it should be but...

**CHAIRPERSON**: Yes.

**ADV MYBURGH SC**: I am indebted to you clarifying that.

**CHAIRPERSON**: Yes okay.

**ADV MYBURGH SC**: So in other words what – on your interpretation the board then decided to depart from 1953 of

the procurement manual.

**MR SINGH**: That is correct.

**ADV MYBURGH SC**: Now could it do that?

**MR SINGH**: So it was the board.

**ADV MYBURGH SC**: But the board cannot just do anything.

**MR SINGH**: No well the PPN which is 1953.

**ADV MYBURGH SC**: Yes.

**MR SINGH**: Is evolved from the board.

**ADV MYBURGH SC**: I see. Now Mr Singh are you sure  
10 when you read the Delegation to Mr Molefe you accept there  
is a distinction typically between the conclusion of the  
contract and the execution of a contract. In other words  
when you look at the fourth bullet point is it not perhaps  
capable of being interpreted as meaning that what the board  
was saying, is yes you can sign these documents and you  
can approve what you must but it does not mean that you  
can go and negotiate and conclude whatever contract you  
want to. Was it not authorising him to sign?

**MR SINGH**: Well I do not see the distinction.

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

**CHAIRPERSON**: Well let me put it to you what I think Mr  
Myburgh maybe having in mind because that is what I am  
having in mind too. But he will indicate if he had something  
different.

I understand that sometimes maybe it is not

sometimes it is all the time or most of the time that when there is a procurement process – tender process that is being followed it would be followed and there would come a point where the relevant committee or the relevant person with authority maybe it is the Bid Adjudication Committee picks the winner as it were and says, this is the – this is the bidder that we are picking that should get the contract.

But after that has been done there may still be a number of issues that must be discussed or negotiated with  
10 that bidder before there is the actual signing or conclusion of the contracts.

I though Mr Myburgh maybe having that in mind but Mr Myburgh you – you will indicate. Is your position that that process does not mean anything really e – that is Mr Molefe would have been mandated to take the process up to the signing of the contract after negotiating whatever needed to be negotiated.

**MR SINGH:** Well Mr Chair let me put it to you this way. This bullet point 4 wording is not specific to the locomotive  
20 or it is not specific to this memorandum firstly.

It is a gen – it is – I will not say generic but it is pretty much put into 90% of the memos that either go to the board BADC or to the board itself because the board does not get involved in executing contracts.

So that is the – the – how can I call it? The – the

wording that effectively empowers the Group Chief Executive to take the action from the time that the board approves to final execution of the contract. So this is the empowering if you want to call it legislation that empowers him to do it.

And that has been the standard practice at Transnet from the time I can remember.

**CHAIRPERSON:** But you – but what you do say is that as far as you are concerned it allows him – it allowed him to  
10 take the process right up to the end.

**MR SINGH:** From here to the end yes Mr Chair.

**CHAIRPERSON:** Okay.

**MR SINGH:** And Mr Chair also just to maybe amplify the point if you look at what we looking at here this is certainly a recommendation from us – the people that signed this to the board.

**CHAIRPERSON:** Ja, ja.

**MR SINGH:** So should the board have requested that this not be the case they would have taken a resolution contrary  
20 to this and said, listen you will do PTN or post tender negotiations and come back to us. Tell us the outcome of them we will then tell you whether to conclude or not.

**CHAIRPERSON:** Okay.

**MR SINGH:** And maybe Mr Chair as I said I do not know what the resolution of this thing says. This is just what we



have submitted.

**CHAIRPERSON:** Ja okay.

**MR SINGH:** The board may have minuted something different I do not know.

**CHAIRPERSON:** Okay.

**ADV MYBURGH SC:** But then if Mr Molefe could do as he pleased and he could contract himself for the 41% increase in the ETC why was it necessary to go to the board and get approval on the 28<sup>th</sup> of May for the increase in the ETC  
10 which Mr Molefe had already contracted.

**MR SINGH:** So Mr Chair the Delegation of Authority framework actually addresses this point that Mr Myburgh raises. What we are dealing with here Mr Chair as Mr Myburg quite correctly pointed out is that it is dealing with the procurement event and it is dealing with the procurement process which is governed by the ETN which is the procurement procedure manual and it basically said, go and do your post tender negotiation and if need be come back to the AC..

20 We have now said by virtue of this thing you do not need to come back to the AC. So on the procurement side Mr Molefe was authorised to complete the procurement process which he did through signing the agreements that as we now know 50 billion.

However Mr Chair there is an ancillary process to

this which is the capital process. Now the capital process is the process that we have been dealing with with Mr Choubey and MNS and ourselves in terms of the values.

Now when we approve a project on the capital side Mr Chair a value is allocated to it. That value remains there as a control figure because it is a – it is a budgeted number and you – if the budget changes then certain processes need to be followed to change that number.

Now in this case the board – the board approved  
10 38.6 on the basis on which we have explained. That number – that 38.6 would have been allocated a warrant in the Transnet system which would attract that project.

Once we have now concluded the contracts we knew that the 38 had now gone to 50 from a contractual perspective and 55 including contingencies.

Now a capital process Mr Chair would have required us to go through a process to amend the 38 to the contractually committed 55 so that when Transnet now spends they are spending against a capital allocated budget  
20 that is 55 and contractually committed agreements of 50 billion.

So that is the separation of the two processes. So the board needed to approve the 55 in order for us to amend the 38 to 55 from a capital process perspective.

**ADV MYBURGH SC:** And what would have happened if the

board had refused to do that?

**MR SINGH**: Well in effect I cannot speculate as to what would have happened but it has never happened in my history that the board did not approve it. The board did in fact approve it. The Delegation of Authority actually does make provision for these type of instances and Mr Chair the – to that extent the significance and materiality framework which is a document between the shareholder and the company also recognised the fact that these instances will  
10 occur when the capital projects exceed their values and we would have to either go for approval or notification to the – to the relevant Ministry that these things have occurred.

**ADV MYBURGH SC**: Yes but I am not sure that addresses the question. I mean what would have happened if they did not?

**MR SINGH**: Well I guess then – I actually do not know because I have never come across it.

**ADV MYBURGH SC**: Yes. But does that not show that the board really did need to agree first.

20 **MR SINGH**: Not necessarily because if you look at the – how can I call it? The

**CHAIRPERSON**: Well I guess – I guess if you want to make sure that the – the – you do not have that situation arising you get the board to agree first.

**MR SINGH**: Well in essence Mr Chair that is what I will

give.

**CHAIRPERSON:** 01:16:39.

**MR SINGH:** Yes so in this case Mr Chair from our perspective when I say our I am talking about management we had presented to the BADC I think on the 26<sup>th</sup> – 24<sup>th</sup> of February or so where we had indicted and listen we have now completed post tender negotiations and this is what the picture looks like and this was the – remember in the morning when I referred to a number of 52 billion that is the  
10 feedback that we had given to the BADC at that point. They then further took a resolution to say: Listen, management. Go ahead and conclude the contract. So had they had an issue with the value at the time they could have stopped this and said: Listen, this is not in accordance. Maybe raised concerns around why this thing is now going from 38 to 55 and what are the reasons and so on.

And we, basically, outlined the same reasons at that stage that we probably outlined in the board(?) meeting(?). So that was done to them on the 24<sup>th</sup>.  
20 Notwithstanding that, they still continued to say: Listen, go ahead and sign this. And the locomotive contracts were effectively only signed, I think, on the 17<sup>th</sup> of March.

**ADV MYBURGH SC:** 17 March, yes.

**MR SINGH:** 17<sup>th</sup> of March. So, there was a period of three weeks within which if they required us to not sign,

they could have, basically, taken a decision to say do not sign.

**ADV MYBURGH SC:** And Mr Singh, can I just take you – I am not sure that they are particularly relevant now, given that you have accepted that but for the delegation, one would have to go back to the board. Can I ask you to go to Bundle 5(c)?

**MR SINGH:** 5(c)?

**ADV MYBURGH SC:** And it is a document that we added  
10 over lunch. Something that you have mentioned earlier in your evidence, to page 2339. It hand paginated. It will be added to the bundle formally in due course.

**MR SINGH:** [No audible reply]

**ADV MYBURGH SC:** These are the minutes of the BADC meeting that you have made mention of, held on the 26<sup>th</sup> of February 2014. Do you see that?

**MR SINGH:** Yes.

**ADV MYBURGH SC:** And you see at page 2340 at the top:

20 “The purpose of the presentation was to request the committee to approve the award of business for the 464 diesel locomotives and 599 electric locomotives...”

And then at page 3, there seems to be something of a debate. There is a figure mentioned of R 52 billion. I think you have said that was the amount at the time, but I just

want to take you to what was ultimately resolved, if I understand the minutes correctly. If you go to page 2348. That is my or hand pagination and if I could ask you to drop down to paragraph 8.12, there it records:

“Supply of 465 new diesel locomotives for general freight business.

The committee agreed that the final total costs of ownership will be tabled to the committee for consideration in due course and further submitted to board for information purposes...”

And then, essentially, the same decision was made in respect of the 599 electric locomotives. Is that correct?

**MR SINGH**: I can see that, sir.

**ADV MYBURGH SC**: Sorry?

**MR SINGH**: I can see that, sir.

**ADV MYBURGH SC**: I just wanted to ask you. When I looked at these minutes, I noticed something that I wanted to question you on. Perhaps you can shed some light on this. At page 2347 at paragraph 8.1, it says:

“Procurement of 1064 locomotives for TFR General Freight Business, the terms of reference for the appointment of an independent expert will be formulated and finalised by the Board Steering Committee comprising the Committee Chairperson,

Chairperson of Risk and Mr Singh.

The Board Steering Committee will gage the skills required and appoint a service provider.

Going for the expert will assist the board.

Management will finalise the process of appointing an independent expert.

Conversation on how the matter will be finalised will be communicated to the chairperson...”

- 10 Now what was the role – what was the anticipated role of this – of this expert to the board?

**MR SINGH**: Mr Chair, this would go back to the - again something that emanated from the business case. In terms of being able to govern something like this, it was envisaged that the – there would be a steering committee that would manage this acquisition process, but over a period of time, it became, I guess, less formalised and this independent expert provision was never actually implemented.

- 20 **ADV MYBURGH SC**: Yes, well, that is what I wanted to ask you. Why not? It was decided here. You were supposed to be involved in choosing the expert.

**MR SINGH**: Yes, Mr Chair, I do not exactly recall but I think there was some discussion between Mr Molefe and the Chairman of BADC at the time and it was agreed that

we should not continue with this process.

**ADV MYBURGH SC:** But why did the board need an expert? Because as I understand your interpretation is that the board had told Mr Molefe that he could do what he wanted to.

**MR SINGH:** No, Mr Chair. This is a matter arising from previous minutes.

**ADV MYBURGH SC:** Yes.

**MR SINGH:** So, it had emanated sometime before. I am  
10 not exactly sure when.

**ADV MYBURGH SC:** Yes, but we are in February now.

**MR SINGH:** Ja. So, this would have been carried for from a number of ...[intervenes]

**ADV MYBURGH SC:** Yes, precisely, but it is subsequent to the January meeting.

**MR SINGH:** Yes.

**ADV MYBURGH SC:** But, as your interpretation, is in January, the board said to Mr Molefe that you can go and conclude whatever contract you want to.

20 **MR SINGH:** Yes.

**ADV MYBURGH SC:** Yet here in February, the BADC, the committee of the board is agitating about the fact that the board actually needs an expert.

**MR SINGH:** Mr Chair, I am – as I said – look, maybe I should have said this even before we started, but I – these



minutes were given to us now. Maybe if I can have a couple of minutes – well ...[intervenes]

**ADV MYBURGH SC:** Sure.

**MR SINGH:** ...we could deal with it in – I do not know ...[intervenes]

**ADV MYBURGH SC:** Let us just deal with what you know.

**MR SINGH:** Yes.

**ADV MYBURGH SC:** What did the board need an expert for?

10 **MR SINGH:** Well, as I said. In my view, this was conceived at the beginning of this process, and it was conceived on the basis that given the fact that we were buying quite a significant number of locomotives for the first time, a transaction of this size and also, it was electric and diesel locomotives, there would have been a need for someone to advice the board in terms of capital costs and, you know, all of those type of technical things that the board may had questions on.

**ADV MYBURGH SC:** So, what – so that we – I understand  
20 this. You yourself because of the size of the contract needed transaction advisors?

**MR SINGH:** Yes.

**ADV MYBURGH SC:** You went, and you got McKinsey and Regiments.

**MR SINGH:** Yes.

**ADV MYBURGH SC:** We have traversed on that, but what is contemplated that the board would have its own expert.

**MR SINGH:** In terms of the technical aspects.

**ADV MYBURGH SC:** Yes.

**MR SINGH:** Yes.

**ADV MYBURGH SC:** And it was something that was raised here as late as 26 February 2014.

**MR SINGH:** Based on the ...[intervenes]

**ADV MYBURGH SC:** Yes.

10 **MR SINGH:** ...on this document.

**ADV MYBURGH SC:** And now we get to the point of why was this not put into action?

**MR SINGH:** I do not recall exactly, Mr Chair, but I think one was. Who was this expert going to be? Where are we going to find the expert? And as time went on, it became irrelevant. As you would have seen, we were almost concluding the contract, yet we had not decided who the expert was going to be. So, by the reflection of time, the proposal became irrelevant.

20 **ADV MYBURGH SC:** But ...[intervenes]

**CHAIRPERSON:** Well, the proposal would become, if it is a proposal, irrelevant if you have signed the contract, but if you have not signed the contract, it would be highly relevant, even at last minute because if the board felt that it needed expert advice before it could give a final go-

ahead, then that could be critical, especially when you are dealing with big amounts.

**MR SINGH**: Yes, Mr Chair, but ostensible, they gave us the go-ahead notwithstanding the fact that this matter arising was still not concluded.

**CHAIRPERSON**: But remember, this question by Mr Myburgh is. It seeks to say: Are you really correct in understanding the resolution to mean that the board had given a go-ahead and it was not going to be involved in the  
10 matter anymore? And he is, in effect, saying. Then, that is this committee of the board, wanting an expert is inconsistent with the notion that they were not going to have anything to do with the matter anymore, where he wants to know what you will say to that.

**MR SINGH**: Well, Mr Chair, in response to that. The very same committee in the very same meeting, basically, tells us to go ahead and conclude the contract, which is on page 2341.

**CHAIRPERSON**: But that might raise the question. What  
20 did you understand this part of this proposal or request to be for then? Because one would have thought that if at the time you thought that it was unwarranted because the board had said go ahead, then one would have thought that you would raise that issue then to say: Why do you want that because you have given us all the mandates?

**MR SINGH**: Indeed. Yes, Mr Chair. As I have said. I have not looked at these sets of minutes in sequence.

**CHAIRPERSON**: Yes.

**MR SINGH**: I am just speaking of the – of my memory at this point in time but as you – in terms of the question that you are asking: Would this have changed the interpretation of what...? Remember this is the BADC. This is the Board Acquisition and Disposal Committee. The original resolution that we were looking for that empowered  
10 Mr Molefe came from the board itself.

**CHAIRPERSON**: But the members of the – this committee would be members of the board itself.

**MR SINGH**: Yes.

**CHAIRPERSON**: Ja.

**MR SINGH**: And that delegation would have happened in January.

**CHAIRPERSON**: Yes, but what does remain is. If members of the full board ...[intervenes]

**MR SINGH**: Yes.

20 **CHAIRPERSON**: ...who happened to be members of this committee as well, if they take this position, the same issue will arise to say but why do you ask for an expert because you were part of the board that said we must go ahead. So, in other words, we go back to the question. One would have expected that you having been at that

meeting of this committee, you would have raised the issue: Why do you want an expert because the board has already given us all the mandates? And if it is not raised, one wonders what your understanding was because one would have thought that you would say but why do we need an expert because you are no longer going to be involved in this matter? You have given it to us.

