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PROCEEDINGS COMMENCE ON 6 MAY 2019

CHAIRPERSON: Good morning Mr Pretorius, good morning everybody.

ADV PAUL JOSEPH PRETORIUS SC: Morning Chair.

CHAIRPERSON: Thank you. Are you ready?

ADV PAUL JOSEPH PRETORIUS SC: Yes we are Chair.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Chair as foretold last week we are ceasing the evidence in relation to Law Enforcement Agencies but only for a period.

10 **CHAIRPERSON**: Yes.

ADV PAUL JOSEPH PRETORIUS SC: We commencing this week and in the next few weeks with evidence in relation to Transnet.

CHAIRPERSON: H'm.

ADV PAUL JOSEPH PRETORIUS SC: That will be followed by evidence in relation to other state owned entities where after we will resume with Law Enforcement Agencies.

CHAIRPERSON: Subject to such changes we may make to that arrangement in terms of bring in implicated persons so that programme will stay like that until there is a change.

20 **ADV PAUL JOSEPH PRETORIUS SC**: Yes Chair.

CHAIRPERSON: Ja.

ADV PAUL JOSEPH PRETORIUS SC: We will address you on that this week as discussed. For today I will do a very brief opening to firstly inform you Chair and the public of the nature and structure of Transnet and to give a very brief introduction to the categories of evidence that

we will lead in this the first phase. That will be followed by what has been referred to in short hand as a gap analysis. Transnet is one of those state owned entities that has instigated and has been subject of a plethora of forensic reports and these will be analysed by Ms Sello for the rest of the day after the opening.

CHAIRPERSON: Okay.

ADV PAUL JOSEPH PRETORIUS SC: Chair you have before you a file.

In that file it does not have an exhibit number because it is not evidence. You have the slides or copies of the slides which constitute
10 the opening and then you have an executive summary of the gap analysis together with the complete presentation which will be summarised by Ms Sello later today. The opening will deal with a number of topics Chair and I am on page 2 of that document. Firstly there will be a brief overview of Transnet business structures and functions. The structure of Transnet and the nature of its business is far more than just a rail freight business. Something which one is not necessarily aware of and we will therefore give an overview of what Transnet is or purports to be. Then we will deal very briefly with key changes in governance structures and executive management of
20 Transnet. You will recall Chair the evidence of Barbara Hogan who spoke of governance issues in Transnet and fundamental to the understanding of any state capture that you may find is how the acts of corruption that might be proved were orchestrated as part of a state capture project and that relates to governance, appointments and dismissals. We will then very briefly and I stress very briefly deal with

the summary of allegations of state capture, fraud and corruption in Transnet particularly those concerning which evidence will be given. And here Chair it is important to understand some of the features of Transnet and similarly Eskom and other state owned entities to a lesser extent. There are issues that we know have been investigated. So for example we will come to the question of the purchase of 1064 the 1064 locomotives. There are issues which we know have been identified but are still to be investigated. But importantly Chair there are also issues probably still to be identified which will in the future require

10 investigation both at the hands of the state owned entities, Law Enforcement Agencies as well as of course at the hands of the commission. So we by no means purport to have a complete understanding of the nature and extent of fraud and corruption within Transnet. For that reason Chair the evidence in Transnet will be presented in two phases. The first phase which will take up approximately thirteen witnesses over the ensuing weeks. Will cover a limited range of topics. Most if not all of which have been the subject of intensive forensic investigation to date. You will hear of the Werksmans Report or Reports. You will hear of the MNS Reports and

20 there are several MNS Reports and you will hear for example of the Fundudzi Report and others and Ms Sello will give a more complete picture of the nature and extent of those reports and the extent to which there are matters yet to be identified and investigated and matters which have already identified but must still be investigated. And what is important Chair to note and this will be raised with

witnesses in the next few days and the next few weeks is that Transnet has selected and prioritised topics for investigation. Large value transactions. The investigation to that extent or the investigations to that extent have been internally controlled. They are not externally controlled. And in fact time constraints that the commission is obliged to abide will limit the nature and extent of the investigations that Transnet can present within the life span of the commission and will limit the nature of the investigations in fact that the commission itself can undertake. Page 3. Transnet SOC Limited Chair is a public

10 company and it is established in terms of the legal succession to the South African Transport Services Act of 1989 which has undergone several amendments obviously since that date. It is a state owned entity with the government as the sole shareholder and that shareholder is represented by the Minister of Public Enterprises. Transnet is not only a freight transport company it is the custodian of the railways, the ports and importantly pipeline networks and we will talk about pipeline networks in due course. It is the largest freight and Logistics Company in South Africa and it connects various industries such a mining, manufacturing, distribution import and export of goods

20 and commodities. So it is an integrated freight transport company and when one talks of logistics one is talking about the detailed organisation and implementation of quite a complex operation. It is the management of the flow or movement of goods including commodities between a point usually a point of origin and a point of consumption or export in order to meet customer requirements. It is far more than just

moving of goods it is the organisation, the logistics dealing with those goods and the management of imports and exports. It is comparable and asset size to some of the top 10 listed Johannesburg Stock Exchange companies. It has approximately 51 000 employees and a capital base of R380 billion. It is a crucial component of the South African economy. It stimulates economic growth or ought to stimulate economic growth through employment, investment and capital projects and social upliftment. It is the repository of vast amounts of tax payers' money. Transnet has five operating divisions and they are

10 supported by a corporate centre which is at present head quartered in Waterfall Estate Midrand. No longer in Parktown. That move itself may be the subject of investigation but enough said for the present Chair. There are five operating divisions as we have said. There is Transnet Freight Rail, Transnet Rail Engineering, Transnet National Ports Authority, Transnet Port Terminals and Transnet Pipelines. To deal first with Transnet Freight Rail this is the largest operating division within Transnet and as far as the public concerned the division which defines Transnet in the public eye. It operates and maintains an extensive rail network across South Africa and connects with other rail networks in

20 the Sub-Saharan region. So it operates approximately 22 000 kilometres of rail track across South Africa. It itself as division employs approximately 28 000 people and it was able to generate in 2018 approximately R43,7 billion in revenue. The next slide will give an indication of some of the logistics which will be relevant in evidence to come. If one looks at the diagram on the right hand side you will

see the coal line export from Mpumalanga to Richards Bay which is a to put it mildly very busy freight line and is the subject matter of some investigation in relation to the purchase of locomotives to service that line. And then on the left hand side of that map one will see from Sishen at the top of the orange line to Saldanha – there Chair – the red line which is the iron ore export line. Now both of those lines require specialised locomotives in order optimally to facilitate the export of vast tonnages of coal and iron ore. So for example in 2018 Transnet Freight Rail transported 77 metric tonnes of coal – 77 million I think
10 that should be. I will correct that Chair it is not 77 metric tonnes, 77 million metric tonnes of coal and a lesser but significant amount of metric tonnes of iron ore on the export iron ore line. Those should be millions. So the principle lines that are important Chair for the purposes of evidence to come will be the export iron ore line, the export coal line from Mpumalanga to Richards Bay, the iron ore line from Sishen to Saldanha and locomotives were also purchased for general freight purposes and that is the spider web of rail connections that you see in the map as a whole. If we can go to page 8. One of the biggest Transnet capital expenditure projects amounting to R54
20 billion that is 1/6th of the total assets of Transnet was the acquisition of firstly 95 then 100 then 1064 locomotives. Those locomotives included electric and diesel locomotives for use on the heavy haul lines that is the coal export line and the iron ore export line and the general freight routes which you have seen on the map on the preceding slide. The evidence to be led will cover procurement irregularities, significant

procurement irregularities, alleged fraud and corruption relating to the procurement of these locomotives and payment therefore. This aspect of the evidence has been subject to detailed forensic reports which will be summarised and presented to you Chair. But the extent of the alleged corruption there runs into billions of rand Chair. If we may move on then to Transnet engineering which also plays a role in the issues relating to the purchase and payment for locomotives. It is the advanced manufacturing division of Transnet. Its core business includes engineering, manufacturing, assembly of locomotives and the
10 assembly of the 1064 locomotives is relevant here, maintenance services for the rail industry locally and globally. Transnet engineering manufactures and remanufactures locomotives, freight wagons and passenger coaches. It is also assembles locomotives, parts of which are manufactured abroad. And it also maintains and services related products. The alleged corruption which is the subject matter of the various reports in relation to the purchase of electric and diesel locomotives involved amongst others and this evidence will be presented to you in the course of the next week or so Chair senior Transnet executives and board members importantly financial advisors
20 and international suppliers acting in collusion. If we may go to page 10. Transnet engineering operates six main establishments really they are something perhaps different from just factories situated in major city centres throughout South Africa. And there will be evidence in relation to the locomotive issues of a so called relocation of the manufacturing processes to be conducted by two locomotive

manufacturers China North Rail and Bombadier to the Durban factory of Transnet engineering. The initial costs for that so called relocation it was really establishment was and estimated to be R9.7 million at least as concerned China North Rail. Those costs escalated astronomically to total approximately R1.2 billion. And the entity BEX which calculated those inflated costs or allegedly inflated costs from an original estimated R9.7 million to R647 million for China North Rail there was a similar cost for Bombadier that entity was paid R67 million for its troubles. Now there are two issues in relation to this issue. It is

10 a complex issue and it will involve complex evidence but in very broad summary the question arises whether any cost should have been incurred at all. Or whether the cost of establishing not relocating strictly speaking but establishing a manufacturing base in Durban should have been part of the overall tender price. But even if it was an extra justifying a variation to the original contract the prima facie evidence and the actual evidence which you will hear will show that the cost of R1.2 billion was just an enormously unjustifiable and hugely inflated cost which should not have been incurred at all and in fact the recommendation has been to date that payments in respect of that so

20 called relocation should stop. So it is not as if there – and terminology here too is important. Relocation assumes that there is an existing manufacturing operation in one location and that manufacturing operation is lifted up and moved and placed in another manufacturing operation. That did not happen. It was merely the establishment of manufacturing operations or assembly operations for the locomotives

that were managed under the various contracts that will be discussed in due course. So the ultimate costs that we are talking about here are in excess of R640 million for relocation or plant establishment for China North Rail on the one hand and a similar amount in excess of R600 million for Bombardier. The contract for the manufacture of 1064 locomotives was established after tender processes with four original equipment manufacturers. Bombardier, China North Rail, China South Rail and General Electric Chair. Only two of those are involved in the so called relocation issue. If we may move then to page 11. Part of

10 the Transnet establishment is the Transnet National Ports Authority. You will see in the right hand side of that slide Chair a diagram showing the location of the ports under the control of the Transnet National Ports Authority. They are Richards Bay, eThekweni or Durban, East London, Ngqura, Port Elizabeth, Mossel Bay, Cape Town, Saldanha Bay and a largely inactive operation at Port Nolloth. Transnet controls the land within all the ports and has a role as the planner to improve, develop and maintain port infrastructure. It also is responsible for the provision of port services and facilities and may obviously enter into agreements with or licence other parties to provide