**MR SINGH**: Well, Mr Chair, I cannot answer for the board. Maybe the board should be asked that question. As I  
10 understand it. No board members were asked for affidavits in terms of the 1064 locos. So, they should tell you what they understood.

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

**MR SINGH**: It is possible(?) ...[intervenes]

**CHAIRPERSON**: ...I am talking about you because ...[intervenes]

**MR SINGH**: But I have told you what I... Mr Chair, I have told you ...[intervenes]

**CHAIRPERSON**: But you do not know what you may have  
20 understood.

**MR SINGH**: I told you what my understanding was. That in my view, this had – it was past its expiring date.

**CHAIRPERSON**: So, is your view that there was no need for an expert at that stage?

**MR SINGH**: If we had already gotten to a point, Mr Chair

...[intervenes]

**CHAIRPERSON**: Yes.

**MR SINGH**: ...of awarding the contract ...[intervenes]

**CHAIRPERSON**: Yes.

**MR SINGH**: ...the board in its view at that point in time had the information that it required to make the decision.

**CHAIRPERSON**: Yes, but of course, the minutes do not reflect you saying: Why do you need an expert? Is it not?

**MR SINGH**: No, no. Mr Chair, that is in the matters  
10 arising, Chair.

**CHAIRPERSON**: H'm?

**MR SINGH**: I said, Mr Chair, these items are recorded in the ...[intervenes]

**CHAIRPERSON**: Ja.

**MR SINGH**: ...section called matters arising.

**CHAIRPERSON**: H'm?

**MR SINGH**: So, yes, it does not record that.

**CHAIRPERSON**: Yes.

**ADV MYBURGH SC**: You see ...[intervenes]

20 **CHAIRPERSON**: Mr Myburgh.

**ADV MYBURGH SC**: Ja, I just wanted to point out something to you. Well, what we know is as late as the 26<sup>th</sup> of February 2014, which was three weeks before the LSA's were signed, at least six members of the board, on the face of it, the entire BADC members wanted an expert

to be appointed.

**MR SINGH**: Well, if they wanted they should have appointed one.

**ADV MYBURGH SC**: And then what is also interesting is. If you look at 347, you see it records under paragraph 8.1: The matter was in progress, and it was for whose attention?

**MR SINGH**: [No audible reply]

**ADV MYBURGH SC**: 2347.

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

**ADV MYBURGH SC**: It was for your attention, Mr Singh.

**MR SINGH**: I note that.

**ADV MYBURGH SC**: And so, what did you do about this?

**MR SINGH**: As I said I ...[intervenes]

**ADV MYBURGH SC**: Nothing?

**MR SINGH**: [laughs]

**ADV VAN DEN HEEVER**: Chairperson, with the greatest of respect. I know he has said it on numerous occasions that you are there to ascertain certain facts but there is a  
20 line to be drawn with cross-examination and I will, with the greatest of respect, submit my learned friend is busy in the mannerism in which he doing and the way he is doing it and the question he is putting, that ventures into the realm of cross-examination.

**CHAIRPERSON**: Well, you talk about the distinction

between asking questions to establish the truth and cross-examination for quite some time. The issue occupied my mind as to what the difference would be but to the extent that there would be a difference, maybe you might offer some insight. It may be that it might be as simply that a cross-examiner is advancing the interest the party that they represent which an evidence leader in the Commission, such as this, does not have.

But, you know, when it says you – when the rule  
10 says an evidence leader is entitled to ask questions to establish the truth, obviously, there are differences, you know. Probing is... So, I am just saying. I know that, you know, people make that distinction and maybe there is that distinction but practically it might be difficult. But from what Mr Myburgh is doing, I have – I do not think that he has gone that far. So. But it is difficult. I am sure you would concede, it is difficult.

**ADV VAN DEN HEEVER:** I have placed my objection on record.

20 **CHAIRPERSON:** Yes.

**ADV VAN DEN HEEVER:** And we will deal with it if necessary in due course.

**CHAIRPERSON:** Yes. No, that is fine. That is fine. Mr Myburgh.

**ADV MYBURGH SC:** Ja, well, perhaps I could just ask



you again, Mr Singh. It reflects that the matter was in progress, and it is for your attention.

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

**ADV MYBURGH SC**: Perhaps, I should not have said that you did not do anything in – it was my interpretation of what you would have said. Perhaps I should simply ask you then. What did you do this being for your attention?

**MR SINGH**: Mr Chair, as I said in – from my recollection, Mr Chair, I was under the impression that this matter had  
10 been closed earlier in the procurement process because as I have said, it actually emanated from the inception of the process. So, now, which is quite a while. So, I am actually surprised that this clause(?) is an open item on the 24<sup>th</sup> of January 2014. So, as I said. I would have to go back and actually reference in understanding.

**ADV MYBURGH SC**: Sure.

**MR SINGH**: What was the – or reconciling in my mind why is it that I think that this matter was closed previously.

**ADV MYBURGH SC**: Thank you. I would like then to turn  
20 to another topic and that is the failure to obtain ministerial approval ...[intervenes]

**CHAIRPERSON**: Just to close off on that item. Did you propose to submit an affidavit after you have had the opportunity of reconciling why you thought that something that had been dealt with earlier?

**MR SINGH**: Sure.

**CHAIRPERSON**: I just do not want to leave it hanging.

**MR SINGH**: No, Mr Chair, we will do that.

**CHAIRPERSON**: H'm?

**MR SINGH**: We will do that.

**CHAIRPERSON**: Ja, okay, alright. Mr Myburgh.

**ADV MYBURGH SC**: Thank you. Mr Singh, I want to deal with the, as I have mentioned, failure to obtain ministerial approval for the increase. Could I take you to your - one  
10 of your affidavits? This is Bundle 5(c) and can I ask you, please, to turn to page 1443?

**MR SINGH**: 1443?

**ADV MYBURGH SC**: 1443. Now what you say – sorry, tell me when you are there.

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

**ADV MYBURGH SC**: What you say at paragraph 52 is:

20 “I stand by the contents of the memorandum of the Board of Directors dated 23 May, specifically paragraph 17 of the said memorandum, where it states:

“Although the approval from the Minister was not subject to a final cost of R 38.6 billion for good governance and for information purposes, the letter will be sent to the DPE advising of the final ETC...”

Do you see that?

**MR SINGH:** I see that.

**ADV MYBURGH SC:** And you were, in fact, the author of this memorandum, correct?

**MR SINGH:** Yes, sir,

**ADV MYBURGH SC:** And then you go on at 54 to say:

“The DOA framework effective 1 June 2013, approved by the Board of Directors in May states...”

10 And you then quote paragraph or Clause 515 under the heading, Increase in Estimated Cost, and it reads:

“Increase in ETC Projects already approved by the shareholder minister must be reported to the shareholder minister if the increase is in excess of 15%...”

Now I think it is common cause that this increase was in excess of 15%. Is that right?

**MR SINGH:** That is correct.

**ADV MYBURGH SC:** And as I understand what you  
20 content and you must correct me if I am wrong, is that one did not need approval of the Minister. One need to simply to report it to the Minister/

**MR SINGH:** That is correct.

**ADV MYBURGH SC:** Well, from what I have seen and certainly from the reports, it appears that that also was not

done. When was it reported to the Minister?

**MR SINGH:** I have no recollection of whether it was reported to the Minister or not. I am not aware of that, sir.

**ADV MYBURGH SC:** You are not aware of that?

**MR SINGH:** No.

**CHAIRPERSON:** Who would have had to report it? Would it have been the board or the CEO or...?

**MR SINGH:** It would have – the letter would have had to be, I would assume, drafted by the company secretary. It  
10 would then go to Mr Molefe for recommendation and then would have gone to Mr Mkwanazi for him to sign to sent to...

**ADV MYBURGH SC:** So, it was Mr Molefe's job?

**MR SINGH:** Well, I would assume so or someone that would be picking up these issues from the board itself.

**ADV MYBURGH SC:** But, of course, that takes me back to that email string that we have dealt with this morning where you were corresponding with – is it Ms Huma?

**MR SINGH:** Mister.

20 **ADV MYBURGH SC:** Ms. Where ...[intervenes]

**MR SINGH:** Mister.

**ADV MYBURGH SC:** ...you said to her that:

“I hope this helps, but we will be providing  
...[intervenes]

**CHAIRPERSON:** You said mister?

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

**ADV MYBURGH SC**: Mister?

**MR SINGH**: Yes.

**ADV MYBURGH SC**: Sorry. I beg your pardon. You said:  
“I hope this helps, but we will be providing the  
DPE with a full report on the transaction once  
the Board of Directors have approved same...

That is what you said.

**MR SINGH**: Yes, sir.

10 **ADV MYBURGH SC**: You did not provide that report?

**MR SINGH**: Well, it was under the knowledge that there  
would be a PFMA process that would require that to  
happen.

**ADV MYBURGH SC**: H’m. Now, could I, please, ask you  
to turn to page 1913?

**MR SINGH**: [No audible reply]

**ADV MYBURGH SC**: This is of Bundle 5(c).

**MR SINGH**: [No audible reply]

**ADV MYBURGH SC**: It is an affidavit or a statement by  
20 Mr Sedumene(?) starting at page 1912, and he then deals  
with your contentions, as he puts it, at paragraph 3 at page  
1913 and he sets out an argument here. I am assuming  
you had an opportunity to read it. It runs from paragraphs  
3.1 to 3.18 at page 1915, where he contends that the  
obligation was not simply to report but that you actually

needed to get permission. To a large extent, I suppose these are questions of law. Do you have any comment on this set of submissions by Mr Sedumene?

**MR SINGH**: I am not sure where Mr Sedumene gets the – or comes to the conclusion that PFMA approval is required. He is, obviously, relying on the incorrect delegation of authority or significance in materiality framework to do that. The delegation of authority and significance in materiality in framework that we have outlined in the  
10 affidavit that you referred to is the correct delegation of authority and it requires that we merely report the increase to the Minister.

In this regard, Mr Chair, we have also referred you to the Werksmans report as well as the Fundudzi report, were also – do not take contention with the manner in which the approval relating to the increase from 38 to 45 is done.

**ADV MYBURGH SC**: But I suppose the more fundamental difficulty, and I would ask you to address this is, that even  
20 on your own interpretation that was not done.

**MR SINGH**: I am not – as I have said, I am not aware of whether it was or whether it was not done. I know Werksmans has indicated in their report that there is no evidence to suggest that a letter had been sent to the Minister.

**ADV MYBURGH SC:** But perhaps I should put that more accurately. You are not aware – you have no evidence ...[intervenes]

**MR SINGH:** No.

**ADV MYBURGH SC:** ...to the effect that it was done?

**MR SINGH:** No.

**ADV MYBURGH SC:** I think Mr Molefe, he – if I recall his evidence correctly, he accepted that ultimately this would have been his responsibility and I think he accepted that it  
10 was not done but I stand to be corrected. Alright. Let me then move to another topic and that relates to the relocation of CNR from Pretoria to Durban.

Now, Mr Singh, what I am going to do is. I am going to give you a sort of a thumbnail sketch of things. I think I have only had one or two questions to ask you. So, I hope that we can work through the rest of the stuff quite quickly. You know that the person who gave evidence about this was a Mr Consalves?

**MR SINGH:** Through – yes.

20 **ADV MYBURGH SC:** Okay.

**MR SINGH:** [Indistinct]

**ADV MYBURGH SC:** Ja. And what his affidavit reflects is that on the 11<sup>th</sup> of March 2014 and let me just position this. This was towards the end of your tenure at Transnet. As we know, it was from August you went over to – you were

seconded to Eskom. So, on 11 March 2014, CNR submitted an initial costing of R 9.7 million and I think we have already seen that because Mr Choubey referred to that. Then on the 23<sup>rd</sup> of April, CNR concludes what we refer to as a BDSA, Business Development Services Agreement, with Becks.

Its benchmark is R 280 million and it will get a fee if it achieve that benchmark. That was subsequently increased to R 580 million. So that is in April. Then in 10 July – this is now in 2015. That is why the role that you have played becomes important. In the next year, a costing of R 647 million was submitted to Transnet and this was agreed by Mr Gama in a variation order on the 23<sup>rd</sup> of July 2015, and that is shortly before you left and there is a consequence of this. Beck's pocketed R 67 million. So that is the rough architecture. Alright?

**MR SINGH**: [No audible reply]

**ADV MYBURGH SC**: Mr Consalves testified that you signed the agreement with CNR and Transnet. Do you 20 confirm that?

**MR SINGH**: No, sir.

**ADV MYBURGH SC**: Okay. So let me take you to Mr Consalves' file. One of the earlier original files, BB5. BB5, Chairperson.

**CHAIRPERSON**: Thank you.



**ADV MYBURGH SC:** If I could take you, please, to page RG-238?

**MR SINGH:** [No audible reply]

**ADV MYBURGH SC:** So, here you will find at 238 an analysis of costs increases, and it is quite a lengthy document, but it provides or signature at 249. You will see there, it was signed by Mr Jeff Wang, the CEO of CNR Railing Stock South Africa and then it provided for your signature. You say you did not sign this?

10 **MR SINGH:** Mr Chair, I do not have any recollection of signing this. I do not – I did not sign this, Mr Chair, nor do I recall. Mr Chair, I think this approval on the 23/07/2015 that Mr Gama had given, I think would indicate who the delegate of authority who signed this, in actual fact was.

**ADV MYBURGH SC:** So, if I could take you, please, to your bundle, 5(b)?

**MR SINGH:** [No audible reply]

**ADV MYBURGH SC:** So, this is – 5(b), page 1011. I do not know if it is of any particular relevance, but I guess it  
20 is – it needs to be determined.

**CHAIRPERSON:** Did you say ...[intervenes]

**ADV MYBURGH SC:** 1011.

**CHAIRPERSON:** Okay.

**ADV MYBURGH SC:** So, it is an extract from Mr Consalves' evidence at 1011. If you go to line 21. The

version that we have on file is only being say – signed by Jeff Wang.

“We do not have a version that was signed by Anoj Singh as well.”

The evidence leader says:

“But can you confirm that you are aware of the signed version which was signed on behalf of Transnet by Anoj Singh and on behalf of the consortium by Mr Jeff Wang.”

10 Mr Consalves:

“Correct, Chair.”

And you will see later on that Siyabonga Gama confirms that this is accepted. As I read his evidence. He says that you signed this contract.

**MR SINGH**: No, Mr Chair, again, if that signed copy does exist, he should have provided the Commission so we could deal with it. As of today, we still do not have a copy of that.

**ADV MYBURGH SC**: Alright. But – well, not that we have  
20 been able to locate.

**MR SINGH**: So ...[intervenes]

**ADV MYBURGH SC**: But do I understand your evidence to be that you cannot recall whether you signed it or not?

**MR SINGH**: I do not – I was not – as far as I recall I am not the delegated authority to sign this. So, I would not

have signed this.

**ADV MYBURGH SC:** I see.

**MR SINGH:** And again, he says that – you will see later on that Mr Gama confirms that this is accepted. I do not think Mr Gama has confirmed that either.

**ADV MYBURGH SC:** You know that – well, I think that I have put it to you that Becks is Gupta linked. It is one of the first line, as Money-flows calls it, “money laundering entity”? Do you know that?

10 **MR SINGH:** Well, from what you have said, yes.

**ADV MYBURGH SC:** Now I want to just take you to the series of concerns that were raised by Mr Laher in relation to the proposed cost of R 647 million. Can we go, please, to Transnet Bundle 4(a)?

**MR SINGH:** [No audible reply]

**ADV MYBURGH SC:** And then go right to the end again to the BB4(f) divider.

**MR SINGH:** [No audible reply]

**CHAIRPERSON:** What page did you say we should go to?

20 **ADV MYBURGH SC:** Well, I would like to start by going to page 238, please. That is part of Mr Laher’s affidavit. At paragraph 71, he says:

“In June 2015, I was instructed by Singh to review proposals relating to the proposed move...”

And then at 72, he says:

“My comments on these proposals and my concerns on the financial point of view are articulated in email correspondence dated 21 June 2015 and 22 June 2015...”

Now that email correspondence, you will find at page 471. Now, Mr Singh, you will see at 471 that it is from Laher sent on the 21<sup>st</sup> of June and it is CC'd to you. Now, I just wanted to ask you to confirm or to comment on this. Mr  
10 Gama, in his evidence, made mention of the fact that there was a Relocation Committee. A committee that was tasked and to deal with this issue of relocation and that you were part of that committee. Would you accept that?

**MR SINGH:** I do seem to recall that, yes.

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

**MR SINGH:** I do seem to recall that. Something like that.

**ADV MYBURGH SC:** And you confirm that you have asked Mr Laher to look into this issue?

**MR SINGH:** Yes.

20 **ADV MYBURGH SC:** And in the interest of time, I do not want to have to go through ...[intervenes]

**CHAIRPERSON:** I am sorry.

**MR SINGH:** Yes.

**CHAIRPERSON:** Did you give an answer?

**MR SINGH:** Yes.

**CHAIRPERSON:** Yes, okay.

**MR SINGH:** Sorry, let me...

**ADV MYBURGH SC:** In the interest of time, I do want to have to go through these 18 points, but you accept that Mr Laher raises a number of material concerns about the costing?

**MR SINGH:** Yes, sir.

**ADV MYBURGH SC:** Now, really, just wanted to ask you this. On what basis were these concerns resolved?

10 **MR SINGH:** Mr Chair, these concerns, from my perspective, would have been dealt with by Ms Molete(?) who was the point(?) person at the time, dealing with the relocation. She was the, let us call it, the project manager responsible for the, let us call it, relocation project...

**ADV MYBURGH SC:** But there was a committee?

**MR SINGH:** Yes.

**ADV MYBURGH SC:** She was part of the committee?

**MR SINGH:** Yes, sir.

**ADV MYBURGH SC:** As you were?

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

**ADV MYBURGH SC:** Now, my question again – well, put another way. Were you satisfied that these concerns had been met?

**MR SINGH:** Mr Chair, in terms of the memo that was then presented for us to recommend to Mr Gama, we – I was

comfortable that Ms Molete would have attended to these matters. I did not get to go back to Mr Laher and say: Listen, have these things being resolved satisfactorily? I do not think... [Speaker's voice drops – unclear]

**ADV MYBURGH SC:** Well, Mr Laher's evidence is. No one came back to him.

**MR SINGH:** Well, it seems like he did resend it to Ms Mdletshe on the 3<sup>rd</sup> of July.

**ADV MYBURGH SC:** On the 21<sup>st</sup> of June.

10 **MR SINGH:** No, I am saying. The original email was sent to Ms Mdletshe on the 21<sup>st</sup> of June.

**ADV MYBURGH SC:** Yes, and then on the 3<sup>rd</sup> of July ...[intervenes]

**MR SINGH:** Copying us and then he, I would assume, resend it to her on the 3<sup>rd</sup> of July.

**ADV MYBURGH SC:** 3<sup>rd</sup> of July.

**MR SINGH:** Why he resend it, I am assuming, for her to either follow it up or she may have requested the fact that he resend it.

20 **ADV MYBURGH SC:** But just so that I understand your evidence. You as a member of the Relocation Committee, were you satisfied that Mr Laher's concerns had been met, bearing in mind that you were the one who asked him to look into this.

**MR SINGH:** By virtue of the fact that I had thought that

Ms Mdletshe was taking care of things. You see, I think also, one of the things that I certainly have reference to with at the time was that we concentrated on the fact that we are looking at CNR for various specific reasons which is in the mandate of the Commission, but from my perspective at the time, Mr Chair, you would appreciate it that I was actually looking at the relocation as a project and the project was made up of two people that were relocating. It was just not CNR. It was CNR and BT(?).

10           So, from that perspective, and again Mr Chair, one of the things that we would – that I think I need to highlight is that the committee was not a – how can I say – formulised committee that sat in a room and then said: Okay, we have no received all of these things. Let us now deal with each one in turn.

          It was a form of committee that was made up of people that were – how do I put this – that had the ability to understand whether these things were sensible or not because remember, Ms Mdletshe, Mr Jiyane and TFR and  
20 TE were the people that actually received the original bids from...

          Then a decision was made to say: Okay, all four cannot build in Pretoria. We need to relocate too. So, the quantification of this process would have been undertaken to understand what the deviation is from, what was

submitted or what is now being requested. And these individuals were best placed to be able to do that and that is one of the reasons why Mr Laher was incorporated into this thing to understand that because he had a meeting with – report(?) was submitted and what would now be required would be – how do I say – allocated for this relocation.

From my perspective, Mr Chair. As I said, I would have expected that between Mr Laher and Ms Mdletshe  
10 that these issues would have been resolved prior to the memo coming to us. In addition to that, Mr Chair. When I compared the two values between CNR and BT, they were not significantly different. I think the number was 647 that you mentioned for CNR. I think Mr Myburgh did mention a value of 6474 for CNR and I think the number for BT was around six hundred million.

So, to me the numbers did not look significantly different having gone through the process that the committee would have gone through. So, from a  
20 reasonable perspective, Mr Chair, I was relatively comfortable that the two numbers were relatively in the ballpark and therefore was comfortable that the values – the memorandum could be supported.

And again, Mr Chair, you will have appreciation that these things, as I would – the memo that went for



approval to Mr Gama was not at authority to pay(?). There would have been a contract. There would have had to be a process that agreed that...

**MECHANICAL INTERRUPTION:** [02:01:18]

**MR SINGH:** So, the approval. Yes, approved the amount and Mr Chair what that would have done, as I explained earlier, it would have released six hundred million for BT and it would have six hundred and forty-seven million for CNR from that contingency amount of five billion that we  
10 had created through the increase from 38 to 50, what we have discussed this morning because remember the purpose of that memo was to release those amounts for which spending would then occur against. And here would be then a subsequent process that would need to justify the values that then were spent against each of those activities...

**ADV MYBURGH SC:** So, what I just wanted then to get your comment on. Let us just have a look at one of these business development services agreements. Again – and I  
20 want you to go back to Consalves, Exhibit BB5. Go to page 216.

**MR SINGH:** [Speaker unclear – moved away from microphone]

**ADV MYBURGH SC:** BB5. One of the original files.

**MR SINGH:** [No audible reply]

**ADV MYBURGH SC:** Ja. And can you please turn to page 216? That is where you see the cover sheet of the Business Development Services Agreement between CNR and Business Expansion Structured Products, BEX. I just want to maybe ask your comment on one thing. If you go to page 221, direct your attention to paragraph 2.5.

**MR SINGH:** Sorry?

**ADV MYBURGH SC:** 221, paragraph 2.5.

**MR SINGH:** [No audible reply]

10 **ADV MYBURGH SC:** It says there:

“Since BEX has undertaken to negotiate and finalise the deal with TFR on a risk basis, it is agreed between both parties that BEX is entitled to an agency commission...”

Now you dealt with this. You received CNR's proposal. You asked Mr Laher to look into it, et cetera. Did you ever get a sense of BEX having played any role in the negotiations and the finalisation of this deal?

**MR SINGH:** No.

20 **ADV MYBURGH SC:** Did you even know who BEX was? Did you know anybody from BEX?

**MR SINGH:** No.

**CHAIRPERSON:** Your – both answers were no?

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

**CHAIRPERSON:** Ja, you were speaking away from the

mic.

**MR SINGH**: No... Yes, that is correct.

**CHAIRPERSON**: Ja, okay.

**ADV MYBURGH SC**: And perhaps just for the sake of completeness. If I could ask you to go to 259? You will see that there is the invoice that was rendered to CNR by BEX and paid in an amount of R 67 million excluding VAT and including VAT R 76 million. This being the first line of the Gupta laundering entity.

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

**ADV MYBURGH SC**: Could you turn then to another contract? And thankfully this time having completed the locomotives, we can speak about something else. Neotel. And I want to deal with the 2014 Master Services Agreement Negotiations and Asset Buy Back Agreement. This, as you may remember, was something dealt with in evidence by Mr Van der Westhuizen. Can I ask you, please, to fish out Exhibit BB7, one of the original exhibits, earlier on and go to A, BB7(a)? And could I ask you,  
20 please, Mr Singh, to turn to page 13?

**MR SINGH**: [No audible reply]

**ADV MYBURGH SC**: Now, at the material time, Mr Van der Westhuizen was an Executive Manager, Office of Chief Information Officer at Transnet. I just want to take you, if I may? I am going to try and paraphrase as much as I can.

I want to take you through paragraphs 47 to 56. It says at Paragraph 47 that:

10 “There were two streams included in the negotiations with Neotel, namely a Commercial Stream which he was responsible for the negotiation and finalisation of the terms of the 2014 MSA and a Technical Stream which was responsible for the negotiation of the technical details of the services to be rendered by Neotel. I was part of the Transnet Negotiation Team in the Commercial Stream...”

Then he says at paragraph 49:

“The contentious issue during the negotiations was the aspect relating to the buy back by Transnet of the assets and infrastructure which constituted its ITC network at the time...”

And if I can then take you forward, please, to page 16, paragraph 51? He says:

20 “The investigators of the Commission presented me with correspondence which reflects that a meeting took place between Francois van der Merwe from Neotel and Singh on 8 December 2014 in Umhlanga.

I am not aware what the purpose of this meeting was and why the Transnet CFO would

meet directly with the supplier without including anyone from the Transnet Negotiating Team.

This was not normal protocol and what might have been discussed at this meeting is not known to me...”

Paragraph 52:

10 “In an attempt to resolve the stalemate, Sing became involved as did Sunil Joshi, the CEO of Neotel.

They convened a meeting on 11 December 2014 which took place at the Slow Lounge in Sandton, attended by myself and Singh from Transnet, Sunil and Francois van der Merwe from Neotel...”

Paragraph 53:

20 “At some stage during this meeting, Singh and Sunil separated themselves from Francois and I in order for them to discuss the final terms of the repurchase of the assets and infrastructure from what I recall...”

Paragraph 5:

“No feedback was provided to us after the meeting between Singh and Joshi but at some point during 11 or 12 December 2014, we must

have been instructed to meet on  
13 December 2014 to finalise the MSA...”

Paragraph 55:

“The final meeting to finalise the MSA occurred  
on Saturday, 13 December 2014 at the office  
of Neotel in Midrand.

Singh arrived at the offices of Neotel and I  
handed him the final draft of the negotiated  
MSA and relevant approval documents.

10 We have exchanged pleasantries and I  
departed.

I later learnt from media articles that an entity  
called Homex was paid by Neotel for allegedly  
facilitating negotiations between Neotel and  
Transnet by being presented with two  
contracts that was ostensible concluded  
between Homex and Neotel...”

And then he goes on to say:

20 “Having read these documents and based on  
my involvements in the negotiations with  
Neotel, I would like to comment as follows:

(1) I did not meet any personal  
representative of Homex during our  
negotiations with Neotel.

(2) Transnet had everything to lose and

nothing to win by delaying/not signing the MSA. As a network transitions it would have taken years to complete. Only Neotel would have benefited as they communicated to Transnet that should the deal not be concluded before expiration of the LOI's, a monthly fee would escalate to R 57 million per month from what I recall. Neotel knew they held all the cards, so as to speak, as they could switch off the Transnet network which would have led to disastrous consequences for Transnet.

10

(3) Transnet knew from the start of the RFP process that any transition would take years and cost Transnet a significant amount of money. Transnet did not have any options but to sign this new MSA or to extent the current MSA with Neotel as significantly inflated costs. At no stage was it a viable option not to sign the new MSA agreement which was business critical to Transnet.

20

(4) I fail to understand how any representative from Homex would have been able to get the parties to reach an agreement in a single day and they could calculate from the day upon which Homex contracted with

Neotel, 12 December 2014 and the day on which I delivered the MSA in its final form to Singh, 13 December 2014. The MSA was signed on 15 December 2014...”

Now perhaps I could just take you to these two agreements? The one you will find at page 494, but this is now in Exhibit BB7(b). So, it is Mr Volmink’s affidavit is in A and annexures, the ones that we are going to deal with, are in B.

10 **MR SINGH**: [Speaker unclear]

**ADV MYBURGH SC**: BB7(b).

**MR SINGH**: Yes.

**ADV MYBURGH SC**: So, at page 494 you will find one of the agreements.

**MR SINGH**: 494?

**ADV MYBURGH SC**: 494.

**MR SINGH**: [No audible reply]

**ADV MYBURGH SC**: You will see if you go to 504 that it is signed. This is an agreement between Neotel and  
20 Homex. At 404, it is signed by Sunil Joshi. That is the gentleman that you allegedly met with. And then there is another agreement at 507 and that is also signed by Mr Sunil Joshi, the person you allegedly met with. And in between these two agreements is an invoice at page 505 rendered by Homex to Neotel for an amount including VAT



of some R 41 million.

Now what we do know is that Homex was Mr Essa's company. Money-Flows have determined that this money was paid. Homex, we know as well, was one of the first line Gupta money laundering entities. So, another transaction that you were involved in. Another – one of the BDSA's where there was this large kickback paid.

What is your comment on the evidence of Mr Van der Westhuizen? Do you accept that you went to these  
10 meetings, that you intervened, and that it produced a signed MSA quite quickly?

**MR SINGH**: Let us deal with the issues in turn. So, Mr Van der Westhuizen does quite correctly summarise from what I recall the events that led to the MSA becoming contentious between Transnet and Neotel. Mr Chair, the background that Mr Myburgh has not covered is that the – this was Neotel's second bite of the cherry. The background hand, this is that there was an award to Neotel.

20 The award was then overturned by Mr Molefe and that overturn was then again overturned to basically award to Neotel. So, in that process, Mr Chair, as you would understand, the negotiating power of Transnet, obviously, diminished quite significantly because of the change in award from Neotel first, then to another bidder and then

back to Neotel.

And secondly, Mr Chair. The negotiating power of Transnet was always – well, Transnet was always going to be on the back(?) because Neotel found the infrastructure. So, basically, we had a gun to our head in terms of negotiating with Neotel. And Neotel was - as you can see the list of issues starts at 49.4.1 on page 14 and runs right up until 49.4.7.5 to – on page 15.

So, and this was a significant period of time that  
10 the teams were trying to negotiate these contracts, Mr Chair. The ...[intervenes]

**CHAIRPERSON**: I am sorry, Mr Singh. I thought I was looking at the right file. Mr Myburgh.

**MR SINGH**: Oh, sorry. I am using...

**CHAIRPERSON**: Oh, looking at ...[intervenes]

**MR SINGH**: ...the page ...[intervenes]

**CHAIRPERSON**: The pages that you are mentioning do not coincide with my pages.

**ADV MYBURGH SC**: He is referring to Mr Van der  
20 Westhuizen's affidavit, Chairperson.

**CHAIRPERSON**: That is BB7(b).

**ADV MYBURGH SC**: That is Exhibit BB7(a). We switched back to the A Bundle.

**CHAIRPERSON**: Oh, okay.

**ADV MYBURGH SC**: Which has got the affidavit

...[intervenes]

**CHAIRPERSON**: I have got B. Okay.

**MR SINGH**: Sorry, Chair.

**CHAIRPERSON**: Okay.

**MR SINGH**: So, it is BB7(a).

**CHAIRPERSON**: Yes.

**MR SINGH**: So, the point I was trying to make Mr Chair is that Neotel, basically, held all the cards in this negotiating process.

10 **CHAIRPERSON**: H'm?

**MR SINGH**: And the attitude that Neotel had taken is demonstrated by the list of issues that was still outstanding at this late stage of the negotiation process which was – which is reflected in paragraph 49.4 which is on page 14 and goes on to page 15 which is a long list of issues that still needed to be finalised.