20 services at those various ports. It makes and applies rules that control navigation within the limits of the South African ports and the approached to them and its mandate is to provide safe and secure ports and to protect the environment within port limits. Transnet National Ports Authority employs approximately 4178 persons. Controls 9 national ports around South Africa. There will be evidence led in

relation to one particular project undertaken under the auspices of Transnet National Ports Authority. The allegations are that there were irregularities and corruption relating to the procurement of CCTV security cameras from an entity called Neotel which was a project intended to upgrade security in the national ports controlled by Transnet National Ports Authority. Then there is a related division but a separate division within Transnet and that is Transnet Port Terminals. So whilst the port authority or the ports authority is responsible for the maintenance and development of the ports the physical ports themselves the logistics in relation to freight at the ports and from the ports and to the ports is controlled under the auspices of the port terminals. So the Transnet Port terminals a separate division but related as we have said is responsible for commercial services relating to freight including imports, exports, trans-shipments and containers as well as automotive parts and vehicles. It services a range of customers they include the general shipping industry which in turn use the ports. They include vehicle manufacturers for import of parts and export or vehicles Agriculture, the steel industry, the mining industry, freight forwarders and cargo agencies. And the port terminals division has a staff compliment of over 7000 persons. An important component of port terminals infrastructure and capital base are as one will know if one has ever been to a port the cranes that operate the loading and unloading of freight onto and off ships. There are allegations of fraud and corruption in relation to the acquisition of ship to shore cranes from entities spelled ZM – ZPMC and Libor and again vast amounts of

alleged money wasted in essence are involved. This matter is still under investigations and form the subject matter of phase 2 of the evidence or part of phase 2 of the evidence to be led before you Chair. If we may move then to the next final division of Transnet that is Transnet pipelines. The importance of the pipelines division to the economy of South Africa Chair is often not foremost in the public eye but Transnet pipelines is a vital part of the economic network servicing South Africa. Transnet pipelines operates, manages and maintains 3800 kilometres of a high pressure underground petroleum and gas pipeline network in South Africa. Its extent can be seen in the map on the right hand side of that slide. It essentially operates from KwaZulu Natal to Gauteng the economic hub Gauteng and their various offshoots and offtake stations along the way. And its importance strategically to the economy of the country Chair is that it is central and critical in maintaining a reliable continuous and efficient supply of crude and refined products oil and gas to industry and to the public at large. It is a vast operation Chair. It is a multipurpose pipeline. In other words it is able to transport various goods in large volumes over long distances. It is buried well underground and it covers a distance of over 550 kilometres. As stated it is designed to transport liquid petroleum fuel from Durban to Gauteng and neighbouring regions. It can – is able to transport two diesel grades and two unleaded petrol grades as well as jet fuel from Durban to Gauteng. The next slide is just anecdotal Chair. It is a factual collation or statistics in relation to the extent of the Transnet pipelines operation – apologies for the spelling error in the

heading there Chair – but it is able to transport 1 million litres of fuel per hour through its pipeline operation. Its structure and manufacture is vast. A number of detailed issues had to be attended to in its construction, river crossings, wetland crossings and the like. It is ranked amongst the largest multiproduct pipelines in the world. Importantly Chair – and this is a matter that is perhaps a matter that ought to be looked at but we do not have direct evidence at present. It was initially forecast to cost about R12.7 billion. Perhaps not unsurprisingly and predictably Transnet has spent by 2017

10 approximately R30.4 billion – almost – well two and a half times the initial cost and costs are apparently increasing continuously as time goes by. There have been allegations of fraud and corruption and these are the subject of investigation. They deal at page 21 - thanks – Chair this section of the opening will deal with general allegations at a – quite a high level of summary in regard to the investigations and reports of state capture, fraud and corruption within Transnet. The allegations of corruption at Transnet and where this Commission will ask its questions, present its evidence and make submissions to Chair in regard to possible findings that you can make ultimately centre

20 largely on procurement. These include questionable transaction for port cranes, locomotives, IT services and also importantly Chair advisory financial management and consulting services. You will hear in due course Chair of the existence a Transnet of a capable, highly skilled and well populated Treasury Department which was at a stage completely side-lined in favour of external advisory financial

management and consulting services at huge cost to Transnet and the taxpayer. Many of the contracts which will be examined Chair were awarded by consignment. That is without an open tender and the allegations that will be examined concern allegations of kickbacks to front companies related amongst others to members of the Gupta family and these were paid often under the guise of promoting BEE or empowerment partners. Those are the allegations that will be examined and those are the allegations which in the evidence will be questioned and testified to. What is important about these deals in addition of course to the loss or the alleged loss of finances and money to the tune of billions of Rand is that accompanying these allegations or the circumstances which form the subject matter of the allegations of corruption is an ongoing systematic weakening of the governance structures within Transnet. I have mentioned but one example of the side-lining of a perfectly competent well regarded Treasury function within Transnet. There will be evidence of appointments to boards that were in appropriate. There will also be evidence of the centralisation of procurement functions decision making powers within Transnet and that evidence will be given in due course. One example I will deal with in a moment. So on page 23 we highlight some of the implications of what has happened in the past decade or so within Transnet. Firstly the situation or the direness of the situation within Transnet has been compounded significantly by the outsourcing of internal Treasury Audit Enterprise Data Management and other corporate functions to a related network of private firms with corrupt or allegedly corrupt interests. So

what has happened is that rather than perform the functions internally through outsourcing - and in some cases unnecessary outsourcing the evidence will be - of for example Treasury functions. A set of relationships was created which enabled corrupt activities or alleged corrupt activities to take place. You will hear evidence ...

CHAIRPERSON: I am sorry – I am sorry Mr Pretorius. You referred a minute ago to the centralisation of power in Transnet including hurrying and procurement powers.

ADV PAUL JOSEPH PRETORIUS SC: Yes.

10 **CHAIRPERSON:** You may need to flag that so that in due course somebody could just go back to Ms Phumla Williams' evidence in terms of what happened at GCIS and see whether what she said happened there is in anyway compared to the centralisation of power in relation to ...

ADV PAUL JOSEPH PRETORIUS SC: Yes.

CHAIRPERSON: Procurement here ...

ADV PAUL JOSEPH PRETORIUS SC: Once ...

CHAIRPERSON: That will be talked about.

ADV PAUL JOSEPH PRETORIUS SC: Yes Chair. Of course once – and
20 this is a central function of this Commission's inquiry ...

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: Is to detect whether there are patterns.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Which indicates a degree of

organisation rather than ...

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: Just random ...

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: And disconnected acts of alleged corruption ...

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: And we will certainly do that.

CHAIRPERSON: Yes, because I do recall that she alleged that after
10 Mr Mzwanele Manyi had been appointed as head of GCIS he changed –
made certain changes which ensured that the power relating to
procurement was centralised if I am not mistaken but I am not sure.

ADV PAUL JOSEPH PRETORIUS SC: That is precisely what happened
and I will come to the detail or at least to some extent to the detail in
due course but ...

CHAIRPERSON: *Ja*, thank you.

ADV PAUL JOSEPH PRETORIUS SC: Two things happened really
within Transnet is that a special committee at board level was
established under particular designated personnel about whom
20 allegations of corruption abound at board level. That is the BADC – the
Board Acquisitions and Disposals Committee. At the same time the
divisions within Transnet – the five divisions about which we have
spoken – were disempowered in relation to procurement so that all
decisions relating to procurement could be made by – in essence – a
few individuals and the allegations are that they were “captured” Chair.

You will hear in a moment Chair of a massive capital expenditure project involving billions – hundreds of billions – of Rand and within those projects costs burgeoned over a period of time and it is arguable and the question will be asked whether that increase in costs over a period of time within the various projects for example on the so called relocation from an initial nine million to less than 100 million to 1.2 billion from locomotives 38 billion to over 50 billion whether those increases of costs were connected to attempts for private gain and the conclusion which will be examined is these events - which will be

10 examined in evidence Chair - the question must be asked the important functions that Transnet must perform for the economy of South Africa has its ability to perform those functions ultimately being weakened or has it been enhanced and there will be evidence to show that the former is the case but it is a question at this stage that will be posed. There is no doubt Chair that money has been lost. The circumstances and the elements of fault in the organisation are matters for investigation – vast amounts of money have been lost. So there is no – there is no doubt that the finances have been affected but there is also the important consequence of the weakening of Transnet as an

20 institution in its capacity and ability to deliver on what is its important function for the economy of the country. So one matter that will be examined over the period of the evidence to be presented and a matter that will concern you – Chair – is what governance and structural reforms might be necessary to ensure that Transnet and other State Owned Entities are able to perform their function within the South

African economy because the allegation is that Transnet has been abusing. Its structures have been weakened in order to facilitate the export of billions and billions of Rand offshore to parties who certainly should not have enjoyed that benefit. Chair on page 25 of the slides we deal with some changes in Government and Executive Management within Transnet from May 2009 onwards. At this stage apart from certain comments that I will make in a moment we seek to draw no conclusions – certainly seek to draw no final conclusions – at this stage in relation to appointments and dismissals. Merely to record that

10 they occurred - to highlight the presence and position of certain individuals within these changing structures and to ask the question as to whether these appointments and dismissals were somehow related organisationally and functionally to the series of alleged corrupt acts that followed and the money flows which occurred as a result. Between May 2009 and October 2010 the Department of Public Enterprises Minister concerned was Ms Barbara Hogan who has given evidence before you Chair and on page 25 you have the persons involved in the Ministry assisting her in that function. She has given evidence about the circumstances which she confronted whilst she was Minister of

20 Public Enterprises. The events, the relationships and their outcome for her position as Minister of Public Enterprises. If I may then go through to page 26? One will see there the Acting Chief Financial Officer who interestingly was appointed a week or so after the resignation of Ms Maria Ramos from Transnet in 2009 as Acting Chief Financial Officer – he will feature largely in the evidence that will be given. In

November 2010 Minister Gigaba was appointed as the Minister of Public Enterprises and that appointment – and that is at page 27 – brought about significant changes in Governance and Executive Management within Transnet. So for example one report to which you will be referred in due course puts it as follows: the word “repurposing” arises and that word in this report broadly means the appointment in Governance and Executive Management of a particular State Owned Entity in order to direct its activities towards illegal gain. In other words the question that this Commission will ask is whether this

10 repurposing took place. In other words whether these dismissals, whether these appointments were directly intended to further the project of state capture, corruption and fraud. One of the reports puts it as follows and of course the sentiments expressed which I am about to quote now will be the subject of evidence and investigation. So at the moment we put it as a question for investigation. The report states:

20 “This repurposing began with the appointments of Boards and Executives. Minister of Public Enterprises Barbara Hogan resisted this emerging undue influence on appointment which likely accounted for her dismissal only 18 months after her appointment. Malusi Gigaba replaced her as Minister of Public Enterprises in November 2010 while he was an early vocal supporter of using procurement budgets of state owned entities to pursue economic transformation often the result

was to unduly benefit elites including local politicians, wealthy international corporates and a foreign family that would become billionaires as a result. Starting with the new board headed by Mafika Mkhwanazi who has admitted to a personal relationship with the Gupta family. There would go on to be many individuals with ties to the Guptas who would be appointed to Transnet's Board and Executive Team."