And, basically, on paragraph 50, Mr Van der Westhuizen does state, and correctly so, that the negotiations became very strained towards the end  
20 November and early December.

And Mr Chair, you would also appreciate that Mr Van der Westhuizen correctly concludes later on in his statement that we were at this point in time paying a premium for network service because we were on a month-to-month basis with Neotel and that value I think was in,

like, R 16 million or close to R 16 million.

And if memory serves, I think the monthly fee would have normally been in the region of about R 40 to R 45 million, I think. If memory serves. So, it was a significant premium. And yes, as Mr Van der Westhuizen says, there was more incentive for Transnet to sign than Neotel to sign at any given point in time.

The attempt to resolve the stalemate, Mr Chair, actually was suggested by Mr Van der Westhuizen himself, 10 if I recall, if not the negotiating team which led to this meeting that was attended to by Joshi and myself. And again, Mr Chair, there is nothing – I do not think there is anything untoward in me and Mr Joshi meeting and discuss this matter because as Mr Van der Westhuizen has correctly outlined that a stalemate has been reached by the two parties.

And this meeting was really a setup to engage with Neotel constructively at a senior management level to ensure that we get to a point where the two parties 20 regularise our relationship going forward for the long term which was what the outcome of the MSA process was supposed to be.

And that was the discussion between Mr Joshi and myself, and from my perspective, I made it quite clear to Mr Joshi that: Listen, we have gone through a tender

process. You have submitted a pricing proposal and you have submitted certain, or you have complied with the tender, the requirements of the RFP. That is what – that is which you were actually appraised on.

So, very simply put. Please comply with those conditions and conclude a contract because all of these other issues that you have raised is contrary to what you have submitted and that is why my team has the issues with you. My team does not have issues with you other  
10 than the fact that you agreed in the tender process to do certain things.

So, all they are saying is. Do what you agreed to do. And that is the discussion that we had with Mr Joshi and that was the reason why there was no feedback because it was up to Mr Joshi to make sure that his team understood what the negotiating parameters were.

And that then led to the conclusion of the MSA on, I think, according to Mr Van der Westhuizen on the 15<sup>th</sup> of December or 14<sup>th</sup> of December.

20 **ADV MYBURGH SC:** Well, I think, really, what I wanted to ask you is. Can you think of any reason why Neotel decided to pay Homex R 41 million?

**MR SINGH:** I have no idea.

**ADV MYBURGH SC:** Let me just take you to the agreements. This is B, BB7(b). I have shown you them,

but I just want to take you to one of two clauses. At page 496 ...[intervenes]

**MR SINGH**: Sorry, what page are you on, sir?

**ADV MYBURGH SC**: 496.

**MR SINGH**: Yes, sir.

**ADV MYBURGH SC**: Paragraph 4.1 towards the foot of the page. The consultant, that is Homex undertakes to facilitate the successful conclusion of the asset sale referred to in the Master Service Agreement. Did Homex  
10 do that?

**MR SINGH**: I have no idea. I have no...

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

**MR SINGH**: I said I have no idea. I have no interaction with Homex.

**ADV MYBURGH SC**: Yes. And if you go then to page 509, paragraph 4, towards the foot of the page.

“The consultants agrees to undertake to analyse the requirements ...[intervenes]

**MR SINGH**: Sorry, what page you said?

20 **ADV MYBURGH SC**: 509, paragraph 4, towards the foot of the page.

“The consultants agrees to undertake to analyse the requirements of both Neotel and Transnet to find a workable solution to the impasse in negotiations...”

Did Homex do that?

**MR SINGH**: Again, Mr Chair, I cannot comment on that because I had no interactions with Homex.

**ADV MYBURGH SC**: But then why if Homex were not involved, why did Neotel pay them this money? Have you got any idea?

**MR SINGH**: No, sir.

**ADV MYBURGH SC**: Could I just ask you to comment on paragraph 51 of Mr Van der Westhuizen's affidavit. I think  
10 you have dealt with much of the rest. And that is at page 16 of BB7(a), where he talks about this meeting that you had with Van der Merwe on the 8<sup>th</sup> of December in Umhlanga.

**MR SINGH**: Mr Chair, again, we have requested the Commission to present us with this correspondence and we have not received this to date. So, we have dealt with this in the affidavit, and we have said we did not have this meeting.

**ADV MYBURGH SC**: Alright. Can you recall this meeting?

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

**ADV MYBURGH SC**: And why is that you became involved, again?

**MR SINGH**: Sorry?

**ADV MYBURGH SC**: Why did you become involved in this?

**MR SINGH:** Well, Mr Chair, this was a significant procurement event. It was one of those that needed to go to the BADC, and I think, if I am not mistaken, I do not think it went to the board, but it is - was part of the CFO's portfolio to oversee procurement events. So, this is – this was part of this.

**ADV MYBURGH SC:** But did you then, as I understand it, you became involved at this stage to resolve the impasse.

**MR SINGH:** Yes, at the request of the negotiating...

10 **ADV MYBURGH SC:** Yes. And I have shown you that the Homex agreement that talks about them intervening to resolve the impasse or finding a way to resolve the impasse. You have seen those words and that language, correct?

**MR SINGH:** Yes, but I have described what my involvement in that was.

**ADV MYBURGH SC:** So, I then have only two other small things to deal with. The one relates to Mr Gama's legal fees in a different era and realm now all together. Could I  
20 ask you to turn to Transnet Bundle 3?

**MR SINGH:** [Speaker unclear – away from microphone]

**CHAIRPERSON:** I have not taken – I have not adjourned for a break.

**ADV MYBURGH SC:** Yes, certainly.

**CHAIRPERSON:** Because I was thinking. Let me allow



you to finish in case you are close to finishing.

**ADV MYBURGH SC:** Yes.

**CHAIRPERSON:** So, but if the witness or anybody feels there is need to take a break, let me know. Mr Singh, are you fine?

**MR SINGH:** [No audible reply]

**CHAIRPERSON:** Okay, alright. So, let us continue and try and finish before we can take a break then.

**ADV MYBURGH SC:** Thank you, Chairperson. I am not  
10 going to be much longer.

**CHAIRPERSON:** Yes-no, that is fine.

**ADV MYBURGH SC:** Those may prove to be famous last words before.

**CHAIRPERSON:** [laughs]

**MR SINGH:** Sorry, you are looking for...?

**ADV MYBURGH SC:** Ja, I am – Transnet Bundle 3. You will also see on the spine, it is Exhibit BB16, 16 and 17.

**MR SINGH:** Okay.

**ADV MYBURGH SC:** Can I ask you, please, to turn to  
20 page 25?

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

**ADV MYBURGH SC:** This is an affidavit of Mr Mapoma. And I want to direct your attention, please, to paragraphs 9 and 10 at page 25.

“Simply put. Transnet was to pay to Mr Gama

what it was supposed to recover from him as its costs in the high court application and in the Transnet Bargaining Council.

I cannot explain the logic behind the board decision.

I was not party to it and was not there when it was taken.

However, I action it as I was instructed.

10 I also refer the Commission to the handwritten notes dated 28 March 2011 I made at the time on the two bills.

One from Bowman Gilfillan and one from Evershare...”

And then at 10:

“I would have discussed the matter with Mr Anoj Singh at the time, as my notes states. However, I do not recall the details of the conversation.

20 The Commission is also referred to the memorandum that I wrote to Mr Singh dated 23 March 2011...”

Now that memorandum you will find at page 104.

**MR SINGH:** 104?

**ADV MYBURGH SC:** Ja.

**CHAIRPERSON:** Where does it start? At 102? Oh, that

is a letter, not a memorandum.

**MR SINGH**: No, this a ...[intervenes]

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

**CHAIRPERSON**: 105, Langa Attorneys.

**ADV MYBURGH SC**: Mr Chairperson, perhaps I could – could I ask if we could have a short break and I can then just check these references. I am sorry. They – something must have gone wrong, but I do not have more than ten minutes' questions ...[intervenes]

10 **CHAIRPERSON**: Yes.

**ADV MYBURGH SC**: ...for Mr Singh after that.

**CHAIRPERSON**: Okay, let us take a – shall we make it the short adjournment?

**ADV MYBURGH SC**: Yes, certainly.

**CHAIRPERSON**: Ja, let us make it the short adjournment.

**ADV MYBURGH SC**: Thank you.

**CHAIRPERSON**: Ja, 15-minutes. We adjourn.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

20 **ADV MYBURGH SC**: ...occurred. That was the anomaly that is being investigated and those annotations that I have shown you, those were the annotations that then resulted in those payments being made.

So at paragraph 12.1 at page 31, Mr Mapoma, this is another affidavit, said:

Regarding the first payment it came about as follows. Following my dealings with Langa Attorneys, who presented a ridiculously inflated bill, I was opposed to paying Mr Gama's fees. This was an unpopular decision and I came under pressure within the organisation to finalise the issue. In this context I held a discussion with Mr Makhwanazi (who I dealt with closely on the issue) which culminated in him instructing me to pay 75% of Transnet's tax cost to Mr Gama. (On the basis that he incurred liability for such costs.) Given that I was unhappy with this, and one can understand why, as I have explained, I escalated the matter to Mr Singh who approved the payment. I refer in this regard to my handwritten annotations dated 28 March on various tax bills attached to Ms Mohlapi's affidavit on costs."

10

Those are the ones that I have taken you to. So here he says that he escalated the matter to you, he was concerned, and you approved the payment. What do you say?

20

**MR SINGH**: Oh, sorry. So, Mr Chair, as I said I do not recall Mr Mapoma escalating this matter to me. Mr Chair, the background to this matter I think would be relevant to the Commission is that when the board was seized with

this matter of Mr Gama, given the fact that Mr Gama had gone through a disciplinary process which resulted in his dismissal and me being in the previous board, they had asked me to recuse myself from the decisions relating to Mr Gama which then I promptly did.

So any issues relating to Mr Gama's reinstatement and the issues relating to these costs, Mr Chair, I was not privy to. So if Mr Mapoma had escalated this issue to me, Mr Chair, my response would have been exactly as I just responded to you, is that I have no ability to assess whether this is good, bad or indifferent because I was not part of the process that made the decision to approve these costs or agree to these costs in the first place.

In addition to that, Mr Chair, I would not be the delegated authority to be able to approve these costs and I my reading of this, Mr Chair, the board had already taken a decision, so they had approved the costs, so there was nothing to approve in essence.

**ADV MYBURGH SC:** You see, Mr Singh, the board had not approved the costs, there was a settlement agreement that said Transnet would pay 75% of Mr Gama's High Court costs. There was never an agreement, was not a term of the settlement that Mr Gama would be paid 75% of Transnet's costs. So what Mr Mapoma is saying here, is when he was instructed to pay those costs by Mr

Makhwanazi he was concerned, came to you. That is what he is saying?

**MR SINGH**: No, well I am saying I do not recall this, it never happened as far as I am concerned and, as I said, if he had escalated the matter to me, I have no knowledge of this.

**ADV MYBURGH SC**: And then what he says in furtherance of his version, is he refers to his handwritten annotations where he says it is discussed with Anoj.

10 **MR SINGH**: But, Mr Chair, also, if you look at what he then says is that the decision was also recorded in the memorandums to Mr Singh and Mr Molefe, refer to paragraphs 10 and 12 of my second affidavit. We have gone through that memorandum and we know that I am not a signatory to that memorandum. So...

**CHAIRPERSON**: But if he needed somebody or if he needed the Chief Financial Officer to approve payment would he have any choice other than to come to you?

**MR SINGH**: That was my original point, Mr Chair, is that I  
20 would not be the delegated authority to approve something.

**CHAIRPERSON**: But if he needed the Chief Financial Officer, you would be the only person if he needed the Chief Financial Officer.

**MR SINGH**: If he needed me but he did not need me in this case.

**CHAIRPERSON:** Yes. Yes, you say he did not need you in this case?

**MR SINGH:** No, Sir.

**CHAIRPERSON:** Now why would he need you if you were – why would he come to you if he did not need the Chief Financial Officer? Do you know?

**MR SINGH:** I have no...

**CHAIRPERSON:** Would he run some things by you, things that are financial?

10 **MR SINGH:** Mr Chair, these things would have been paid I would assume out of the Group Legal budget. So again Group Legal budget that would have been spent against. But, Mr Chair, as you can see, other than the handwritten annotations which he makes on these bills, there is nothing else I can say.

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

**ADV MYBURGH SC:** Yes, thank you. And then, Mr Singh, can I ask you in the same file to turn to page 801? I want to just deal if I could quickly with Abalozi. Now 801 is a  
20 memorandum that was addressed to you by Mr Silinga.

**MR SINGH:** That is correct.

**ADV MYBURGH SC:** And you then approved the payment of 20 million. That you see at 802, to Abalozi.

**MR SINGH:** Yes, Sir.

**ADV MYBURGH SC:** Did you have any idea what you

were actually paying for?

**MR SINGH**: No, on the basis that the letter from Mr Molefe had been attached.

**ADV MYBURGH SC**: Alright, so you did not know what you were paying, you were simply guided by the letter that you – is it the letter at 803 that you are referring to?

**MR SINGH**: That is correct.

**ADV MYBURGH SC**: So you made no further enquiries or interrogation of this transaction?

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

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

**CHAIRPERSON**: Why would Mr Silinga have needed you here?

**MR SINGH**: Mr Chair, in this one, if you look at the issue of the budget, here you see the settlement amount was not budgeted for, on page 802.

**CHAIRPERSON**: Was not budgeted for?

**MR SINGH**: Yes, on page 802, if you look at paragraph 9, it said budget implications.

20           “The settlement amount was not budgeted for, the payment therefore will be made out of the corporate centre.”

And then I added my handwritten note to say:

“And will be funded from overall cost saving.”

So basically Mr Silinga – Mr Molefe had created the



liability in terms of agreeing to pay. Mr Silinga then identified to say well, I do not really have the money to pay this, so where am I going to get this money from? So he then basically prepared this memo to say this listen, can I go ahead and pay this notwithstanding the fact that I do not have the budget? And then he said listen, in the overall corporate centre budget you can reallocate expenses to cover this and at that time, Mr Chair, we had a cost savings target that we were achieving, so I just added  
10 the point that we would comfortable in terms of being able to pay this amount because of the cost savings initiatives that we had put in place.

**CHAIRPERSON:** But why would it need to come to you?

**MR SINGH:** Because I was the CFO and the budget – you cannot overspend on your budget.

**CHAIRPERSON:** Is the position that if payment is not budgeted for it must come under the budget or allocation of a particular department or unit?

**MR SINGH:** Yes.

20 **CHAIRPERSON:** If they do not have budget for that it must come from somewhere else.

**MR SINGH:** It must be allocated to that, yes.

**CHAIRPERSON:** It must be allocated and you would be responsible for that.

**MR SINGH:** I will be responsible.

**CHAIRPERSON:** Okay. Mr Myburgh?

**ADV MYBURGH SC:** Mr Singh then perhaps I could just ask you, do you own shares or have you ever owned shares in a company called Venus Limited?

**MR SINGH:** No, Sir.

**ADV MYBURGH SC:** As I said to you at the beginning of the day I was not going to take you through all of your affidavits and everything that is in there, obviously it will have to be read and digested but perhaps I could end by  
10 asking you is there anything – I know you are going to put in an affidavit in re-examination, so as to speak, is there anything that you would like to say by way of your – the evidence that you have given?

**MR SINGH:** Not at this stage.

**ADV MYBURGH SC:** That completes our questioning and inquiries of Mr Singh. Thank you, Chairperson.

**CHAIRPERSON:** Okay, thank you. Where are we with the timelines for various things, affidavits and written submissions?

20 **ADV VAN DEN HEEVER:** Chairperson, maybe just to fill you in, we have been receiving some documentation from Eskom during the week. I think this morning we received another document with, I think, about 50 annexures thereto. The hope was that we will submit an affidavit tomorrow in response. That was our affidavit in response

to the last let us call it issues in main that Mr Seleka...