- 10 The allegation in that report and summary Chair is that these appointments from a Ministerial to an Executive level were designed to and influenced by external interests. That is the allegation that will be the subject matter of interrogation in the evidence to follow. Certainly as far as the nature and purpose of Government and Executive changes commencing in November 2010. At page 28 one will see the Executive changes that happened under the watch Minister Gigaba. We have mentioned Mr Mkhwanazi who was the Chairman of the Board of Directors between 2011 and 2014. Importantly - and a name that will feature prominently in the evidence over the next few weeks - is the
- 20 appointment of Mr Brian Molefe as Group Chief Executive in 2011. What is interesting as a feature about that appointment is that it was forecast in the New Age Newspaper three months before it actually occurred. In relation to his particular appointment and the processes followed there has been a great deal of controversy and evidence will in due course be led concerning how Mr Molefe became to be

appointed, the processes followed in his appointment and whether these were proper – to put it bluntly – or not. It was on 7 December 2010 about three months before his appointment the New Age without quoting its sources said:

“The New Age has it on good authority that Molefe will be appointed CEO by the Board.”

That newspaper correctly predicted other appointments to the new Transnet Board including that of the Chairperson Mr Mkhwanazi – no - Chairman of the Board Acquisitions and Disposals Committee
10 Mr Mkhwanazi is different from the Chairman of the Board. One will see that the Executive Manager under the watch of Mr Gigaba included Mr Molefe, Mr Anoj Singh who was appointed permanently as Chief Financial Officer in 2010, Mr Don Mkhwanazi who was Chairman of the Board Acquisitions and Disposals Committee. That is the Procurement Committee that I spoke of earlier Chair that was centralised and wielded enormous decision making powers in relation to the vast procurement projects that took place and then Mr Iqbal Sharma succeeded him as Chair and you will hear of him in due course. In fact we are informed Chair that it was Mr Iqbal Sharma that nominated
20 Brian Molefe for appointment as General Chief Executive or Group Chief Executive and you will learn in due course that Mr Sharma played a central role as Chairperson of the BADC. Mr Sharma as Chairperson of Transnet’s Board Acquisitions and Disposals Committee and Mr Essa were business associates and the evidence is that certainly Mr Essa or a company in which Mr Essa was involved a company called Tequesta

you will hear - that is T-E-Q-U-E-S-T-A - benefitted enormously from what the reports allege is quite an improper deal to the extent of tens of millions of Rands. If I may just mention that it was under the watch of Mr Singh as General Chief Financial Officer that the contract in relation to the 1064 locomotives ballooned – it is alleged in the reports unjustifiably – from an amount of R38.6 billion to well over R50 billion. Then over the page on page 29 Chair Minister Lynne Brown was appointed as Minister of the Department of Public Enterprises in May 2014. On page 29 one can see those in the department who were
10 mandated with the task of her Ministry and its functions. On page 30 one will see the changes in Executive Management. You will hear evidence in relation to the General Chief – the Group Chief Executive Mr Siyabonga Gama, Mr Garry Pita the Chief Financial Officer, the Group Treasurer Mr Ramosebudi and the Chairman of the BADC Mr Stanley Shane. They will all featured prominently in evidence. The evidence will be that all the persons who I have named - who apart from Mr Anoj Singh - came onto the scene under the watches respectively of Minister Gigaba and Minister Brown played a significant role as Senior Executives in the circumstances which have given rise to
20 the allegations and to the findings of corruption in the various reports. I may just mention Chair a relevant section of the Governing Legislation which is a matter that perhaps bears interrogation. It is the Legal Succession to the South African Transport Services Act Section 17 which gives the Minister responsible powers but clearly also concomitant duties. It reads:

“Without in any way derogating from the provisions of Section 15 should the company ...”

That is Transnet.

“...act in a manner contrary to the strategic or economic interests of the Republic of South Africa the Minister may direct the company by means of a written notice or by any other means that he may deem desirable to discontinue such activity within a reasonable period which shall be stipulated in the
10 notice or other means of communication employed.”

And it may be an interesting part of our investigations to determine whether and if so which and when notices under that section were issued because one of the most important aspects of the investigations to date and in future will be the question of oversight both Ministerial and Parliamentary. As you know Chair Parliament has through its Committees already embarked upon investigations into State Owned Entities. Just bear with me a moment please Chair. On page 31 at least one of the key changes in the manner in which Transnet was governed is highlighted. You will hear Chair of the establishment of the
20 Board Acquisitions and Disposals Committee under the watch of Minister Gigaba and continued under the watch of Minister Brown. It is that committee that as we’ve said exercised wise precision making powers in relation to procurement within Transnet.

That procurement took place against a background of what is highlighted on page 32 and that is the market demand strategy of

Transnet. Essential to that strategy Chair was rather than responding to customer demand, or market demand, a decision was made on the part of Transnet to create demand, and I will deal with that in due course, but for the moment what is important is the allocation of R300billion to capital expenditure, a fertile ground for what is alleged to have transpired and what is found to have transpired in the many reports which will be placed before you.

The market demand strategy was an investment program well intentioned to expand and modernise the country's rail, port and
10 pipeline infrastructure over a period of seven years in order to promote economic growth in South Africa.

The question will be asked is has that result been achieved. So R300billion was earmarked for a capital investment program, immediate question may be posed was that capital investment program properly utilised for the benefit of South Africans or was it to some or even large degree money thrown away.

The underlying intention was to increase the operations of Transnet, increase its capacity so that it could generate market demand, so that if there was an efficient export rail service it would
20 attract customers rather than merely meet existing demand. It was obviously aimed at maintaining financial stability and strength, it was aimed at productivity and operational efficiency. Important in the Transnet strategy was a desire to encourage a shift from road to rail. The benefit to the economy, the maintenance of the road framework which is overburdened by freight at present is obvious.

Not only might that reduce the cost of doing business, the logistics of freight movement but also would have a beneficial environmental effect, and mostly importantly properly managed the project would have enabled economic growth, job creation, skills development, localisation of production empowerment and transformation opportunities. And the question that is posed Chair is whether that market demand strategy and the related capital expenditure plan of well over R300billion albeit that it was clearly sound in its objectives and principles whether that was exploited for the

10 purposes of State Capture, fraud and corruption, whether through the dismissals and appoints, the weakening of oversight and governance, the centralisation of decision-making in regard to procurement, arguably in the wrong hands, has undermined a market demand strategy that arguably was for the great benefit of the country.

And so the question will be asked whether that program rendered Transnet in short a prime target for looting.

So Chair on page 35 we say that during this first phase of evidence approximately 13 witnesses will give evidence, that evidence will cover not only allegations but findings of procurement

20 irregularities, fraud and corruption relating to a number of procurement categories of issue.

Firstly there are the contracts for the purchase of the 95, the 100 and the 1064 locomotives, contracts between Transnet and China South Rail as well as China North Rail. There will be evidence of the appointment of financial advisors, McKinsey, Regiments and Trillian as

advisors to Transnet, the nature of those relationships and the cost of those relationships to Transnet and ultimately the taxpayer and importantly the proprietary of those contracts. I mentioned the so-called relocation of the locomotive manufacturing operations from Gauteng to KwaZulu Natal, contracts and other transactions with Key Systems, contracts and other transactions with Neotel. On page 36 we highlight the nature of evidence to be led in relation to the procurement of the 95 locomotives contrary to procurement procedures and policies of Transnet.

10 Also the separate category of issue, the acquisition of 100 locomotives by confinement to China South Rail for R4.84billion, which involved not only failure to comply with procurement procedures within Transnet but unilateral changes to the business plan by senior executives and misrepresentations made to the Board of Transnet.

 Then in 2014 the massive procurement contract involving the manufacture and purchase of the 1064 locomotives. That is the contract that was split between four manufacturers, China South Rail, Bombardier, General Electric and China North Rail.

20 Some of the issues that will be discussed is that these manufacturers or original equipment manufacturers were obliged to source up to 60% of their components from South African sub-contractors, this did not happen. This whole process was overseen by the Board Acquisitions and Disposal Committee.

 The costs at page 38 of this operation increase significantly from R38billion to R54billion. Whether this was justifiable at all,

whether increase in costs was permissible in terms of the original contractual arrangements is a matter that will be raised and has been raised in the report, but much of what occurred in the increase in costs was not so much the increase in costs of the equipment or the original equipment and its assembly but the financial dealings, the cross-border financial dealings, the interest rate swaps, very complex evidence that will be given, hopefully clearly by someone other than – or led by someone other than myself Chair, in a way that can be understood.

The relocation I've dealt with, the involvement of McKinsey,
10 Regiment and Trillian as advisors, in which relationships were sourced arguably the loss of billions of Rands to Transnet as a result of the finances relating to payment for the deals, and what is of some concern potentially is why the Transnet Treasury Department was sidelined completely in this operation when according to the evidence it was capable of doing the work that McKinsey, Regiment and Trillian were employed to do.

There will be evidence Chair of tens of millions of Rands paid to companies that did nothing for it, just simply paid, arguably just looted or stolen.

20 Then on page 39 we deal with the Neotel contract, the entire digital communication network services was outsourced to Neotel during the period 2009 to 2019. As part of that operation an amount of R300million was spent in purchasing certain network equipment from Neotel under a Master Services Agreement. R34million was paid to an entity called Homex, again as a "success fee" for facilitating that

contract which was worth as we said R300million. A new Master Service Agreement was signed in 2014 which again resulted in payments being made to Homex totalling an amount of R41million as a success fee. The question is not whether that was a payment of an amount of money in excess of what ought to have been paid, but whether it should have been paid at all. In other words whether the amount of R34million and R41million was simply looted from the coffers of Transnet for no value whatsoever, that will be the question that will be asked.

10 Similar to the over R70million paid to Tequesta in relation to the 1064 locomotives deal entity in which Mr Essa had an interest and we know that Mr Sharma and Mr Essa were business associates.

So Chair there are a number of transactions here where one is not only talking of payments that have involved the ballooning of manufacturing costs, but matters where the allegations have been, and the reports have shown that no money should have been paid at all and yet it seems that tens of millions of Rands were in fact paid, and that is, those are questions the veracity of which and the allegations in relation to which will be examined in evidence over the next few weeks.

20 Then Chair we have in relation to Key Systems on page 40 allegations of the favouring of particular bidders who ought not to be have been favoured in the awarding of contracts and the intervention of the Board in overruling the procurement processes and recommendations of the evaluation team, disregarding the business owner, that is the division from which the contract emerged, or for

whom the services were to be rendered and I've mentioned the disempowerment of the divisions and the business owners. That contract was ultimately set aside and declared irregular by the High Court.

Chair there are as we have tried to stress a number of other matters, besides the matters already subject to the reports that appear to indicate that notwithstanding the attempts of Transnet itself, of Parliament and of independent investigators to uncover what happened in Transnet over the period of time that is the subject matter of the
10 evidence that we have been mandated to place before you Chair, whether there is not too a vast amount of unknown matters still to deal with and investigate, whether we will have the capacity and the time to do so certainly mechanisms should be in place to ensure that a complete and thorough investigation into all procurement within Transnet takes place and that will be the subject of further investigation, but many reports including Gupta Leaks Chair indicate the presence of other (indistinct) besides that which we foreshadowed in this opening.

Chair I see it's quarter past eleven.

20 **CHAIRPERSON**: Okay, we will take the tea adjournment and we will resume at half past eleven. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes Mr Pretorius.

ADV PAUL JOSEPH PRETORIUS SC: Thank you Chair. There are

some housekeeping matters which we will deal with tomorrow morning that have arisen this morning. I need not trouble you with them now but for the present Ms Sello will present the gap analysis on existing reports into the matters relating to Transnet.

CHAIRPERSON: Okay thank you. Ms Sello.

ADV MAHLAPE SELLO: Thank you Chair and thank you Mr Pretorius. Chair with your leave may I start by handing you two indices in a little pack. I am going to suggest that the Chair retain these two indices for the duration of the Transnet evidence. It will make reference to the
10 various reports and volumes much easier.

CHAIRPERSON: Thank you.

ADV MAHLAPE SELLO: Thank you. You have Chair to your right volumes of reports that are being submitted on behalf of Transnet.

CHAIRPERSON: To my left.

ADV MAHLAPE SELLO: To your left, my right. My apologies Chair. To your left indeed.

CHAIRPERSON: There is nothing to my right. Yes.

ADV MAHLAPE SELLO: And Chair just to point out a few things before I deal with the respective reports.

20 **CHAIRPERSON**: H'm.

ADV MAHLAPE SELLO: There is a total of 17 separate documents. Combined they run to 26931 pages. We tried to think of a way to make them presentable to you without necessarily subjecting you to 26000 pages and we have come up with the following system which we hope will meet with your approval. You have been provided with 16 of the 17

and I will explain shortly why reports excluding their respective annexures. That is what make the report so voluminous. Except for the reports we call the MNS Reports. The reason for that is that there will be evidence led specifically on the MNS Reports where the annexures during the course of the hearings become pivotal. What we have done instead is to provide you with a report and a list of all annexures relating to that report what pages they would appear at except that the annexures are provided electronically. Your volumes as you currently have therefore Chair would run from Volume 1 to Volume

10 17. This is excluding those annexures. If that meets with your approval Chair I suggest that we approach the matter in that way?

CHAIRPERSON: Ja that is fine thank you.

ADV MAHLAPE SELLO: Secondly Chair in the file that Mr Pretorius handed you today the Chair will realise that it is in three parts. The first part is the presentation that Mr Pretorius has just given. The second part is what we call the executive summary of the gap analysis. And the third part is the full gap analysis. We have tried to create an executive summary for purposes of presentation today. [Indistinct] as we tried we did not reduce it to as much as we had hoped we would be

20 able to. The two indices I handed up to the Chair in a red folder they relate in – they relate to the main gap analysis which is the third document in your folder. So the pages will correspond. What we have done for the executive summary is to paginate afresh the executive summary starting with page 1 and that is for ease of reference during presentation. We have not tampered with the original typed numbering

of the document which will correspond with the index as I have given and with the main presentation. That way the Chair is able should he so desire and if he has made any notes on any page to substitute page 5 or page 15 of the main presentation with the one he has made notes on. Thank you Chair. Before I get into the respective reports I need to point out that the reports that we present today do not purport to constitute a result of thorough investigation of all Transnet affairs. As we go through the report the Chair will notice that each investigation had a specific scope and mandate and at times there would at first
10 bluish appear to be overlaps and duplications but as we go through the reports the Chair will notice that what would appear as duplications or overlaps have got a rational explanation. If now the Chair would have regard to the executive summary. I will move Chair to page 5 of that executive summary and at – just to give an overview of the gap analysis itself and to indicate that there are 19 reports in total that we have deemed relevant to the affairs of Transnet. We have tried to classify them in a coherent fashion that would make it easier to follow. We have divided the presentation into three section a, b and c where section a are what we call reports by public organs and at times
20 presentation by Eskom to the Portfolio Committee. Section b are the forensic reports. The actual forensic reports following investigations and section 3 just highlights certain relevant court cases that will be dealt with or that will be – will be covered in the course of testimony before you Chair. Now if I may then turn over to page 6 and deal with the first section, section A which are reports by public organs. The first

report at page 7 is just the front page of the Public Protector's state of capture report. This report is relevant for Transnet but to avoid prolixity we have not included it in this presentation because it has served before you already as Exhibit A. That will then take us to the second report which is the Public Affairs Research Institute Report starting at page 9. This – this report was generated on 24 August 2018 following research conducted by the Public Affairs Research Institute PARI for short. If the Chair would have regard to page 10 we explain at point 2 thereof the limitations of that – this report and it states that the

10 authors of this reference book have set out to provide an independent accessible concise and fact based account of some but not all of the alleged instances of governance failure and corruption at Transnet. Only on reading of the report the limitations of the report are clear and one understands specifically which alleged instances of governance failure have been dealt with in the report. At page 11 we list the specific transactions that the PARI report covers and it's the A transactions that appear on the screen. Some of these transactions have also been considered by other investigators. The difference between what PARI did and what other investigators – how the other

20 investigators conducted their investigations is that PARI relied in the main on the Gupta – some of the Gupta leaks emails and documentation that was in the public domain already. As we deal further with these reports we will deal with some of these transactions such as the procurement of locomotives, Neotel, Regiments, T-Systems. And the reports in respect of each one of them further on in

the report are based on investigations of original documentation. To the extent therefore that there may be contradictions between the original investigation and the PARI report the explanation is that the investigators used original documentation obtained from Transnet and other reliable sources. We express a view at page 12 whether Chair you can con – you can accept this report and our view is that yes you may with the [indistinct] that we understand that it is based on the Gupta leaks not the entire HDDH record and publicly available information. With that qualifier we submit that it may be admitted.

- 10 They – we note that further investigations need to be conducted by the commission itself to give credence or deal with some of the issues or finding that the PARI report have made with reference to their own material and the entire HDDH report. The second document Chair at page 13 is headed Portfolio Committee on Trade and Industry and Transnet and dated 20 – 12 February 2019. This in fact is a presentation made by Transnet to the Portfolio Committee on trade and industry. In essence to give a report of steps it had taken following the various investigations into Transnet and these are then listed at page 14 the steps thus far taken by Transnet Chief amongst which has been
- 20 the institution of criminal cases where relevant someone has been issued to those employees who are suspected of wrongdoing in an attempt to recoup the monies lost to Transnet and some have also been issued to the companies Regiments, Capital and Trillian – and Trillian who had transaction advisors in what as Mr Pretorius has indicated was the 1064 acquisition process. We list further on senior Transnet of

former Transnet officials who the reports have pointed to as having committed some irregularities and summons have been issued to the people listed therein. At page 15 is a table that on its own is – would not make much sense. The purpose of this table is to give a sense of the 1064 acquisition process and notwithstanding its [indistinct] purchase price that by March 2018 – by December 2018 none of the contracts had been executed to the full. There are still a whole lot of outstanding deliveries and these are some of the problems for Transnet as they continue to increase costs. These first then three documents

10 Chair are what we call Section A and they are to be found in Volume 1 of your report. If I then proceed to page 17. Page 17 is the start of Section B the forensic reports. And the first is at page 18 which is the Werksmans Report, acquisition of 1064 locomotives. Page 19 reflects the mandate that was given to Werksmans by the Transnet board at the time and this included inter alia to establish whether the processes followed in procuring the 1064 locomotives were in compliance with Transnet policies and procedures as well as National Treasury regulations. To review and validate submissions made to the [indistinct] adjudication committee and the board in respect of the

20 procurement of the 1064 locomotives and to ascertain amongst other things the reason for the increase in the estimated total costs to establish whether prices were inflated after hedging and determine whether escalations and contingencies were added. The mandate was broader than that Chair we just highlight the key issues that are addressed in this report. And at page 20 we reflect the conclusion and

the view is that the – the report is subject to limitations. It is apparent from the report that the report must be considered inconclusive. Werksmans was frustrated at every turn. It did not enjoy any cooperation and – from the management and board of Transnet at the time and was denied access to relevant information. In the circumstances it could not make any conclusive findings in respect of the mandates that I have referred to. The next report appears or before I get to the next report the Werkmans Report is the last of the reports in your Volume 1 Chair. So that completes your Volume 1. We
10 then get to page 21. At page 21 we deal with reports prepared by MNS attorneys. MNS attorneys investigated and have submitted six separate forensic reports. Yes Chair.

CHAIRPERSON: It may be a useful idea to have another copy of the index that you have given me.

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: That can be put at the beginning of this – these reports which will tell me without me having to look for the separate bundle in which volume which report belongs.

ADV MAHLAPE SELLO: I will do so Chair.

20 **CHAIRPERSON**: Ja.

ADV MAHLAPE SELLO: Will do.

ADV MAHLAPE SELLO: Okay.

ADV MAHLAPE SELLO: Thank you Chair.

CHAIRPERSON: Alright.

ADV MAHLAPE SELLO: I am not at page 21 and dealing with the MNS

reports. There are a total of six forensic reports submitted by MNS Attorneys. The first is a procurement of Transnet 1064 locomotive – locomotives. The second concerns the alleged irregularities relating to the appointment of the transactional advisors in respect of the acquisition of the 1064 locomotive tender and financial transactions concluded pursuant thereto. In that respect there are two separate volumes. The third was an investigation into the procurement by Transnet of 95 on the one hand and 100 locomotives and these – the results are reflected in two separate volumes. And the last is the
10 relocation of the manufacturers to Durban. Turning then to the procurement of the 1064 locomotives themselves. This report starts at page 22 dated October 2018. The mandate as reflected at page 23 of MNS and the Chair would immediately realise that the mandate in large part corresponds with the mandate given to Werksmans. It was to investigate the same issues that Werkmans had investigated. The reason for this as – at the time of engagement of MNS the whole investigation had to be redone. MNS enjoyed better access to the information held by Transnet whereas Werksmans was not able to do so a year previously. So any – there may be one or two contradictions
20 between the two but as we work through the MNS reports through witnesses it will become apparent why it is a [indistinct] arrives at a different conclusion should that be the case to the conclusion drawn by Werksmans on the same issue. In the main as far as 1064 is concerned Mr Pretorius brought to your attention Chair that insofar as 1064 – the acquisition of 1064 is concerned there was an – a

significant increase in the cost of acquisition from R38 billion to R54 billion. MNS was to investigate the cause of that increase and to determine whether the reasons advanced for the – for the increase were reasonable and justifiable. This is contained in the report and MNS has drawn its conclusion and when we present the witnesses in respect of MNS we will take the Chair slowly through the process of how this price [indistinct] from R38 billion and to R54 billion and will be able to demonstrate why it is at the end of the day MNS draws a conclusion that the increase of over R15 billion was unjustifiable in the