**CHAIRPERSON:** Ja.

**ADV VAN DEN HEEVER:** We are still hopefully going to do that. If we cannot achieve it by tomorrow, we will achieve that by Monday.

**CHAIRPERSON:** Okay.

**ADV VAN DEN HEEVER:** And then there is the issues of our reply.

**CHAIRPERSON:** Ja.

10 **ADV VAN DEN HEEVER:** And then of course Chairman indicated that you want some heads of argument, if I can call it that, or submissions.

**CHAIRPERSON:** Ja. Ja, ja.

**ADV VAN DEN HEEVER:** Pertaining overall to the Eskom stream.

**CHAIRPERSON:** Yes.

**ADV VAN DEN HEEVER:** So we still plan to do whatever is necessary to achieve what we set out or agreed to do, Chair.

20 **CHAIRPERSON:** Yes. Or the arrangement that had already been made in regard to written submissions were made in regard to Eskom. Okay, we had not made any arrangements in regard to Transnet.

**ADV VAN DEN HEEVER:** No arrangements been made, Chairperson.

**CHAIRPERSON:** Okay, on behalf of Mr Singh.

**ADV VAN DEN HEEVER:** Chairperson, we have got no problem with that. We are going to, however, ask you especially in light what you said this morning.

**CHAIRPERSON:** Yes, ja.

**ADV VAN DEN HEEVER:** To be a bit patient with us, but timeline wise, we have taken note of your timelines and we will, if you do not mind, we can revert maybe on Monday with possible dates in that regard.

10 **CHAIRPERSON:** Ja, okay. No, that is fine. Okay, that is fine. Seeing that I might be mixing up things that were discussed under the Eskom work stream maybe and thinking that they were discussed under the Transnet work stream, let me check. The arrangement that re-examination would be dispenses with but instead affidavits would be filed, does that – have we reached that agreement under the Transnet work stream or not?

**ADV VAN DEN HEEVER:** In fact, Chairperson, you will recall when we started off on the Transnet stream we  
20 reserved our right not to make an opening statement.

**CHAIRPERSON:** Yes.

**ADV VAN DEN HEEVER:** But to consolidate whatever we wish to state at the end of the process, so we still reserved that right to instead of doing “re-examination” to submit an affidavit. There is a number of issues that we wish to deal

with.

**CHAIRPERSON:** Ja.

**ADV VAN DEN HEEVER:** And I think we have indicated to you also in chambers that we do not think a day would suffice and it would potentially be better to rather just go on oath and deal with those issues on oath.

**CHAIRPERSON:** Ja. Okay, alright. We will need then to have a time when we can fix the timeframes. You suggested that on Monday you might be ready. Mr  
10 Myburgh, do you think it would be fine if we made arrangements that in regard to what they need to file by when they must file it that we can discuss that on Monday? Will that be fine? How is your situation?

**ADV MYBURGH SC:** Well, Chairperson, I am not sure that my learned friend will be here on Monday but I mean if we cannot reach an agreement it may present something of a difficulty. I mean, I do not know how long my colleagues need to put in the – let us call it the re-examination affidavit.

20 **CHAIRPERSON:** Yes.

**ADV MYBURGH SC:** Perhaps you could give us an indication now.

**ADV VAN DEN HEEVER:** We will revert on Monday, Chairperson, there is a number of issues that I need to canvass with both my client and my attorney and I will – we

undertake to make contact with Mr Myburgh. On Monday we can telephonically try and see if we can thrash out some kind of arrangement and if it is necessary to come and address you on the issue we will make ourselves available.

**CHAIRPERSON:** Okay, I think then maybe what we could do is if on Monday there could be a discussion between both sides to provisionally agree some timeframe that would be subject to my approval.

10 **ADV MYBURGH SC:** Yes.

**CHAIRPERSON:** Then Mr Myburgh can talk to me after those discussions and then I can indicate. Is that fine?

**ADV MYBURGH SC:** Yes, I think that is a sensible proposal, thank you.

**ADV VAN DEN HEEVER:** It is acceptable to us too, Chairperson.

**CHAIRPERSON:** Yes. Okay, alright. It now remains for me to thank you, Mr Singh, you have come to the Commission numerous times to be able to give you  
20 evidence and subject yourself to questioning. Thank you to your legal team, as well. Thank you, Mr Myburgh, I know that you and I are not going home as yet but thank you very much for all your cooperation, thank you.

**MR SINGH:** Thank you, Mr Chair and Mr Myburgh as well.

**CHAIRPERSON:** Thank you. Shall I adjourn for a few

minutes, Mr Myburgh?

**ADV MYBURGH SC:** Thank you, Chairperson.

**CHAIRPERSON:** Ja, we will adjourn for about 15 minutes before we resume and then we will deal with the evidence of Mr Gigaba. We adjourn.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

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

**MR GIGABA:** Good evening, Mr Chairperson.

10 **CHAIRPERSON:** Thank you. I guess almost everybody else has been here with us except your junior, Mr Myburgh. Good evening to everybody. Mr Solomon is there. Good evening, Mr Solomon.

**MR SOLOMON:** Good evening, Chair, good evening to you.

**CHAIRPERSON:** Good, thank you, thank you. Okay, please administer the oath or affirmation. I am sure by now Mr Gigaba can recite the oath.

**MR GIGABA:** By heart.

20 **CHAIRPERSON:** Ja.

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

**MR GIGABA:** My name is Malusi Knowledge Nkangezi Gigaba.

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

**MR GIGABA:** No.

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

**MR GIGABA:** Yes.

**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.

**MALUSI KNOWLEDGE NKANGEZI GIGABA:** So help me  
10 God.

**CHAIRPERSON:** Thank you. Okay, Mr Myburgh?

**ADV MYBURGH SC:** Thank you. Good evening, Mr Gigaba.

**MR GIGABA:** Good evening, Mr Myburgh.

**ADV MYBURGH SC:** Do you still have your schedule with you?

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

**ADV MYBURGH SC:** Could I pick up at page 36 please under the heading The Gupta Money Counter.

20 **MR GIGABA:** Yes.

**ADV MYBURGH SC:** Ms Mngoma said at paragraph 64 that on one of the visits to the Gupta residence when you were still the Minister of DPE:

“We attended a function at the Gupta residence. Ajay Gupta took us on a tour of one of the newly



renovated houses in the Gupta compound. We were part of a small group of people, who were unknown to me. He showed us a room that had been converted into a small cinema and in another area I saw a sauna. At one area I saw a device which looked like a small version of an automated teller machine. Mr Ajay Gupta demonstrated how it operated by punching an amount on a keyboard of the machine which was R10 000, if I recall correctly, and it dispensed the cash notes in denominations of 100 and 200.”

Do you want to comment on that?

**MR GIGABA**: I was never part of this tour, I have never seen an ATM. I actually – it was the first time when I read this affidavit that I knew that a private individual could have an ATM at their residence. I was not aware of this, it is the first time I hear of it and it seems bizarre to me, as I said in my response that Ms Mngoma would be shown an ATM that could dispense an entire R10 000. I do not know how that happens. In my own opinion, if she saw such a thing – if she is not lying again here in this statement by herself then it would mean that she was alone in my absence when she saw such an ATM. But, as I say, it is the first time I hear that a private residence could have an ATM because my understanding is that an ATM should be

an available instrument to the public. I do not know – I do not know anything about this.

**ADV MYBURGH SC:** Have you any idea where Ms Mngoma would have got this because this is one of those things that certainly is not a matter of public record.

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

**ADV MYBURGH SC:** This is not one of those things that has been in the media or is a matter of public record.

**MR GIGABA:** As I have indicated, Chairperson, previously,  
10 that Ms Mngoma's affidavit was the works of accomplished lies, very, very concerted, a concerted effort to create – to fabricate a story that does not exist. That I why – I have visited many people, Sir, I have been at the private – at the official residence of the President, I have visited many people who are wealthy, I have never seen any of them, including leaders of banks, who have ATMs at their private residences. I think she is the one who can best answer this and probably explain how a bank would install an ATM  
20 at a private residence. Which bank is this? There are several banks in this country. To my understanding there are no regulations which provide for somebody to have an entire ATM because people would need – if a bank needs to come and – you know, an ATM does not have money that you can withdraw that is drawn directly from the bank, it means a bank has to deliver cash loads into the ATM. Now

why would you have an ATM – if you wanted to have access to cash as private individual, you would simply go into the bank and apply for that cash, why would you have an ATM and which bank exactly would install such a thing? If it happened, I am not aware of it, I have never seen such an ATM.

**ADV MYBURGH SC:** I think I must just explain to you that I do not think it is Ms Mngoma’s evidence that it was an ATM connected to a bank. She went on to explain that it  
10 was really in the form of a cash dispensing machine.

**MR GIGABA:** What is a cash dispensing machine, Sir? I have never seen a cash dispensing machine.

**ADV MYBURGH SC:** Alright.

**MR GIGABA:** I mean, surely if there is – if a private individual needs to have cash from their bank, they go into the bank, they withdraw money. I have never seen a cash dispensing machine, I do not know what it looks like. The only cash dispensing machine I am aware of is an ATM and I have never seen this ATM. So I consider this to be lies.

20 **ADV MYBURGH SC:** Do you know that there was a cinema and sauna at Saxonwold?

**MR GIGABA:** I have never seen – I have never been shown a cinema and a sauna. I would presume – again, I have been to private residences of many wealthy people, they do have saunas, they do have cinemas, many of them,

it is mini-cinemas. And I am sure if I were to fabricate a story about any rich person I would also go on to say they have a lounge, they have a heated pool, they have – so on and so on and so on, but at the Gupta residence I have never gone to be shown a sauna and a cinema. In actual fact I would be surprised if anybody showed me that thing because what is special about a sauna and a cinema?

**ADV MYBURGH SC:** Then at paragraph 66 Ms Mngoma goes on to say that:

10           “During February 2020 I asked Mr Gigaba for a divorce. Without expanding on the details surrounding the personal circumstances of my request for a divorce, I bring the following to the attention of the Commission.”

And she says at 66.1:

“Mr Gigaba asked me to delay the divorce proceedings until after he appears before the Commission.”

20           And then you give quite a lengthy response to that, that spans from paragraph 141 all the way to 149. These are things that I think you have mentioned already albeit it in a different context but what is your response to that?

**MR GIGABA:** As I repeat – as I stated in my affidavit, it is not true that she asked for a divorce in February 2020. She – the issue of the divorce was initiated by me in – I

think it is in August or something like that, of August/September 2020. So it is not true that Ms Mngoma asked for divorce in February 2020 and that I asked her to delay until I had appeared before the Commission.

Mr Chairman, in February 2020 I did not know that I would be appearing before the Commission. At that time I was responding to a number of affidavits that were being submitted. The summons to me to appear before the Commission occurred very late last year after which – after  
10 I think we – they appeared this year earlier in the year and we appeared here, we were requested to delay our appearance until at a later stage. I understand now that that was informed by the affidavit that she had submitted that the Commission obviously wanted to look at, but the issue of Ms Mngoma is that in January 2021, she is the one who approached me requested my divorce attorneys should contact hers, making a number of pleas.

She informed me at the time that Mr Tembeka Ngcukaitobi SC was very excited about the prospect of her  
20 submitting an affidavit at the Commission against me and that they were in conversations with the attorneys of the Commission. At that time she showed me a number of Whatsapp exchanges between herself and the attorneys of the Commission and she said to me that her attorneys had assured her that should I agree with her proposal they

would prevail upon the Commission not to allow her to testify on the grounds of spousal privilege.

I then had a conversation, as I say, with my attorneys and the issue of us pleading with them was not part of the conversation, the issue that we were discussing with them was issues surrounding the divorce. I did not bother to say to her that she should go ahead and not come to the Commission, it was her own decision and I think that is demonstrated by the fact that when she first  
10 was supposed to appear before the Commission she instructed her attorneys to say she was withdrawing her participation on the grounds that the Commission had doctored her affidavit and inserted in the affidavit things she had not written and that in this affidavit that was now before the Commission there were things she had not written, she was only forced to sign the affidavit that she had not consented to.

She did not say when she was here, through the mouth of her attorney, that I no longer wanted to  
20 participate because I am now pleading spousal privilege. She now said it was because the Commission had manipulated her evidence. So you can see that you are dealing with lies, with inconsistencies, you are dealing with somebody who is not willing to tell the truth as it is.

**ADV MYBURGH SC:** Well, I must just put this to you for

your comment. When I put your version to Ms Mngoma in relation to paragraph 143.1, 2, 3 and 4, she disputed that she ever said to you that she would not appear before the Commission if you met certain conditions and she said the same thing in relation to 147 and the Blue Valley house. Do you want to comment on that or do you stand by your version?

**MR GIGABA:** I stand by my version, Chairperson. Ms Mngoma lies, pathologically. She makes a habit of lies, 10 she says things today, she denies them tomorrow or even on the same day. So these things that are here, where would I have found that she had spoken to Mr Ngcukaitobi? He is a respected member of the legal fraternity in South Africa. I would not go out of my way just to fabricate lies about somebody like that. These are all issues that she told me. How would I have known that she was in conversation with the attorneys of the Commission? These are things that she showed me on her phone and all of the issues which I state here including the matters relating to 20 my house at Blue Valley are issues which we discussed with her because she asked me what about I give her that residence and I clearly stated that the residence is the legacy of our children, that it was still owing quite a lot of money, that I then said to her if you were to take it, you would have to carry on the bond. You know, I am willing to

give you the house but you must then carry on the bond. But I then even said to her that – but you can consider selling the house and splitting the cash or taking the whole cash, which would be difficult in today's environment because if you look at the property market, it is a buyer's market.

If you sell a property at this stage, you are not likely to make a lot of money and so we agreed that taking the house would not be in the best interests of the divorce settlement and only for me to learn on City Press afterwards that she was saying, I think angered by the fact that – because when they talked to my attorneys, they then made an offer that we had agreed to waive the ante nuptial contract and my divorce attorneys said to them you are out of your minds. He said to them you are out of your minds, there is no way we can agree to that. We can agree to some payment, a settlement of sorts, but not waiving the ante nuptial contract. After that she then approach the City Press claiming that I had made this offer to her so that she would not be appearing before the Commission.

Mr Chairman, it was brought to my attention by my divorce attorney that I was correct to be careful about this and not to comment on it when she made the offer because it was clear that it was blackmail on her part and so we took the view that there is no offer anymore on the table.



**ADV MYBURGH SC:** So, Mr Gigaba, you style Ms Mngoma, if I understand your evidence correctly, as a pathological liar.

**MR GIGABA:** Yes.

**ADV MYBURGH SC:** Is that right?

**MR GIGABA:** Yes.

**ADV MYBURGH SC:** And you say she lies on a daily basis.

**MR GIGABA:** Yes.

10 **ADV MYBURGH SC:** Is that right?

**MR GIGABA:** Yes.

**ADV MYBURGH SC:** I assume by way of contrast you consider yourself a person of integrity and honesty?

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

**ADV MYBURGH SC:** You consider yourself a person of integrity and honesty, I take it?

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

20 **ADV MYBURGH SC:** Just in relation to some of the thing that you have mentioned, Ms Mngoma said about the Whatsapp communications between herself and the Commission that she could not have shown you them because she had not had any Whatsapp communications with the Commission.

**MR GIGABA:** She showed me Whatsapp communications with the Commission. I do not understand this point, Mr

Chairman, because it would seem to me that there is a – that the evidence leader is casting aspersions on me. The contrasting what I see about Ms Mngoma and asking whether I am a man of integrity and then saying Ms Mngoma says she could not have shown me the Whatsapp communications between herself and the attorneys. Where did I get that from?

If she was showing me fabricated text then the issue is on her and her integrity because insofar as I  
10 understand it, those were Whatsapp text exchanges between herself and the attorneys and the attorneys of the Commission.

In those texts there were proposals for meetings to be arranged as soon as she came back from holiday. That happened as it is. Those meetings were held soon after she returned on holiday – I mean, from holiday and so that has got absolutely nothing to do with whether I am a person of integrity or not.

**CHAIRPERSON:** Well, the evidence leader is entitled to  
20 probe issues with every witness. Obviously with regard to Ms Mngoma's evidence and your evidence and particularly with you rejecting most of what she has said as untruthful - and I think she has herself in her evidence also said certain things that you have said in your evidence are untrue, so the evidence leader is entitled to probe and look

at both witnesses.

**MR GIGABA**: With due respect, Chairperson, I doubt if he is entitled in probing my evidence to ask about my character.

**CHAIRPERSON**: About?

**MR GIGABA**: My character because I think he [inaudible – speaking simultaneously] with here.

**CHAIRPERSON**: No, he is entitled to ...[intervenes]

**MR GIGABA**: His statement that I am [inaudible – speaking simultaneously]

**CHAIRPERSON**: No, he is entitled to ask questions that are aimed to establish where the truth lies. The rules of the Commission are specific, that an evidence leader is entitled to ask questions including questions aimed at establishing the truth and obviously if there are conflicting versions, that means even asking questions that hopefully can throw light of where the truth lies.

So it is something that is permissible. But obviously from your side you are entitled to respond in a manner that supports what you say and in a manner that indicates that as far as you are concerned, there is no basis for anybody to think that you are not honest, you do not have integrity, you are entitled in answering to put up that.

**MR GIGABA**: Thank you, Chair.

**CHAIRPERSON:** Ja.

**MR GIGABA:** I would like to emphasise that I am a man of integrity.

**CHAIRPERSON:** Yes.

**MR GIGABA:** I am being honest.

**CHAIRPERSON:** Ja.

**MR GIGABA:** And I think it is unfortunate to have my integrity questioned in that fashion.

**CHAIRPERSON:** Yes but I think you in a forum such as  
10 this do not take it personally. Do not take it – there is nothing personal, he is just doing his job, so do not take it personal. But somebody like you, who has been a member of parliament for a number of years, should not easily take it personal because in parliament you people say all kinds of things against each other.

**MR GIGABA:** I appreciate it, Chair, point taken.

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

**ADV MYBURGH SC:** Thank you. Mr Gigaba, also in  
20 relation to Mr Ngcukaitobi, Ms Mngoma testified in response to this, that you like picking on Adv Ngcukaitobi, as she puts it.

**CHAIRPERSON:** I am sorry, what did she say?

**ADV MYBURGH SC:** She said you like picking on Adv Ngcukaitobi.

**CHAIRPERSON:** Oh.

**MR GIGABA:** Why?

**ADV MYBURGH SC:** Well, perhaps you can tell us.

**MR GIGABA:** Well, I am sure she would have explained to you – I have got absolutely no reason, as I say, I respect him, I respect Adv Ngcukaitobi, he represented me at Home Affairs when I was still Minister Home Affairs. I have no personal grudge against him.

It is her who raised with me – there is a number of people that she has spoken about when she has spoken to me and I am sure she would be worried about me referring to them here because it would mean to them that they issues they discuss with her are not safe because as we would say in Zulu she was kicked by horse on the chest, *wakhahlelwa esifubeni*, she cannot be able to withhold the – not to disclose the secrets that they have heard.

I have got no grudge against Adv Ngcukaitobi, I have high respect for him, not only in his professional capacity but also in his personal capacity.

**ADV MYBURGH SC:** What Ms Mngoma also said is that her appearance before the Commission and her cooperation with the Commission is not in any way connected to your divorce and that she gave evidence here, as part, as she put it, of her civic duties; or duties as a South African citizen.

**MR GIGABA:** That would have been genuine - I would

have considered it a genuine concern on her part, had one, had we not had a disagreement around there offer in terms of our divorce settlement and the issues raised with me and secondly, had she not gone on to lie so extensively, because she has misled the Commission on a whole range of things, including accusing the Commission of authoring her affidavit and manipulating some of the issues and inserting things in her affidavit which she had not agreed with.

10           Now, for somebody who would have done that, you would then expect that in her testimony, she would be very clear that look, I want to testify only on the basis of an affidavit which I have done myself even her supplementary affidavit does not say that that was not - was inserted by the Commission therefore I will not talk about it. Even as she was asked questions, she continued to answer on the basis of the initial affidavit.

          So in my opinion, the issues that prompted her to come here were related to our divorce and have concerns  
20   about what the settlement of that divorce would be and that is why even the divorce features so prominently in her initial affidavit.

**ADV MYBURGH SC:** If I could ask you then to direct your attention to paragraph 66.2:

“Around June 2020, says Ms Mngoma, Mr Gigaba

asked me for all my electronic devices, because he had brought someone to our home who he introduced as an IT expert to delete certain information from our phones, iPad and laptop, our device. I refuse to hand over my devices, this made him visibly upset on querying what information needed to be deleted, Mr Gigaba stated that certain pictures and information on my gadgets could be used to prove that he had visited the

10 Gupta's regularly, which would contradict his answers in Parliament to questions put to him by the Economic Freedom Fighters members of Parliament. He said that he did not want the same to happen to him as it happened to Mr Molefe during the Public Protector investigation, which had used his cell phone records to prove that he had visited the Gupta residence. He was also particularly concerned to delete any photos that I had taken on our trip to Mumbai, New Delhi, in

20 India, photographs of our honeymoon trips to Mauritius and Dubai and my private trips to Dubai. I did not hand over my devices."

And let me just finish this because you answered all of the paragraphs together, 66.3:

"Mr Gigaba also asked me not to speak to the

Commission nor the law enforcement agencies about Gupta visits the cash and the gifts.”

66.4, she refers here to the 18<sup>th</sup> of June 2020 but you will remember Chairperson that a correction was made to that date by her counsel, before she gave evidence, and it was corrected to read 20 July instead of 18 June. So she says;

“On 20 July, a domestic incident occurred at our home.”

And then the 24 June was changed to 22 July:

10 “So on 22 July, Mr Gigaba called me into the living area where I met Captain Mavuso and Sergeant Ndabeni of the Hawks. They demanded my two iPhones my old Huawei phone, my iPad, and my MacBook, and knew exactly where to locate each gadget in various parts of our home. They refused my right to legal representation. They demanded all the usernames and passwords for the devices all details of my email and social media accounts, making me search each one in their presence when

20 the confiscated gadgets were later returned to me all photographs and emails relating to my trips overseas, visits with the Gupta’s and other information were deleted from the devices.”

And then she refers to a High Court judgment, and what is your response to all of that Mr Gigaba?



**MR GIGABA:** Thank you very much, Chairperson. Let us start with the IT expert and I have challenged Ms Mngoma to name the IT expert and provide proof of such an IT expert and conversation because there was no such an IT expert. Around June 2020 there was absolutely no need for an IT expert to come and do the things that she alleges, I wanted to delete from her phones, her iPad and laptop.

Again Chairperson, this is a lie. The lie which I deny with the contempt that it deserves, I never brought  
10 such an IT expert, I have never asked her to delete any information from her phones or any of her gadgets. Ms Mngoma does not have a laptop Chairperson, Ms Mngoma does not have a laptop. She has an iPad, she has a MacBook, I guess when she talks about the laptop, she probably is referring to the MacBook.

I never asked any IT expert to come home to do this, on - so all of the things which flow from there certain pictures and information, Ms Mngoma is also a very public person. All her things are on her Instagram account. All  
20 the pictures she is talking about are on her Instagram account. So if she claims that there were pictures which needed to be removed from her phone, why would you remove those pictures from the phone when they were already on her Instagram account. The trips she is talking about, which were put to me when I was a member of

Parliament by various opposition parties. I responded to those issues when I was an MP, they are on the records of Parliament and I am sure that the Commission would be entitled to those responses because they were also for public record.

In so far as the information which could be used to prove that I had visited the Gupta's, Chairperson why would that information be on her phone and not mine? Anybody, anybody I mean, just simple logic. Why do you  
10 remove information from somebody's phone when that information could have been found on mine?

The issue about Mr Molefe I have never raised this with Ms Mngoma, never said to her that I do not want what happened to Mr Brian Molefe to also happen to me, because the Public Protector did her investigation, I cannot recall the year I think it must have been 2017 or '18 published her report on the basis of the report...[intervene]

**CHAIRPERSON:** It was published in 2016.

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

20 **CHAIRPERSON:** The report was published in 2016.

**MR GIGABA:** Oh, thank you very much Chairperson for the correction and that report did not include me and the Public Protector had no reason not to include me in her report but after her investigation, my name was not in that report. So, I would not worry about this four years later,

when the report had been released as the Chairperson has correctly corrected me in 2016.

The photographs about the trips to Mumbai to New Delhi are not necessary, why remove them? It is public record that I visited in 2015 New Delhi I did so in my official capacity as the Minister and as I indicated in my response, the trip was part of my official visit to India and therefore if you wanted to know anything about the trip, you did not need to expunge pictures or to extract pictures  
10 from your phone. You just simply needed to ask me or go into the records of the Department of Home Affairs, which would explain the purpose of the trip.

The reason why the trip was applied for in the Presidency and the rep report, because the good thing is that back then - I would not know now, I am no longer a Minister, back then if you went on an official visit to any country, you were expected to provide a detailed report to the President, because the President was concerned that many Ministers undertook trips, some of which are not  
20 meant, some Ministers undertook trips some of which trips had nothing to do with official business of government or their department.

So we were expected I think, much earlier on to provide reports when we came back on official trips abroad, the issues of the honeymoon trips, to Mauritius,

the trips to Dubai, those were on her Instagram account, I have no access to that Instagram account and I could not have demanded of her to expunge those pictures.

As I say Ms Mngoma is a very public person, she, posts anything, including if she arrives at the airport, you will find pictures of her Louis Vuitton bags and stuff like that. That is the person she is, with regard to not talking to the Commission or the law enforcement, law enforcement agencies. I have never, I have never done this, I have  
10 never asked her not to do this. It has always been my view that if she wants to talk, I did not expect that she would do it but when she decided that she was going to do it, I have never asked her not to do it.

I understood that she needed to do it, she was angry, she had always said that she would drag me if we went through the divorce and so I have no reason to stop her about it. With regard to the incidence of July, I have tried to explain here in detail because, you know, it may sound as if what she describes are just a pity, you know, a  
20 pity forgetfulness about dates but it is not.

It is because she is fabricating a story and in fabricating that story, she then fabricates the dates to, that is why you can see here, it is not only about this incident that happened at our residence, it is also about the to India, it is about the reason for the trip to India. It is about

the honeymoon, the trip to Mauritius, all of those things. This is not just a small, negligible forgetfulness, it is about the fact that this person is deliberately fabricating a story and therefore in so doing she fabricates the dates to.

Captain Mavuso and Ndabeni who – well it is Captain Mavuso who came to do this, to take her statement the day after the incident of the 20<sup>th</sup> because when this incident happened I called Captain Mavuso and said look something like this has happened at our residents will you  
10 please come quickly and take her statement because in my opinion, there was an investigation which they were undertaking. I had not heard the results of that investigation.

I still am not aware of the results of that investigation sitting here. I have not been given an official report on that investigation and he came the following day on the 21<sup>st</sup>, he took the statements, he brought with him a police photographer who took photos of the damaged vaguely, the damage to my study and inspected the items  
20 of evidence which still lay next to the car and some of them had been taken to the teaching.

On the 21<sup>st</sup>, they did not demand her gadgets, that is a fact, it is in the police records. They did not demand her gadgets; these gadgets were collected on the day they came to arrest her on the 31<sup>st</sup> of July. It is not true that

they knew where the gadgets would be, how would they have known unless they had somebody who was in the house, who knew where she puts her gadgets.

I did not know where she puts all her phones as she says she had there, how many several phones, I did not know where she put those phones. When they came, they asked for these gadgets, they collected them as part of collecting the evidence which related to the other matter they were investigating of an allegation I had received,  
10 which is in the police record to of a plot to kill me, which involved her.

The incidence therefore of 20 July in my opinion, and I did not know could not be treated as separate from the allegations of a plot to kill me and so when the police took this stuff, it was for the purpose of extracting from the phone of downloading from her phone, I presumed any information which could lead them to establishing the veracity of the claim that she was involved in a plot to kill me. It had nothing to do with expunging anything from her  
20 phone.

Now, Chairperson, if there is any information that was expunged by the police from her phone, surely if you went to the IT department of the police, the records of what was extracted from her phone are available, those records could be made available to the Commission. The Court

decision of February this year, said everything which was taken from her phone must be returned surely there is an account and an audit of all those things. So there could not be a situation where there was something extracted from the phone which was on police record, which was not returned together with the phones when the gadgets were returned to her.

So what she is saying here is a deliberate lie in order to present a particular picture of an encroachment to her privacy, and an attempt to hide any information. The advantage of IT - and she claims to be an IT expert, is that all of these things are available on police records and they could be checked on police records and if there is anything which was never returned to her, those things would then be either returned to her or and or the police would have to explain why they were not returned to her as is in accordance with the Court order of February 2021.

**ADV MYBURGH SC:** So let me just understand, Mr Gigaba and I am going to come to the judgment later on but do I understand the sequence to be this there was the domestic incident the 20<sup>th</sup> of July?

**MR GIGABA:** Yes.

**ADV MYBURGH SC:** And as I understand what you have said the Hawks came to take a statement in relation to the domestic incident on the 21<sup>st</sup> of July, they came the next

day?

**MR GIGABA:** Yes.

**ADV MYBURGH SC:** And then 10 days later on the 31<sup>st</sup> of July they returned to your home and this time to arrest Ms Mngoma?

**MR GIGABA:** Yes.

**ADV MYBURGH SC:** And it was at that point that they took the gadgets?

**MR GIGABA:** Ye, so on the 22<sup>nd</sup> if I am not mistaken, on  
10 the 22<sup>nd</sup> of July they called me and asked me to go to the Brooklyn Police Station to make a statement there, which I did.

**ADV MYBURGH SC:** So you made a statement on the 22<sup>nd</sup> of July?

**MR GIGABA:** Yes, I think it must have been on the 22<sup>nd</sup> of July but it was within that period of the domestic incident at home.

**ADV MYBURGH SC:** And I take it that that statement then related to the domestic incident?

20 **MR GIGABA:** Yes.

**ADV MYBURGH SC:** And these two, gentlemen, are they from the Hawks in Mpumalanga?

**MR GIGABA:** Well, they are from the Hawks I do not know where - I did not know which division of the Hawks, remember Chairperson as I have said a bit earlier that



year, last year I received an SMS text which is available at the police, which informed me that or which alleged that Ms Mngoma had hired people to kill him. I approached the Minister of Police for advice on how do I handle this. Do I go to a police station to report, is there a unit where I needed to report it?

The Minister of Police said to me that I will ask people involved in investigations of political matters in the assassinations to contact you. I was contacted by the  
10 head of the DPCI who indicated to me that they had assigned Captain Mavuso to come and take a statement. Indeed, he came, I do not recall what date it was, indeed, he came, he took the statement and he said we are going to investigate, and we will keep you informed of the investigation.

So when this domestic incident happened by the same person, and the fury and the anger with which it happened, if you saw that car and how it was damaged you could see that this person was extremely angry when she  
20 did this, the damages to the car cost half a million rand to fix and so the owner of the vehicle would not say to me, my vehicle has been has been destroyed or damaged at your residence and you did not report the matter to the police, you did not open a statement and I find that okay.

The reason I called Captain Mavuso was because

he already had an issue he was investigating in relation to the same person who committed the damages to the car, that she committed the damages to the car is contained in her own confession statement, which she made to Captain Mavuso and Sergeant Ndabeni where she indicated that yes, indeed, I had damaged the car and the instrument with which she had damaged the car was still there and in the police took those instruments.