10 circumstances. If I then turn over to page 24 – from page 24 to 26 we highlight the key findings made by MNS in this report and as I have alluded to just before bullet point 3 it deals significantly with the increase in the ETC from R38 billion to R54 billion. In this case MNS notes that Mr Gama was a signatory to the memorandum that misrepresented to the board the true reasons and extent of their increase from the initial ETC to R54 billion. The initial ETC being R38.6 billion. This was misleading because it is apparent that hedging and forex escalations were already included in the initial ETC of R38.6 billion. The hedging and forex escalations were advanced as to some

20 of the reasons to justify the increase. At point 4 it states one of the reasons for the increase was the batch pricing. Mr Gama attended the BADC meeting of 26 February 2014 but he failed to inform the BADC of the increase and the reasons for the increase of the ETC. At 26 we deal with the board's failure to obtain the Ministerial approval of that increase in the ETC. The decision to commit Transnet to batch pricing

arising out of split – the splitting of the award. And at page 26 we deal with other non-compliance issues such as failure to comply with the requirement for local content. And the conflict of interest between in particular Mr Sharma and Mr Essa who enjoyed a business relationship. Particularly their interest in VRLS Properties and VR Laser. VR Laser was a vendor at the time for Transnet and Mr Sharma failed to disclose this conflict of int – direct conflict of interest to the board at the time. Mr Essa was contacted by China South Rail Hong Kong to provide advisory services to Transnet through his company Tequesta previously referred to by Mr Pretorius for the procurement of 359 locomotives for which it enjoyed a success fee. Overleaf at 27 we deal with how the commission should – should deal with the document – with this report. We submit that Chair you admit it. It is quite comprehensive. We point out however it bullet points 1 and 2 that the commission is currently undertaking an analysis of various email records and minutes and audio recordings of the BADC and the board meetings and its performing relevant cash flow analysis. As regards the analysis of the email records and minutes the results thereof should come – should be presented through the various witnesses that will appear before you.

10

20 The performance – the cash flow analysis is a subject for when Transnet returns the next time to appear before you it is not for this session Chair. If I may then proceed to page 28. That is the report again by MNS appointment of advisors for 1064 locomotives tender. It is dated March 2019. And the man – MNS mandate in this regard is reflected at page 29 which was to conduct investigations into

irregularities relating to the appointment of these transaction advisors in respect of the acquisition of 1064 locomotives and the financial transactions concluded pursuant to such appointments. We list the key findings from page 30 of that report. It is page 30 of our presentation through to page 39. This is a very important report and at times complex as Mr Pretorius indicated. Firstly the appointment of the transaction advisors were fraught with irregularities in that Transnet elected to use the method of confinement instead a public tender. The reasons advanced were in part – did not substantiate a choice of

10 confinement as a method of acquisition because that acquisition did not meet the requirements of a confinement which is inter alia urgency. The issue with the appointment of advisors is that firstly a proposal was submitted by McKinsey Consortium. At the time that McKinsey submitted its proposal Regiments was not part of that consortium. However at the time that the LOI was being signed with Transnet Regiments had – was reflected now as a part of a consortium in this tender. The problem with this was that Transnet – because Regiments did not form part of the consortium did not have the opportunity to verify and investigate the affairs of Regiments in the decision to make

20 this award to the McKinsey Consortium. Oh at page 31 a further change to the consortium was effected which was inconsistent with the policies of Transnet in this regard. Trillian was appointed to replace JP Morgan and in the process of obtaining the R1 billion club loan. This was done purely on the recommendation of the CEO without going back to tender to replace JP Morgan which for reasons had had to leave the

consortium. If we go over 32 insofar as the consortium itself is concerned the RFP required that all tenderers submit audited financial statements. Failure to submit would result in disqualification of the bid. In the McKinsey consortium instance it failed to submit – McKinsey failed to submit its financial statements and should thus have been disqualified but that requirement was overlooked in this instance for no reasons advanced and McKinsey became part of the consortium that was awarded the contract. At page 33 we deal with the other part of the McKinsey consortium which is Regiments. As I have

10 indicated Regiments was not originally part of the consortium but now had become included – had become included on the eve of the signature of the LOI. The view expressed by MNS at 13 is that this constituted a misrepresentation and states that Mr Singh signed an agreement on – in January 2014 between Transnet and Regiments setting out the updated scope of transaction advisory work that Regiments was assigned to render as a result of Nedbank no longer forming part of the McKinsey consortium. There was never such a scope. It is an issue that was raised by Mr Singh to justify the inclusion of Regiments and this consortium. The result of this

20 agreement signed by Mr Singh resulted in Regiments being entitled to a 20 percent performance fee which was payable – which was to be payable by Transnet. That according to MNS was unlawful because having on all documentation provided and the award made Regiments was a sub-contractor to McKinsey. There was no contractual nexus between Regiments and Transnet and it could not under the

circumstances have been entitled to any fee payable by Transnet but that agreement bound Transnet to pay that fee and the fee was indeed paid. There are other issues arising which is to the extent that Regiments would have been entitled to a fee - a performance fee. The contract provided that such would kept at nine million but as will become – as we shall see it was in fact paid in excess of 100 million. At page 35 we continue to deal with Regiments. There will be evidence that at this juncture before the signature of the LOI there was an email on which Mr Singh made certain comments – handwritten comments and
10 this including the fact that Regiments is not a direct contractor to Transnet. Notwithstanding his comments Mr Singh prepared a memorandum motivating to the then CEO Mr Molefe that Regiments be remunerated by Transnet on a risk sharing model or a success fee. Why Mr Singh did this is a matter that will be debated with the witness to the extent that they are able to clarify or maybe Mr Singh himself would be in a better position to assist. This misrepresentation led to Regiments being paid and a fee of 79 230 000 that it was not entitled to which MNS concludes is an amount – that amount constitutes fruitless and wasteful expenditure. The report then deals further on with the
20 appointment of J P Morgan and this appointment MNS held was irregular on the basis that it did not comply with the policies of Transnet. At 36 we then deal with the other partner in the consortium – Trillian. As I indicated earlier Trillian subsequently replaced J P Morgan in the consortium. The issue is whether or not a proper procurement process was followed in the appointment of Trillian to

replace J P Morgan in the consortium and the conclusion is that such an appointment was non-compliant with the Constitution and the policy of Transnet – policies of Transnet – and is thus irregular. From page 37 we try to simplify the various payments made to members of the consortium which are deemed to be – by MNS – are deemed to be irregular and unlawful. I indicated earlier that to the extent it may be argued that Regiments would have been entitled to a fee. Such was in terms of the contract kept a nine million and their report – in their report MNS explains the difference – how the difference between nine
10 and R15 million occurs which in their view at the very most is what Regiments would have been entitled to receive. At 37 we indicate that in actual fact Regiments received not only more than nine million but more than 15 million and that it was paid 194 240 000 including VAT. This payment led to Regiments being unjustifiably enriched to the value of at least 79 230 000 and as a consequence Transnet being impoverished thereby. At page 38 we deal with payments to Trillian and this is a payment of 93 480 million which was made by Transnet to Trillian in circumstances where it is contended that Trillian did not do any work that justified payment to it for that amount or any as the work
20 it claimed for had already been executed by Regiments. So in Trillian's case it is not a question of overpayment. It is a pure fraudulent exercise to benefit to the tune of 93 million at the expense of Transnet in circumstances where it did not provide services. If the Chair would turn to page 90 – page 39 we deal with the amounts that – MNS deals with the amounts it believes for reasons advanced in the report are

recoverable by Transnet from the various beneficiaries. In this regard it contends that Transnet must recover an amount of 79 230 000 from Regiments. It must recover an amount of 189 000 from Regiments – 189 million, sorry – from Regiments once again as Regiments when it received this amount had adequately been remunerated to the extent of R15 million and MNS Report suggests that Transnet seeks to recover the payment of 93 480 000 paid to Trillian. At page 40 then Chair we deal with how – we propose the Chair should deal with these reports and as with the previous report we point that an analysis of email
10 records, minutes and board meetings recording is currently being undertaken and that the relevant cash flow analysis is being conducted. As regards the result of the analysis of the emails and minutes that witnesses will testify to soon enough and the cash flow analysis will be at a later stage. All these documents – this report which is substantial Chair is in Volumes 4, five, six, seven, eight, nine and 10 and it is listed as such in the index. That then deals with the acquisition of 1 064 locomotives together with the transaction advisors appointed in respect – in regard thereto. I now turn to page 41 Chair and that deals with an acquisition of a further 95 locomotives which is a different
20 transaction. This is a fairly small report comparatively speaking and MNS found in this transaction various irregularities regarding the procurement and the award of the 95 locomotives. The Commission – the investigators conclude there is no further work to be done on this transaction and that the report should be accepted as final by you Chair. This is then followed by the next process – acquisition process

which is the acquisition of the 100 locomotives starting at your page 44. As with the 95 MNS concluded that this procurement process was fraught with irregularities and equally so was the award and at page 46 we extracted the key issues that MNS highlighted in regard to this transaction. The first is that the use of the confinement methodology once again was not in compliance with the policy as it did not meet the requirement of urgency standardisation and highly specialised goods as prescribed by the confinement. In the process of acquiring these locomotives there was a decision not to acquire them – if you could just
10 bear with me Chair. In the process of executing this acquisition which was originally budgeted at 3.8 billion a memorandum was prepared by the then CEO Mr Molefe recommending – as recommended by Mr Singh and Mr Gama that led to an increase of that budget from 3.8 to 4.4 billion a total of 965 million which increase MNS - based on its investigations - concluded the inflation was unjustifiable and that the factors relied upon for such an increase were not reasonable in the circumstances and could not justify such an increase. As a result of this increase Transnet paid per locomotive 3.47 million and at times 6.2 million which was unjustifiably increased. It concludes by holding that
20 Messieurs Molefe, Gama, Singh and Jiyane failed in their fiduciary duties in the acquisition of these locomotives and at 47 Chair we indicate that the report is final and in our view no further work is necessary as regards that report and the Chair may admit it as it is.

CHAIRPERSON: Does that mean that the legal team submits that the findings made in that report are all justified insofar as they may relate

to the matters that were investigated?

ADV MAHLAPE SELLO: Whether the findings are justified?

CHAIRPERSON: Hm.

ADV MAHLAPE SELLO: The only conclusion we can make at this juncture Chair is that the conclusions drawn by MNS are supported by evidence and I do not know if that is what the Chair is requiring of now.

CHAIRPERSON: Excuse me. Well the forecast should be whether the findings made are justified having regard to the material on which they are based.

10 **ADV MAHLAPE SELLO:** Yes Chair.

CHAIRPERSON: So that if this Commission were to adopt them it would not be subject to any – any criticism.

ADV MAHLAPE SELLO: Chair that – that is our preliminary view but I say ...

CHAIRPERSON: Hm.

ADV MAHLAPE SELLO: That with your permission Chair with a rider ...

CHAIRPERSON: Hm.

ADV MAHLAPE SELLO: That to the extent as we work with MNS through these reports and the annexures ...

20 **CHAIRPERSON:** Hm.