So that was the reason why I called Captain Mavuso  
10 and the issue of them being from Mpumalanga was not known to me, why would I have picked people up from Mpumalanga? What had I to do with the police, with investigators in the police and to the point of knowing exactly who to call and where are they based, I had no such information. I acted on the information of the people provided to me by the relevant authorities within the police.

**ADV MYBURGH SC:** So when had you made a statement to Captain Mavuso about the plot to kill you?

20 **MR GIGABA:** Yes, I beg yours?

**ADV MYBURGH SC:** When was that?

**MR GIGABA:** I do not recall sir, I am sure the police would be able to provide that information to you, I do recall what month it was whether it was in May or April or June.

**ADV MYBURGH SC:** Was it in 2020?

**MR GIGABA:** It was in 2020, yes.

**CHAIRPERSON:** That is Captain Mavuso, hey?

**MR GIGABA:** Yes.

**CHAIRPERSON:** M-a-v-u-s-o?

**MR GIGABA:** Yes.

**ADV MYBURGH SC:** Yes, so that would have been in the first half of 2020.

**MR GIGABA:** Yes.

**ADV MYBURGH SC:** So you talk and have confirmed that  
10 Ms Mngoma was arrested on the 31<sup>st</sup> of July, what was she arrested for?

**MR GIGABA:** Damage to property, sir, damage to property, yes, she was arrested for damage to property.

**ADV MYBURGH SC:** By the Hawks?

**MR GIGABA:** Yes.

**ADV MYBURGH SC:** Can we then deal with the loss of passports, well that is at least the heading at paragraph 66 and let me read to you two paragraphs and then you can -  
66 and 67:

20 “On my return from Durban on 1 March 2021 I discovered that mine and my children's personal passports are missing, not where I had left them. I found only an empty passport cover for my passport, I also discovered that copies of my passport that I made earlier and kept them in my

drawer were also missing. I confronted Mr Gigaba about the whereabouts of my children's passports and mine later that day, he denied having seen them. I believe that the theft of my children's passport and mine was to conceal evidence of a trip that we took to Mauritius.”

What do you have to say to this?

**MR GIGABA:** But Chairperson, I have not denied the trip to Mauritius, why would I steal passports to conceal a trip  
10 to Mauritius which I have not denied but secondly, Chairperson, she kept the passport. My passport is kept by my assistant at Luthuli House because I often have to undertake official trips on behalf of the party, which is currently my employer and so she keeps my passport with her so that if I have to undertake a trip sometimes they are at short notice she can be able to immediately act on the bookings and stuff like that.

But the passport of Ms Mngoma and the passports of the children were in her possession. If she lost them,  
20 she is the one who needs to explain and in actual fact it bothers me that she has not gone to do an affidavit of the loss of the passports and informed Home Affairs of the same because the passports of my children could be in the hands of any criminal around the country.

They could be used, including hers, they could be

used by people who steal identity to falsify passports and travel around on the information contained in those passports but insofar as the theft of these passports I have no knowledge of them and I am surprised that I think it seems to me that she is claiming that I have something to do with those passports, I do not.

She kept the passports, she knew where they were, therefore should know what happened to the passports.

**ADV MYBURGH SC:** Mr Gigaba, you raised the question  
10 of why you would want to take the passports as you say, she said in her affidavit that you would want to potentially conceal a trip to Mauritius, you say well, you have admitted that. The Chairperson, asked Ms Mngoma the same question I just want to read to you what she said so that you can comment on it because her evidence went a bit wider than the affidavit.

**MR GIGABA:** Yes.

**ADV MYBURGH SC:** The Chairperson said:

“Why do you think Mr Gigaba - why do you think  
20 there were trips that Mr Gigaba might not have wanted to be conveyed to the Commission?”

And Ms Mngoma said:

“Well, because firstly, on this affidavit, he denied that we – Ms Dudu Myeni paid for the trip for us, so he does not want that trip to be there, which she

did pay our trip to Mauritius. She even emailed the whole itinerary for us and I remember when we were in Mauritius, Malusi did not even know where to go to get a car, and everything because his not used to travelling without his staff and at that time when we were travelling it was the two of us.”

And then she said two:

“When we went to Dubai, and there were certain trips, I travelled with him, there are certain trips I have travelled alone. So he did not want me to have proof of those trips that had happened, hence he took the passport.”

And then the Chairperson asked again:

“But why would he not want there to be proof of those trips?”

And she continued:

“Because the trip that I remember when we stayed at the Hilton in Dubai and even the trip when we stayed in the Waldorf in Dubai, there was a trip that Malusi said Ajay will sort out this trip for us.”

And then she went on to explain that you went with Ajay to a jewellery shop and that you came back with watches and she said:

“So that trip what I know, it was them who paid for us. So that is the reason he deleted those itinerary

on my emails because most of the emails are deleted. He also when we went on those trips, also took pictures and all those pictures are deleted because his denying that we went on those trips, so hence he took my passport as well.”

So I just wanted to - in fairness ask you to comment on this, you will see that her evidence is wider than just Mauritius.

**MR GIGABA:** Thank you Chair, Chairperson the - a trip to  
10 a country is independent of it, if she wants to prove a trip to a country she does not necessarily have to have a passport to prove it. I am sure there are various ways that she can prove that she had visited a particular country.

Secondly, there was no trip where I was in Dubai with Mr Ajay, no trip whatsoever and I challenge her to provide evidence. You see, it cannot be that somebody makes an allegation that they do not prove and it is expected of the person against whom the allegation is made to be the one who proves that the allegation is false.

20 I challenge her to provide proof of Mr Ajay being in Dubai on the trip she alleges where he went out to buy me watches. There is no such has happened, I was never bought any watches by Mr Ajay Gupta. The issue of the trips to Mauritius, to Dubai buy are issues which I have not denied and I have clearly indicated that if the trip to

Mauritius was organised by Ms Myeni, Ms Myeni did not tell me that, Ms Mngoma did not tell me that and when we went to Mauritius, we went to Mauritius – she came to tell me, it actually was a surprise. She came to tell me that we were travelling to Mauritius, we did not need a passport to go to Mauritius and we then travelled to Mauritius, it was a holiday. quality.

It is true that I did not know where do you get a car or stuff like that, in actual fact we did not hire a car we  
10 were being fetched from the airport. So I did not have to go looking for any car, as we landed at the airport, we were being fetched, there was somebody holding a placard with our names and so we went into the car and drove to the resort where we were going to stay.

And the issue of the trip to Dubai, it had nothing to do with Mr Ajay Gupta, he never paid for that trip and he certainly never bought me any watch, whether in Dubai or anywhere else for that matter.

**ADV MYBURGH SC:** Mr Gigaba, I would like to turn to a  
20 different document, you should have a file in front of you, which is marked Transnet Bundle 7A and it contains in majority part documents that relate to you that DB24 and you will see a divider towards the end of the file marked BB26, it would be right towards the end.

That is Ms Mngoma's exhibit and could I ask you



please to turn to page 1027.8 and perhaps to make it easier for you, I would estimate Mr Gigaba that that is about 10 pages or so from the end of the file.

**MR GIGABA:** 1027?

**ADV MYBURGH SC:** Point 8.

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

**ADV MYBURGH SC:** Are you there?

**MR GIGABA:** Yes.

**ADV MYBURGH SC:** So what one finds at that page is a  
10 supplementary or clarification affidavit. Now I just want to  
take you to certain parts of it for your comment please.  
Could I ask you to go to page 1027.13.

**MR GIGABA:** Chairperson, has this document been  
provided to me prior to today?

**ADV MYBURGH SC:** It certainly should have been, yes.

**MR GIGABA:** I ask because I am not aware of it and I  
have not responded to it.

**ADV MYBURGH SC:** I do not think there is any obligation  
on you to respond to it but if you would like an  
20 opportunity...[intervene]

**ADV MYBURGH SC:** But the obligation Chairperson to  
inform me prior to being ambushed with a document of this  
nature, surely it would have required me to prepare my  
responses.

**CHAIRPERSON:** This would be the supplementary

affidavit that Ms Mngoma came to the hearing with - maybe the last time...[intervene]

**ADV MYBURGH SC:** Yes, certainly.

**CHAIRPERSON:** ...or maybe the time before that.

**ADV MYBURGH SC:** Chairperson, I just want to make a point to Mr Gigaba I am certainly not trying to ambush you, if you say you have not seen it before, I am more than happy for you to have the opportunity to - we can deal with it tomorrow, you can read it overnight.

10 I can check whether or not it was sent to you and your counsel, I have – it is certainly not my mission, my intention to ambush you, but really what I want to ask you relates to two things that we have already dealt with.

**MR GIGABA:** Okay.

**ADV MYBURGH SC:** I was going to direct your attention to paragraph 8, perhaps we can deal with it this way if there is something that you feel you cannot answer or you want to seek the advice of your counsel on or whatever – can we take it on a paragraph by paragraph basis because  
20 a lot of it really re-treads ground that we have already gone down.

**CHAIRPERSON:** And if you are not able to deal with it until you have had a chance to look at it as Mr Myburgh says, it can be dealt with tomorrow. So you can answer what you are comfortable with or if you would really prefer

that this document be dealt with tomorrow that can be done.

**MR GIGABA:** No, we can go ahead, Chairperson.

**CHAIRPERSON:** We can go ahead?

**MR GIGABA:** Yes.

**CHAIRPERSON:** Okay, alright.

**ADV MYBURGH SC:** So at page 1027.13 paragraph 8:

“The submissions and or suggestions made by Mr Solomons SC on behalf of Mr Gigaba in his address to the Commission, where that I cannot...[intervene]

10

**MR GIGABA:** Sorry, paragraph?

**ADV MYBURGH SC:** Paragraph 8, page 1027.13.

**MR GIGABA:** Yes.

**ADV MYBURGH SC:** But let me start again:

“The submissions and or suggestions made by Mr Solomons SC on behalf of Mr Gigaba in his address to the Commission, were that I cannot be a reliable witness as I am unhappy and or a bitter spouse going through a divorce and that as a result my evidence will only serve my bitter purpose to seek to get to Mr Gigaba.”

20

Paragraph 9:

“The narrative and;/or suggestion cannot be further from the truth. I wish to demonstrate this point by providing the chronology of events which this

Commission is or may be unaware of as follows:

1. During or about the first quarter of 2020 I approached Mr Gigaba and asked him for a divorce, reasons that are not relevant to this Commission;
2. In his response Mr Gigaba requested and begged that I should only consider the institution of divorce proceedings after the completion of his evidence in this Commission. I agreed to this request;
3. On or about June 2020 Mr Gigaba then requested me to provide and hand over my cell phone and iPad for purposes of deleting certain information contained therein to get rid of certain information which might contradict his false testimony in this Commission. I refused to hand over my gadgets.”

10

Is there anything that you want to – I mean to a large extent you have already dealt with this.

20 **MR GIGABA:** It would be interesting ask that suddenly at 9.3 the laptop is omitted. Again I repeat this is not menial omission. It is not, it must not be read to be just we forgot to add laptop, it says my cell phones, my iPad but the laptop is suddenly not included when in actual fact in her statement earlier she also had included the laptop, but

again I stand by my chronology which I presented. In her initial affidavit she was specific about the date during which she asked for the divorce, she said February 2020.

In the supplementary affidavit she now says during or about the first quarter of 2020. That also is not true, if you want to divorce somebody you don't go to them and ask I would like to divorce you please. You don't do that. You serve them with a summons exactly the way that I did it.

10           So on record I am the one who filed the divorce application, because during or about the first quarter of 2020, or in February 2020 as she claimed in her initial affidavit there was no request for divorce on her part, she was still happily married, she was still a spouse, and so these omissions to me are not just minor, they speak to somebody who is saying something and because she had the advantage by the time she submitted the supplementary affidavit to have read my response to her I then find myself here, responding to her initial affidavit,  
20 her supplementary affidavit and her testimony which she submitted.

The supplementary affidavit is clearly an attempt on her part to re-engineer the facts as she had presented in her initial affidavit.

**ADV MYBURGH SC:**    Alright, then she deals with the

arrest by the Hawks at 9.4:

“This arrest came soon after I specifically or I had specifically refused to hand over my gadgets to Mr Gigaba, more specifically I make the point that had I done so I would not have been arrested by the Hawks who immediately and unlawfully arrested me, confiscated my gadgets and deleted specific information from my gadgets. I reiterate that the delete of information specifically related to the events which are of keen interest to an amendment was made to this Commission. This is definitely no coincidence.”

Do you want to address that insofar as you haven't already?

**MR GIGABA:** Ms Mngoma says in her initial affidavit, Chairperson if you just bear with me a little bit I need to just take this thing out and off, sorry.

**CHAIRPERSON:** Do you need assistance?

**MR GIGABA:** No, no, no, all is in order, all is in order.

20 **ADV MYBURGH SC:** Are you going to the schedule?

**MR GIGABA:** Yes I am going to the schedule. I am just pleading for a little bit of time so that I find ...[intervenes]

**CHAIRPERSON:** That's fine.

**MR GIGABA:** Yes, ja, so Ms Mngoma says in her original affidavit that around June 2020 I brought an expert and

asked her to hand over her gadgets. In the supplementary affidavit she now says that the arrest came soon after she had refused.

Now this is a period of June/July. She says in June I asked her to hand over the supplementary, I mean to hand over her gadgets but the arrest happened on the 31<sup>st</sup> of July, now this is not soon after she had refused to hand over her gadgets. The supplementary affidavit as I made the point is an attempt to re-engineer the facts but a  
10 dismal attempt at that because it continues to omit crucial information, it continues to confuse the chronology of events which she had stated in her initial affidavit. I have already said that there was never a request by me for her to hand over her gadgets, she said in the original affidavit I had asked her to hand over these gadgets to an IT expert. In the supplementary affidavit the issue of an IT expert is suddenly omitted. It is now omitted, it is not there, she no longer says that the gadgets were to be handed over to an IT expert, but she says that they were  
20 confiscated by the Hawks, of course she said the same thing in the initial affidavit but it is not just minor that in the supplementary affidavit the issue of the IT expert is also omitted. It is to re-engineer the facts that she – to re-engineer the original affidavit in order – because she has seen my response in order for her to try and align her

narrative with the response which I had provided.

The – again I repeat Chairperson that if there was any deleted information the records of the police will indicate what information was extracted from her phone from her phone and what information was deleted and therefore the burden of proof on these – of this deleted information should lie with the person making the allegations because if she claims that I should know what information was deleted by gadgets, which she claims were  
10 not handed over to me but were handed over to the police then she is asking me to perform a task which I cannot perform because I am not the one who allegedly deleted this information from her gadgets because by her own statement she refused to hand her gadgets over to me or to the so-called IT experts, the nameless IT expert. Then if she says the police deleted certain information she must say that this is the information deleted and then the police must check and provide information and proof of what  
20 information was extracted and what information was deleted because the police were only interested in finding out if there is any suspicious communication between her and the so-called people that she was alleged to be plotting with to kill me, nothing to do with issues of retrieves, private photographs, all of those things are found on her Instagram account, if they are not there it is



because she has deleted them herself.

**ADV MYBURGH SC:** Alright, and then she says at 9.5:

“Following from this in or about August 2020 I learned from the newspapers the announcement of the divorce proceedings being instituted by Mr Gigaba, summons was only served on me in September of 2020. On or 17 December 2020 did I conduct a television interview with ENCA after which I was immediately contacted by the  
10 Commission on 18 December 2020.”

And she goes on to say at 9.7:

“In or about January 2021 discussions on settlement ensued between me and Mr Gigaba as in normal divorce matters and with the principal aim of avoiding long and protracted process of divorce.”

Do you want to comment on those paragraphs?

**MR GIGABA:** If I am not mistaken Chairperson in the original affidavit Ms Ngoma claimed that the Commission approached her and I disputed that in my previous  
20 appearance and said it was not the commission which approached her, it was her who offered to approach the Commission when she was interviewed on ENCA and in the City Press interview, so suddenly in 9.6 it is the Commission that approached her.