ADV MAHLAPE SELLO: Should we identify gaps ...

CHAIRPERSON: *Ja.*

ADV MAHLAPE SELLO: We shall revert Chair and indicate whether or not there should be any qualifications in accepting that report.

CHAIRPERSON: *Ja* and that should apply to all reports.

ADV MAHLAPE SELLO: To all – yes Chair.

CHAIRPERSON: The idea should be for us to be able to say this report contains the following findings that can justifiably be adopted by the Commission but these others maybe need further work - further investigation and maybe others are just not justified.

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: *Ja.*

ADV MAHLAPE SELLO: And – and in the – in the case of the latter ...

CHAIRPERSON: Hm.

10 **ADV MAHLAPE SELLO:** We attempt to indicate where the gaps have been identified and what further work is required ...

CHAIRPERSON: Hm.

ADV MAHLAPE SELLO: In respect of each report.

CHAIRPERSON: Okay.

ADV MAHLAPE SELLO: And yes I confirm Chair that insofar as 95 and 100 concerned the preliminary view is that they are conclusive and may at this juncture be admitted unless we revert Chair having identified gaps that perhaps we – we have not seen as yet.

CHAIRPERSON: Okay.

20 **ADV MAHLAPE SELLO:** Thank you Chair. If – if I – we then go to page 48. The Chair would have heard from Mr Pretorius about relocation of manufacturers to Durban. MNS conducted an investigation into this relocation and the report relocation of OEMs is the outcome of that investigation. At 49 we highlight MNS mandate in this regard which was to conduct an investigation into possible

irregularities in respect of the relocation of China North Rail and Bombardier Transport from Koedoespoort to Durban. The Chair will recall that Mr Pretorius indicated that the relocation concerns the cost that had to be borne by Transnet in this regard. It is necessary to determine whether such relocation was necessary and whether Transnet should appropriately be burying that cost. This report at 50 Chair we mark as a preliminary report. The reasons for that is that Nedbank and McKinsey have been invited to comment on that – the report – the preliminary report as it stands and their comments are

10 awaited. I would like to point out that the delay is not significant because if the Chair has regard to page 48 this report was only published in March 2019. So we expect in the fullness of time both Nedbank and McKinsey to comment and for MNS to then conclude the report and we shall resubmit it if necessary. If they do not make comments then MNS will tender this as a final report Chair. I then move on to another set of reports from page 51 which we refer to as the Fundudzi Report for convenience. They are actually two separate reports. The first relates to the acquisition of 9 500 and 1 064 locomotives and the second relates to the appointment of McKinsey,

20 Trillian and Regiments. Before we deal with this report in detail this is one of the reports where there is an overlap as the Chair can see from the heading of the reports between MNS, Fundudzi and Werksmans insofar as the acquisition of the locomotives are concerned. The reason for this overlap is that ...

CHAIRPERSON: I think you said 9 500 locomotives?

ADV MAHLAPE SELLO: 9 500 and 1 064.

CHAIRPERSON: Is it not 95?

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: You said 9 500.

ADV MAHLAPE SELLO: Oh, I should - 95, 100 and 1 064. Sorry, I read it as if it is one number. My apologies Chair.

CHAIRPERSON: Okay.

ADV MAHLAPE SELLO: And as the Chair recalls the acquisition of the 95 locomotives, the 100 and 1 064 have already been dealt with by
10 MNS and the 1 064 were subject of the Werksmans' Report and these are the overlaps that we previously referred to. The reason for the overlap as Fundudzi was engaged by National Treasury to investigate the same transactions whereas MNS and Werksmans had been – and Werksmans had been engaged by Transnet. The issue really that arises is whether there are any conflicts between the MNS Report and the Fundudzi Reports. In our assessment there are no significant contradictions. Any that may be found could be explained by who had better access to what information. So we propose that notwithstanding the fact that they cover the same issues that they be allowed – they be
20 admitted side by side. The second of the Fundudzi Reports relates to McKinsey, Trillian and Regiments and these entities we have spoken about when considering the advisors for the acquisition of the 1 064. For Fundudzi purposes however their investigation included the activities or investigation into the activities of McKinsey, Trillian and Regiments in both Transnet and Eskom. It is thus a wider report than

the MNS findings as regards these three entities and the Fundudzi first report is captured at pages 52 and 53 and at 54 we deal with Fundudzi's main findings as regards the locomotives acquisitioned. In this regard Fundudzi – Fundudzi identifies in particular certain aspects that are not dealt with in as much depth in the MNS Report in particular I would like to refer the Chair to bullet two which states that:

“Mr Molefe and Mr Singh failed to conduct a cross benefit analysis ...”

CHAIRPERSON: Do we have the same numbering? I see you keep on
10 saying bullet what – what ...

ADV MAHLAPE SELLO: Number two – numbering two Chair. I have ...

CHAIRPERSON: Oh, we have the same paper.

ADV MAHLAPE SELLO: Slip of the tongue. I apologise.

CHAIRPERSON: Okay.

ADV MAHLAPE SELLO: I apologise, yes. I will call it point two. Yes
Chair.

“That Mr Molefe and Mr Singh failed to conduct a cross benefit analysis when a decision to change the locomotives from 19E ...”

20 Needs to be locomotives.

“...to 21E CSR were undertaken. Transnet would have saved ...”

At three:

“...1.2 billion if it had procured 100 locomotives from Mitsui at 3.188 billion rather than procuring

from CSR at 4.4 billion.”

The Chair will recall that when dealing with this aspect in the MNS Report it – I pointed out that MNS found that Mr Molefe based on a recommendation by Mr Singh and Mr Gama made a proposal to the board to approve the adjustment of the budget price from 3.8 billion to 4.4 billion. This Fundudzi Report gives further detail as to why such an increase was unnecessary and based on Fundudzi the argument was the same locomotives could have been acquired from Mitsui at about 1.2 billion less. There will be a witness who will speak at length Chair
10 on the 19E locomotives and the 21E locomotives. It is not necessary at this juncture to go into detail. One of the important aspects as well is at point five which reflects that Transnet fail – Transnet Board failed to notify the shareholder as it was in law bound to of acquisitions and disposals above 2 billion before it concluded the contract with CSR and this is a requirement of the shareholder contract and in contravention thereof the Transnet Board concluded this contract with CSR without informing the shareholder. At page 55 Chair we briefly deal with how we suggest this report be – be dealt with by the Commission and we indicate it is a final report again with just a qualifier and points one and
20 two which is that the analysis of emails, records and minutes of the Board and the BADC is currently being conducted by the Commission. Equally so – so are the relevant cash flow analysis and that will be dealt with in due course. From page 56 – before I go to 56 Chair if I may just point – for the record point out that the Fundudzi Report on the acquisition of 95, 100 and 1 064 locomotives are in your Volume 14

and at Volume 15 it contains two documents. The first of which is the second Fundudzi Report which is the appointment of McKinsey, Regiments and Trillian. At page 57 we set out the mandate. Most importantly Chair at page 58 – page 58 – I was hoping my – it is catching up with me – my slide presenter. Thank you.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: Page 58 indicates that the Fundudzi Report insofar as those three entities are concerned is much, much broader than the MNS investigation. Expands a longer period which is a period
10 from 2012 to 2016 and deals with at least eight separate transactions all of which have been investigated by Fundudzi and recommend – and findings made and recommendations made in respect thereto. So and so they overlap with MNS would be about the advisory services for the 1 064 locomotives and the SWAT – SWAT and SWAT two. The rest MNS did not investigate at all. So insofar as the Chair would like to hear more about those transactions one would have – to have regard to the Fundudzi Report and once again there will be witnesses who will table these reports formally and deal with their detail. At 59 – page 59 Chair Fundudzi deals with various irregular payments made to McKinsey,
20 Regiments and Trillian and these included payments at (indistinct) of what is referred to as out of pocket expenses. In circumstances where the three entities did not submit any supporting documentation to substantiate entitlement to the amounts reflected in the invoice. The three - McKinsey, Regiments and Trillian – were paid 1.5 billion during the period 2012 to 2016 in respect of the contracts awarded to them

through confinement. Yet again Chair it is a question of the process that was employed by Transnet to get these entities on board – this process of confinement which was not only irregular but was unlawful as the circumstances of acquisition did not meet the requirement for confinement. Most importantly Chair - at nine - Fundudzi found that Mr Ramosebudi misrepresented that Trillian assisted Transnet to negotiate with Nedbank, Bank of China, Absa and LIPFIN in the memorandum dated 17 September 2015. This is in respect of the club loan that is dealt with in the MNS Report and Fundudzi concluded that

10 this misrepresentation – it is this misrepresentation that resulted in Transnet making an irregular payment of 93 480 000 to Trillian Asset Management. The Chair will recall that – and Mr Pretorius' presentation - I think Mr Ramosebudi at the time was a Senior Executive within Transnet I think within the Treasury Department and such a finding is of course concerning. At 60 then Chair once again we – we deal with our recommendation – recommendations and we suggest that the document – the report maybe placed before you with the proviso of course that we shall revert with the findings regarding the current analysis been undertaken of audio recordings and minutes and

20 the cash flow analysis. The second document in your Volume 15 is what appears from your page 61 Chair. It is a report that was commissioned by Mr Tokyo Sexwale then the Chairperson of Trillian Capital Partners into allegations with regard to the Trillian Group of Companies and related matters. This report was prepared – the investigation was conducted and report prepared by

Advocate Budlender SC. The mandate of Advocate Budlender appears at 62 and in the main he was required to investigate the allegation that Trillian in – invoiced some SOEs for work which was not done and was paid or invoiced without contracts. He was secondly to determine the role or impact if any of members of the Gupta family and persons associated with them on the activities of Trillian. The opening caveat by Mr – by Advocate Budlender is key Chair to understand the detail or in some instances the lack of detail of his report and it states – I read for the record:

10 “The management of Trillian have obstructed this investigation. The obvious question is why they have done so. The only conclusion I can reach is that the questions which I raised and my request for documents and information led them to conclude that if they complied with the undertaking they had given information would be revealed which would be embarrassing to them. I can think of no other reason. I expect that Trillian will say that some of the factual information in this report is incorrect or

20 incomplete. If that is so it is because Trillian refused to cooperate with the inquiry. This investigation is still incomplete and ...”

He said he could have spent more time except that at the time he had – it had become clear to him that the inquiry would not reach a satisfactory conclusion. It is with that qualifier then Chair this report

must be dealt with.

CHAIRPERSON: I think we have referred earlier on; there was a reference to an incomplete report, if a report is incomplete how much value is there including it here?

ADV MAHLAPE SELLO: We have found that it has got two values, firstly in some – it's an investigation that's been undertaken. Absence or lack of access to documents – certain documentation which is listed made it impossible for advocate Budlender to draw a conclusion. He has, however, given detail of the documents required to substantiate
10 his preliminary findings and we as the Commission are able to access those documents from Transnet. So for an incomplete investigation and I think I deal with this particular – yes report at page 68 and suggest how it must be dealt with and we say that at this stage these are allegations which would need to be substantiated and confirmed by the Commission but there are allegations that are useful to the work of the Commission.