No, the Commission may have technically contacted

her but it is her who offered to come to the Commission, she was specifically asked this question and she agreed, and she said yes indeed I would be happy to approach the Commission and make a statement about Mr Gigaba.

**ADV MYBURGH SC:** Yes, but the fact is that the Commission did approach her, did contact her.

**MR GIGABA:** But the fact is that she offered to come to the Commission, she offered to come to the Commission but it is quite important to view her statements in how she  
10 contradicts herself along the way, because it speaks to the reliability of the submission which has been made before the Commission, about which I commented from the very outset that it was a misleading submission and I think I have also provided a lot of argument to disprove a whole lot of things which have been submitted to the Commission, the omissions between the first and the second affidavits.

Secondly Chairperson the issue of – I don't think the issue of the divorce and how it was made public is a  
20 matter of State Capture, it certainly was not leaked by me, it was not leaked by me, I also read about it on the – I think it was the Sunday where they reported about it, I am sure they would be able to explain who leaked it if it was leaked, if it was not leaked, and I don't know about – I am not sure about divorce proceedings. Once the summons are

served I think they become public, I mean they become available and journalists are always looking for news and they probably would have found this information through that process.

On the 9.7 Chairperson, the 9.7 Ms Ngoma again conceals deliberately and on 9.7 and 9.8 concede – no you have not come to 9.8, right?

**ADV MYBURGH SC:** No, not yet.

**MR GIGABA:** Not yet sir, but 9.7 she deliberately  
10 conceals issues which she raised with me, and the approach which she asked us to take in dealing with the issue of the divorce settlement and I reported this to my attorney, I reported it to my attorney exactly the way that she raised it with me, and he said to me he can – he could only deal with the issue of the divorce settlement because there were two issues which he had raised, one was that I should withdraw the case against her, and secondly that in reciprocity she would reciprocate by refusing to come to the Commission and my attorney said he does not think  
20 that's a legal offer that we should make, we should confine ourselves to the divorce settlement.

**ADV MYBURGH SC:** Alright, and then at 9.8 this is when the allegations of supposed extortion started flying around.

“I must indicate that I am totally astonished at the utter suggestion that I would seek to blackmail or

extort Mr Gigaba into any form of settlement in respect of the divorce. As a matter of fact I remain shocked as to what it is I would be seeking to achieve by such conduct. I say this for the following reasons:

1. The house we live in is a rented house;
2. We are married out of community of property;
3. The other house that Mr Gigaba owns there is still a huge amount owed to the bank in respect of the bond;
4. The entire furniture in the house that we live in belongs to me.
5. I am in no sate to have any intention to fight with Mr Gigaba as we have two minor children together whom I have even proposed to leave with Mr Gigaba to avoid any further confrontation and dispute relating to our divorce so as to expedite.
6. As confirmed in a letter from my attorneys to the Commission there are no ongoing settlement discussions between the parties. It is therefore not clear what I stand to gain by assisting the Commission.”

Do you want to deal with that paragraph.

**MR GIGABA:** Yes, let me start with the last point, there is

no ongoing settlement discussion between the parties precisely because we could not agree on their offer, on what they wanted us to do. The very first thing which they raised with my attorney was that we should waive the ante nuptial contract and my attorney said that they are out of their minds, we will not do that.

I was then supposed to look at – and I regret Chairperson to have to deal with issues of my divorce here because I believe issues of my divorce have nothing to do  
10 with the – with the mandate of this Commission, except to the extent that it is being alleged that I had made an offer that we should settle an for Ms Mngoma not to come to the Commission. They first suggested that we waive the ante nuptial contract, we refused. They – we then said no instead let me look at my policies to see if I could be able to find – because I indicated to her that I had spent a lot of money, she asked me a very specific question. When you resigned from Cabinet what did you do with your policies, your pensions and so on and I said to her I invested them  
20 and part of what was from those settlements I used it to pay the attorneys, whom I am still owing large sums of money, and then I said I don't think I have any because I said to her I will check with my financial advisor but I do not think that I have any remaining disposable cash which I can immediately deploy to a divorce settlement, but I said I

would talk to my financial advisor with whom we spoke, I advised my divorce attorney on what the outcome of that was, but it became clear that it was no longer necessary to even make that offer, even the hostile approach which Ms Ngoma and her attorneys took to go to City Press and make this statement that we were offering a divorce settlement in order to prevent her from coming to the Commission.

We thought that it would be risky for us to continue  
10 with those settlement negotiations even that they would then be read to be a confirmation of the allegations which she had made on the City Press so that is why there is on ongoing settlement discussions to this effect.

The Chairperson last time I came here asked a question, Mr Gigaba why would if – why would Ms Mngoma say things which seem to be in your favour but that – but you argue that she is trying to harm you, and perhaps I did not understand the question well when it was posed to me but I reflected on it and I think it comes well in the context  
20 of I think 9.8.5 because she says certain things in her testimony that seem be favourable to me that I was not a “yes boy”, that I was resisting as a result there was this view to punish me by sending me back to Home Affairs.

Now but in my view Chairperson the mere fact of these testimonies and the issues being raised here do a lot

of harm to me, to my reputation, to my profile and public standing, in the manner in which they are raised and the lies, the extensive lies which have been perpetrated through this including in the supplementary affidavit which now makes certain omissions in order to re-engineer the initial affidavit that I had responded extensively to and the lies of which I had exposed in my response.

So it would appear Chairperson that the – this Ms Mngoma is not doing me any harm but in the manner in which she deals with a whole lot of issues, and the lies that she perpetrates in her affidavit, both the original and the supplementary affidavits, including in her response where she dragged the name of my later father and said really demeaning things about my late father and how she deals with my family, the demeaning manner in which she refers to my family, all of those things are intended to harm and to portray an image of somebody who was receiving cash and gifts was being bought, watches in Dubai who was being sponsored for trips without providing a shred of evidence, so that even areas which may appear to be favourable to me become minor compared to the harm, the damage that is being done to me and my family, by the extensive lies that are contained in this affidavit mainly of these lies to which I have responded.

**ADV MYBURGH SC:** Paragraph 9.9 at page 1027.16:

”I ought to highlight that the proposal I was making to Mr Gigaba was that we should agree on the issues so that we can both move on with our respective lives. Indeed the settlement discussions which were even escalated to our respective attorneys yielded no fruits and were accordingly abandoned.”

Is that correct?

**MR GIGABA:** The question Chairperson that she should  
10 answer is why those discussions were subsequently abandoned, but let me repeat for the sake of the Commission that they were abandoned because we could not agree to waive the ante nuptial contract, they were abandoned because I suppose we did not respond timeously on whether we could find financial settlement, because I indicated that the financials – that I had no available case to dispose through a settlement, they were abandoned because I indicated that the property in Centurion was still owing and that if she were to take it  
20 over she would need to continue with the bond and let me also further indicate that I had agreed to a divorce settlement, I had agreed to this, I thought it would work best for both of us and it would work best for the family but the offer which they made, and the strange thing was this insistence that don't say to your attorneys I have



approached you, rather say to your attorneys that you and I have agreed, but we had nothing we had agreed to, we were agreeing on a settlement but the details of that settlement had not been agreed to and I could not go because when I went to my attorneys and said there is this proposal they then came to him and said apparently they have agreed on waiving the ante nuptial contract which obviously was not true, so it – the manner in which we were expected to deal was quite strange and unfortunately  
10 it did not yield any fruits but it was my understanding that any settlement is based on negotiations the day you agree, tomorrow you don't agree, you negotiate further, you compromise, you eventually find a settlement that works for all parties but it seemed that the inability to agree on initial offers was taken to be a permanent inability to agree.

**ADV MYBURGH SC:** When were the settlement negotiations abandoned?

**MR GIGABA:** It was here – ja, it was at the beginning of  
20 this year, I wouldn't say they were abandoned, I would say that – because I don't think there was a discussion and agreement that we are now abandoning settlement negotiations. The fact of the matter is that the divorce is going ahead, it will go ahead, it may just be delayed by the facts that we have to go through this process but it will go

ahead so I would expect that there would still be reinstated settlement discussions because my understanding is that even if you were to finally go to court on the issue the court would expect that on certain issues you would have discussed and agreed so that it gets – I don't know what's the right word, but confirmed by the court that you say so.

**ADV MYBURGH SC:** So what we know then is that settlement discussions came to an end, I mean whether  
10 they were abandoned is correct, but ceased at the beginning of the year, is that right?

**MR GIGABA:** Chairperson abandoned and coming to an end seems to me to be meaning the same thing.

**CHAIRPERSON:** They were simply not pursued from a certain point?

**MR GIGABA:** Yes.

**CHAIRPERSON:** Ja.

**MR GIGABA:** But that they will still be re-instituted that's my expectation.

20 **CHAIRPERSON:** That might still happen.

**MR GIGABA:** Yes.

**CHAIRPERSON:** Okay.

**ADV MYBURGH SC:** So that was before then Ms Mngoma filed her affidavit, you see she did that on the 6<sup>th</sup> of March 2021, that you see at paragraph 9.11.

**MR GIGABA:** Ja, sure.

**ADV MYBURGH SC:** Then at paragraph 9.10 she deals with the high court judgment, 9.11 she files her affidavit on the 6<sup>th</sup> of March and then on paragraph 9.12 she says that:

”on the 26<sup>th</sup> of March the NPA withdrew criminal charges against me, which were related to my unlawful and malicious arrest.”

Do you accept that the charges were withdrawn against Ms Mngoma?

10 **MR GIGABA:** Well I was not involved in the case so that’s what I had in the media, I was not represented in the case.

**ADV MYBURGH SC:** And then she concludes by saying at paragraph 10:

“I lay out the above chronology to demonstrate ...[intervenes]

**CHAIRPERSON:** Just one second Mr Myburgh. I understood that – I assume that that letter relates to what you have referred to as the domestic case.

20 **MR GIGABA:** Yes.

**CHAIRPERSON:** I thought you said you were the one who laid the criminal complaint.

**MR GIGABA:** Chairperson I reported the incident, I did not lay a complaint.

**CHAIRPERSON:** Oh you reported it ...[intervenes]

**MR GIGABA:** I reported the incident yes.

**CHAIRPERSON:** And then you were asked to make a statement?

**MR GIGABA:** Yes.

**CHAIRPERSON:** Okay.

**MR GIGABA:** It was for the purposes of insurance and all of that process.

**CHAIRPERSON:** Yes, but the police or neither the police, that is Hawks nor the NPA have informed you whether the  
10 charges have been withdrawn or not, you just read the ad the media.

**MR GIGABA:** I was – I heard in the media but I was informed informally.

**CHAIRPERSON:** Ja.

**MR GIGABA:** Because I was not involved in the case itself, I didn't have legal representation.

**CHAIRPERSON:** Ja.

**MR GIGABA:** So we were not party to the case so it – that is why I was also saying I have not even been  
20 informed as to the progress or lack thereof, of the allegations that Ms Ngoma was involved in a plot to kill me.

**CHAIRPERSON:** Oh.

**MR GIGABA:** And that's where the matters are.

**CHAIRPERSON:** Okay, yes Mr Myburgh?

**ADV MYBURGH SC:** Thank you, at paragraph 10 Ms Mngoma concludes this part of her affidavit by saying:

”I lay out the above chronology to demonstrate to this Commission that the suggestion that I was a bitter spouse attempting to get to Mr Gigaba through this Commission is not only malicious in the very least, but is misleading on the real issues before this Commission.”

Do you want to comment on that?

10 **MR GIGABA:** Chairperson the – I hold a different view, I hold a different view because uhm, uhm, because, yes, if you look at 9.11, she says that in January she filed, I mean we had discussions, the settlement discussions were accordingly abandoned, that is on 9.1, then in 9.11 she says on the 6<sup>th</sup> of March she filed a affidavit to the Commission. The chronology of that is informative. There are settlement negotiations in January, then on the 6<sup>th</sup> of March she files an affidavit after, in her opinion the settlement negotiations have been abandoned. I believe  
20 in my opinion that 9.11 confirms my acumen that the reason she came to the Commission in March and not in January as she had indicated to me that the negotiations, the discussions between the Commission and herself and her attorneys had already taken place by then.

She didn't come to the Commission in January, she

didn't come to the Commission in Feb, but in March after in her opinion the settlement discussions had accordingly been abandoned that is using her own language.

So point 10 – point 10 is in my opinion weak to demonstrate that she is not or was not a bitter spouse, because if you read 9.9 and 9.11 they actually confirm that what subsequently happened on the 6<sup>th</sup> of March was an action prompted by the fact that the settlement negotiations had been abandoned but as I say in my  
10 opinion they had not been abandoned we had disagreed on a few things which could still have been ironed out and only when she thought that the settlement negotiations had been abandoned she then approached the Commission which then confirms that she indeed was a bitter spouse.

**ADV MYBURGH SC:** Chairperson you will be aware that the curfew starts at ten o'clock now.

**CHAIRPERSON:** Yes, I have been meaning to check ...[intervenes]

**ADV MYBURGH SC:** I had certain, I am sorry, I had  
20 discussions with some of the technical staff and I was advised by at least one person that he would ideally need to leave by half past seven, so I have gone over that time a little, I am sorry, but I think the position is I had hoped we could carry on until eight o'clock, I canvassed that with the technical staff, but it is not possible in relation to

everyone, apparently at least one person has got a long way to travel.

**CHAIRPERSON:** Yes, okay, no, no I think we have to be sensitive, if it is somebody, I was also hoping we could go up to eight at least, if it is somebody that we cannot continue once he or she is not here then – because if it is somebody that can go but there is somebody else who can assist us to continue it would be different. Your understanding is that if we release that person we would  
10 not be able to continue in terms of technical support.

**ADV MYBURGH SC:** I am not sure that I am qualified to answer that question, DCJ, but perhaps I can ...[intervenes]

**CHAIRPERSON:** Reverend Stemela is not here, now he normally talks to them.

**ADV MYBURGH SC:** He may have stepped out, in fact I think he is a person who has a long way to travel.

**CHAIRPERSON:** Yes, he is the person?

**ADV MYBURGH SC:** Yes.

20 **CHAIRPERSON:** Oh, I am just because if other people can stay until eight and that would not affect the proceedings then it would be – we would release him.

**ADV MYBURGH SC:** I am sorry, it may not be Reverend Stemela, it may be somebody else.

**CHAIRPERSON:** It may be somebody else, okay no I think

maybe we must just stop for now, I think it will be important that somebody from the Secretariat is always here because now we don't know whether if we continue until eight there is going to be a problem or not.

Okay Mr Gigaba I think we will have to stop here, for this evening. Mr Solomon are you still there?

**ADV SOLOMON SC:** Yes M'Lord I am, I am trying to put my video back up yes.

**CHAIRPERSON:** Okay we have to stop now I was hoping  
10 we could go up to eight o'clock but I am told that there might be one technical person who has to go far when they go home and with the curfew starting at ten we have to leave, I was hoping we could go up to eight, but we will stop now and then we will continue tomorrow.

In terms of how much time we might need tomorrow and bearing in mind that I think Mr Solomon becomes unavailable from four o'clock maybe we should start earlier than normal. Mr Myburgh how is that?

**MR MYBURGH SC:** Yes I think that would be a good idea  
20 Chairperson.

**CHAIRPERSON:** Yes, would that be fine with you Mr Gigaba.

**MR GIGABA:** I am at your disposal sir, I can start even at five in the morning.

**CHAIRPERSON:** Yes Mr Solomon would that be fine with



you?

**ADV SOLOMON SC:** Yes that would be in order Chair.

**CHAIRPERSON:** Yes, yes, okay I think then maybe let us start at half past nine, I think let's start at half past nine tomorrow morning.

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

**CHAIRPERSON:** Ja, thank you to everybody for staying on until this time, we will adjourn and continue with Mr Gigaba's evidence tomorrow.

10                   We adjourn.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS TO 18 JUNE 2021**