CHAIRPERSON: Ja but shouldn't you just note the documentation to which he refers and then the Commission does its own investigation because he's not drawing not any final conclusions, so what's the use
20 of including the report for purposes of this Commission.

ADV MAHLAPE SELLO: Chair we had...(intervention).

CHAIRPERSON: You can't say much about findings that are not conclusive – that are not final conclusions.

ADV MAHLAPE SELLO: Chair if I may give you an example at page 65 onto 68 Mr Budlender deals with a payment of an invoice of

10million rand he, however, finds a claim and he needs for us to check whether that was paid for same services for again 10million rand. The question he poses is whether or not this constitutes two payments for the same service provided and because of that important exercise that he has conducted we thought it appropriate to bring it to your attention, but we stayed as we do so that the report as we find it to constitute useful background information and intelligence but is subject to the limitations that he could not draw any definitive findings.

CHAIRPERSON: Ja I'm not sure that it's very useful to include it
10 here, it may be that all that should be done is to note certain things that he has said and then the investigators of the Commission could then investigate those, not to include the whole report. So you may have to reflect on the question whether it really serves much purpose to include it here.

ADV MAHLAPE SELLO: We will do so and Chair it may very well be – because we also characterise it as useful background and intelligence we would uplift it and we will make the appropriate amendments to the index and to your file Chair.

CHAIRPERSON: So it might be useful for the investigators to follow
20 up certain things as opposed to including it here.

ADV MAHLAPE SELLO: That is already underway Chair.

CHAIRPERSON: Okay.

ADV MAHLAPE SELLO: And we shall revert, therefore, Chair as regards the issues arising here from and the results of the investigations.

CHAIRPERSON: Ja.

ADV MAHLAPE SELLO: But in the meantime it shall be uplifted and it will not form part of the Transnet document. I would then, Chair, turn to the next report which is at page 69 and this is to be found in your volume 16. This is a report by UBAC Qhubeka...(intervention)

CHAIRPERSON: If that is Zulu it would be pronounced as Qhubeka if it is Zulu, I don't know if it is Zulu but it does look Zulu.

ADV MAHLAPE SELLO: Chair neither do I know if it Zulu but I will go with what the Chair's suggestion, Qhubeka.

10 **CHAIRPERSON:** Okay.

ADV MAHLAPE SELLO: And I did spell it it's Q-h-u-b-e-k-a for purposes of the transcribers and this is the report of investigation into the Transnet National Ports Authority, investigation into the Neotel transaction. At page 70 we provide a summary of the issues pertaining to this transaction, this was, in large part, a transaction for the acquisition of CCTV and related equipment for the Ports Authority. The issues, that in the main, arise from this report is that Transnet paid an excessive price for what was delivered at – contracted at R150 000.00 per unit provided and it has since been established that the equipment
20 provided ranges in price from between 4 500 and 9 000 dollars. On the second point it deals with the quality of video recorders provided and concludes that these were a cheaper product than that contracted for. There is a question of the guarantee provided by Neotel, Neotel appears to have provided a three year guarantee but the original supplier of the equipment to Neotel, I don't know if it is Nice or Niece,

I'll settle for Niece, the documents indicated that it could only provide a guarantee for two years. The question then is, how does Neotel provide a three year guarantee in those circumstances. The last key issue is at point 4 which is that Neotel itself as a supplier of these – this equipment is not a registered security services provider in terms of the Private Security Industry Regulation Authority Act 56 of 2001. The investigators of this transaction concluded that they are, in law, required to be registered as security services providers before they can be engaged to provide these services.

10 The witnesses will testify in this regard and it's beyond doubt that Neotel did not satisfy the requirements of the Act in this regard. At 72 we then, Chair, deal with our recommendation and we say although it is a final report by Qhubeka and UBEC further procedures must still be performed or undertaken and one of those is to check – is to conduct an assessment whether the technical specifications were appropriately addressed by Neotel in delivery on this contract and to perform a physical inspection of all the equipment, the recorders on site to dispute the version that has been put forward by Niece in relation to the video recorders. So this is one of those reports that are
20 inconclusive Chair. The suggestions and recommendations made here for extra procedures to be conducted relate, in large part, to Transnet. These are not issues for the Commission to undertake. So we suggest that the report be preliminarily accepted and Transnet, in the fullness of time to report back to the Chair on what these – whether they have implemented these recommendations and what their further

investigations have found.

I turn then, Chair to page 73 and page 73 deals with – is a report by Ligwa and this was an investigation into allegations of irregularities relating to the network transition programme and asset buy-back. There are two - there are two transactions – there are two issues that the report looks into Chair, it is on the one hand, the network transition programme and a separate issue is the asset buy-back by Transnet from Neotel. Now insofar as the network transition programme is concerned Ligwa made these following conclusions and
10 these are reflected at page 75, my apologies Chair these are not conclusions this is the mandate and Ligwa’s mandate at 2, was to determine which services were included as part of the transition of services budgeted for at 225 and amongst...(intervention).

CHAIRPERSON: The mandate is at 74 and not 75...(intervention).

ADV MAHLAPE SELLO: It’s at 74 and ...(intervention).

CHAIRPERSON: Ja okay.

ADV MAHLAPE SELLO: Overleaf the heading is not correct to say that it is key findings. The key findings are overleaf at 76, the issues listed at 75...(intervention).

20 **CHAIRPERSON:** So – yes.

ADV MAHLAPE SELLO: If Chair if I may say 74 I said there are two issues that Ligwa was to investigate. As regards to the network transition programme the specific issues under that programme, it was to investigate listed in 75.

CHAIRPERSON: So the heading “key findings” should be crossed

out?

ADV MAHLAPE SELLO: It should be crossed out Chair because this was a specific mandate in respect of the network transition programme.

CHAIRPERSON: Okay.

ADV MAHLAPE SELLO: My apologies there Chair.

CHAIRPERSON: Maybe what you can do it provide a corrected page 75 in due course.

ADV MAHLAPE SELLO: Will do Chair.

CHAIRPERSON: Ja.

- 10 **ADV MAHLAPE SELLO:** The key issues and the network transition programme besides a concern that a transition agreement did not exist in the first place between Transnet and Neotel is that the 225million contracted for, for the network transition programme did not detail the actual services that were to be provided for payment of that amount and at point 5, a further issue that Ligwa looked at was following the payment of 225 a further claim by Neotel of payment – for payment of 500million in respect of the same services. These were the key issues that Ligwa had to investigate. It's findings start at page 76 and the key ones I'll refer to, and this time Chair, I'll be correct under 2, is
20 bullet point – second bullet point and Ligwa...(intervention).

CHAIRPERSON: Yes you are correct this time.

ADV MAHLAPE SELLO: Thank you Chair. Ligwa notes in its report that Neotel had submitted a proposal for the services and it had quoted an amount of 132million which amount was split between three different services. If the Chair then has regard to bullet point 4, the last on the

page, notwithstanding that Neotel had bid for the works and costed them at 132million, Neotel and Transnet actually concluded a contract for 225million. That contract did not allocate or did not provide any breakdown of services and did not allocate any costs to any particular service tower. Chair will recall at bullet point 2, the 132million is...(intervention).

CHAIRPERSON: I'm sorry with regard to bullet point 4.

ADV MAHLAPE SELLO: Yes.

CHAIRPERSON: I thought you made a statement that made me have
10 a look here. I thought you were saying that although X amount was –
the bid amount was X amount, another amount was awarded but they
seem to be the same figures...(intervention).

ADV MAHLAPE SELLO: No the bid amount is in bullet point 2, the
last sentence of bullet point 2, Neotel's proposal amounted to
132million.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: And was split between three different
services.

CHAIRPERSON: Yes.

20 **ADV MAHLAPE SELLO:** Bullet point 4 says the total fee amounted
to 255million excluding VAT and that 255million was not broken down
and neither was it allocated between the various service towers – the
three service towers.

CHAIRPERSON: Is a suggestion that the bid amount was 132million.

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: But ultimately the amount awarded was 225million.

ADV MAHLAPE SELLO: The contracted amount was 225million.

CHAIRPERSON: I think the way it's formulated doesn't make that clear but when you were dealing with it you did make it clear except that I could see that the amounts looked the same on bullet point 4 and therefore what you were saying didn't make sense.

ADV MAHLAPE SELLO: Indeed Chair.

CHAIRPERSON: So you might have to...(intervention).

ADV MAHLAPE SELLO: We'll re-visit page...(intervention).

10 **CHAIRPERSON:** You might have to re-formulate here to say – to make the although in your statement make sense.

ADV MAHLAPE SELLO: Indeed Chair but the Chair appreciates the difficulty with this and the difficulty with this transaction is that the increase in cost is not explained, there's no documentation to explain it, all that is available is a contract for 225million and this point is made at page...(intervention).

CHAIRPERSON: So maybe therefore, this page also, you might replace it with one that has an amendment of what we have just talked about.

20 **ADV MAHLAPE SELLO:** I have made a note of it and in fact Chair, if I may refer you to page 77, we will dovetail it with – what's contained in 77 which states, first bullet point, Ligwa have not received any explanation as to the difference between the proposed amount being 132million and the amount included in the MSA being 225million.

CHAIRPERSON: Ja.

ADV MAHLAPE SELLO: Second bullet point at 77, it is evident that the 225million was paid by Transnet to Neotel without Transnet knowing what services were included in this payment. The point I'm making is to take those two pages, re-word and – so that it is clear what the issues are arising from this Ligwa report.

CHAIRPERSON: Ja because I think what you were saying, which is not clear here, was, you were contrasting the amount that was in the bid documents and the amount that was actually awarded and highlighting the difference.

10 **ADV MAHLAPE SELLO:** Indeed Chair, that's what I intended to do Chair.

CHAIRPERSON: Okay.

ADV MAHLAPE SELLO: We shall attend to it Chair and we'll attend to your file as well. At page 78 Ligwa – we have extracted – the main issues from the Ligwa report in regard to this transaction – and now it confines itself to the 225million rand. At bullet point 2 we reflect what the report found that the 225million was intended as a once-off fee and was payable within 7 days of the effective date, the effective date being contained in the contract. So in effect, the contract provided for an
20 advanced payment of 225million excluding VAT and this would be a full payment of the contract amount prior to any services being rendered. In the last bullet point, the point is made that Neotel issued invoice number 70074 for an amount of 225million VAT exclusive on 9 December 2014 and that – the date of that invoice precedes the date of signature of the MSA by five days.

Overleaf at page 79 bullet point 2 on that invoice of 9 December 2014 on 17 December 2014 at 79 bullet point 2 Mr Singh approved payment of this invoice and that invoice at bullet point 3 at page 79 was paid in full, 225million excluding VAT on the 23rd of October 2014.

CHAIRPERSON: Your headings, “key findings” include in some of those pages, are they correct?

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: The reason why I’m asking that is because of in a
10 number of pages where you have that heading, immediately under it you have, like in – at page 77 under 2, determine which services were included, which seems to relate to the mandate.

ADV MAHLAPE SELLO: No Chair at page 75 we’ve corrected and we’ve removed the topping – topic, the heading “key findings include” because at page 75

CHAIRPERSON: At page 75?

ADV MAHLAPE SELLO: Only at 75 because that lists the mandate in respect of the network transition programme.

CHAIRPERSON: Okay, no we did that...(intervention).

20 **ADV MAHLAPE SELLO:** Further on the rest then deals with key findings.

CHAIRPERSON: Ja.

ADV MAHLAPE SELLO: And if the Chair will have regard, for instance, to 76 – 76 starts with number 2, determine which services were included and what the page does is to – each time...(intervention).

CHAIRPERSON: I think I know what you are trying to do but I don't think – I think you did it in a way that's causing confusion, I think you should be – you should have said something like, in relation to the determination blah, blah, blah, blah, shouldn't you have done that? In relation to the determination of which services were included or something like that then you say these were the findings made.

ADV MAHLAPE SELLO: The specific mandates were used as headings, I understand Chair...(intervention).

CHAIRPERSON: What you are doing, you are repeating the relevant
10 part of the mandate and then you are setting out the findings but I think that will make it clear, say, in relation to that part of the mandate, these were the findings.

ADV MAHLAPE SELLO: And the findings are the bullet points thank you Chair...(intervention).

CHAIRPERSON: Yes so then maybe all the relevant pages you could do that ja.

ADV MAHLAPE SELLO: The same would apply to 77, 78 and 79.

CHAIRPERSON: Ja you can just go through that.

ADV MAHLAPE SELLO: We will make those changes so that it is
20 clear that each page deals with a different exercise – a separate exercise and what conclusions are drawn there from.

CHAIRPERSON: Ja or if you don't put it like that another way of doing it would be to say immediately after 2 for example in 76...(intervention).

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: Mandate: and then you put determine but then you put findings immediately below that so that It's clear these are the findings that relate to this mandate – this part of the mandate.

ADV MAHLAPE SELLO: We'll consider doing that Chair and we will ...(Intervention).

CHAIRPERSON: Whichever you prefer.

ADV MAHLAPE SELLO: We shall attend to your file accordingly.

CHAIRPERSON: Ja.

ADV MAHLAPE SELLO: In dealing with the payment of 225 from
10 page 76, I don't know if the Chair followed me because I did not highlight all the points, I more or less jumped the key points.

CHAIRPERSON: No, no that's fine you might not need to highlight all of them.

ADV MAHLAPE SELLO: Need I go through the issue?

CHAIRPERSON: You can only highlight what you think is important.

ADV MAHLAPE SELLO: At 78, Ligwa's findings – I'll start with bullet
20 point 2 and the issue there is that the MSA concluded between Transnet and Neotel provided for payment of 225million excluding VAT to Neotel and at bullet point 4 the point is made that, that payment was due in full prior to any services being delivered by Neotel. The last bullet point at 78 points out that on 9 December 2014 Neotel did issue an invoice of 225million against Transnet for what it called mobilisation fees. The date of this invoice is important because it is exactly five days before Transnet and Neotel signed the MSA agreement. Overleaf at 79 I then have regard to bullet point 2 which states that, that invoice

for advanced payment dated 9th of December was approved by Mr Singh on 17 December 2014 and this was, still again, two days before the contract was concluded and at bullet point 3 the issue there is that the invoice was honoured in full on 23 December 2014 following approval by Mr Singh.

Notwithstanding at page 80, Chair, that the full amount of 200 – notwithstanding that the full amount of 225million was paid for a contract that was to be completed in 12 months as indicated at the second bullet point at page 80 as at the 8th of September 2015, and the
10 Chair remembers that the award comes from December 2014, only 38% of that contract had been executed and at that point it had – was supposed to be at 43% if it was to meet its completion date. The issue that arises from that is – and I will just remind the Chair that this is September 2018 the report, is it needs to be established whether or not that transaction was completed in full. Chair it has been brought to my attention that it is 1 o'clock I have got very little left to go through, if we were to break for lunch Chair I probably would take, maximum half an hour after lunch. I'll propose that perhaps I deal with the remainder of the report now and finish it.

20 **CHAIRPERSON:** Are you not going to have a witness ready to take the witness stand when we are done with this?

ADV MAHLAPE SELLO: Chair if I may just...(intervention).

CHAIRPERSON: It looks like there will be enough time.

ADV MAHLAPE SELLO: Look behind me and – the next witness for Transnet is the Chair of Transnet and it's a question of his availability

today. He's scheduled to appear before you, Chair tomorrow.

CHAIRPERSON: Is he not here – he is here, he is here and he has raised his hand so we can continue?

ADV MAHLAPE SELLO: I'm advised that all 33 notices of persons implicated by Mr Molefe provide the date of the 7th of May so all those implicated know to come tomorrow and not today, it might be something the Chair might consider. May I suggest differently Chair, we may break for lunch and maybe we confer and see what...(intervention).

CHAIRPERSON: Ja let's break for lunch and then when we come
10 back I'll hear what you have to say.

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: We'll take the lunch adjournment and resume at two, we're adjourned.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes Ms Sello.

ADV MAHLAPE SELLO: Thank you Chair.

CHAIRPERSON: H'm.

ADV MAHLAPE SELLO: Chair we – when we broke for lunch we were
20 at page 18 and had dealt with the issue that notwithstanding full payment by the 8th September 2015 which was...

CHAIRPERSON: Well let us deal first with the other issue about whether we will stop when you finish or whether we will have a witness.

ADV MAHLAPE SELLO: Indeed Chair I am happy to. Mr Pretorius will deal with that one.

CHAIRPERSON: Ja okay.

ADV PAUL JOSEPH PRETORIUS SC: Chair there are two issues. The first in relation to the next witness is the notification given to implicated parties and although perhaps not decisive it is very important that we abide by those notices insofar as possible and the second that Mr Molefe has arranged this afternoon to consult with his attorneys and requires that opportunity to be able to do so and will be ready at ten o'clock tomorrow morning.

CHAIRPERSON: I take it is on the assumption that the legal team also
10 did not think that he would be required to testify before tomorrow.

ADV PAUL JOSEPH PRETORIUS SC: Yes, no in fact if one looks at the presentation being given to you Chair.

CHAIRPERSON: H'm.

ADV PAUL JOSEPH PRETORIUS SC: It is a 170 pages.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Of Slides.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: And there is just given our failure to predict accurately in the past.

20 **CHAIRPERSON**: Yes, yes.

ADV PAUL JOSEPH PRETORIUS SC: And consistently with that.

CHAIRPERSON: Ja.

ADV PAUL JOSEPH PRETORIUS SC: I certainly and legal team did not think that we would even be finished that presentation today.

CHAIRPERSON: Ja. No, no that is fine.

ADV PAUL JOSEPH PRETORIUS SC: Although Ms Sello has made every effort to condense it.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: And has done so successfully – too successfully it turns out.

CHAIRPERSON: Well no that is fine. I was concerned about two things. One was us using the time we have optimally but I was concerned that he may have been ready to start and he had been sitting in the – in the hall from morning. So – but if – if there are those
10 two issues you have mentioned then that is fine. We will finalise what Ms Sello has to deal with.

ADV PAUL JOSEPH PRETORIUS SC: Yes.

CHAIRPERSON: And then adjourn until tomorrow.

ADV PAUL JOSEPH PRETORIUS SC: Yes.

CHAIRPERSON: What we may have to look at is whether we cannot start earlier tomorrow than ten o'clock. Do you know what your position is on that?

ADV PAUL JOSEPH PRETORIUS SC: Well there are certain issues...

CHAIRPERSON: Is the legal team.

20 **ADV PAUL JOSEPH PRETORIUS SC:** That I am leading the evidence.

CHAIRPERSON: You might need time.

ADV PAUL JOSEPH PRETORIUS SC: Chair I would like to discuss with Mr Molefe before...

CHAIRPERSON: Tomorrow morning.

ADV PAUL JOSEPH PRETORIUS SC: He gives evidence in fairness to

him.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: That I would like to put that are not contained in the statement.

CHAIRPERSON: Oh.

ADV PAUL JOSEPH PRETORIUS SC: And in fairness ..

CHAIRPERSON: So he...

ADV PAUL JOSEPH PRETORIUS SC: He should consider so we will be busy from early tomorrow.

10 **CHAIRPERSON**: You would

ADV PAUL JOSEPH PRETORIUS SC: So I would prefer to start at ten o'clock and finish the evidence.

CHAIRPERSON: At ten o'clock.

ADV PAUL JOSEPH PRETORIUS SC: And finish the evidence tomorrow.

CHAIRPERSON: Okay no that is fine then. So one he will not testify this afternoon. Two we will continue until we finish and then we will adjourn until ten o'clock tomorrow.

ADV PAUL JOSEPH PRETORIUS SC: Thank you Chair.

20 **CHAIRPERSON**: Okay thank you. Ms Sello.

ADV MAHLAPE SELLO: Thank you Chair. Chair I was indicating where we were when we broke for lunch and we had just dealt with the – the lack of delivery on this network transition programme at page 18 that for a twelve month contract that is scheduled to end in December 2015 by 8th September 2015 only 38% of that contract had been

delivered. Overleaf then Chair we deal with the second issue arising from the network transition programme. The Chair will recall that the first issue is the payment of the R225 million up front before any services are rendered. The second is a current claim faced by Trans

CHAIRPERSON: And before the contract was concluded? (Chair not speaking into mic).

ADV MAHLAPE SELLO: Yes Chair before the contract was concluded indeed. The second issue regarding that same programme is a claim currently faced by Transnet of R500 million by Neotel. And that claim
10 is said to be simply be in respect of the transition of services. That is dealt with at page 81 and it is unclear firstly how this – the amount of R500 million is arrived at? What services are contemplated for which R500 million is charged and what is the basis for requiring that payment from Transnet in circumstances where 225 contracted for amount has been paid in full. If it were to be payable it would...

CHAIRPERSON: The 500 million – the 500 million relates to the same transaction for which 225 had been paid?

ADV MAHLAPE SELLO: Had already been paid yes Chair.

CHAIRPERSON: So it just kept on going up?

20 **ADV MAHLAPE SELLO**: Yes Chair.

CHAIRPERSON: The amount just kept on going up?

ADV MAHLAPE SELLO: I guess Transnet is the gift that always – that keeps on giving. Yes Chair it started at – as I said with this report the issue really is the bid was for 132 Transnet decides to contract for 225. By – towards the end of September of 2015 the contract was barely

halfway delivered and now Transnet is faced with a further claim of 500 million. This is outside the contract. It is not clear currently what entitled Neotel to that charge and the way the charge is described it would appear to be for the same services that Transnet has paid 225 million. Now Transnet is resisting that claim of 500 million currently.

CHAIRPERSON: H'm.

ADV MAHLAPE SELLO: And this matter – it has not been paid so this matter is up in the air. But the concerning aspect is that Transtel – no that Neotel could increase the cost of that contract readily by 429% and
10 without giving any substantiation for that increase. So Chair that would be the first part of [indistinct].

CHAIRPERSON: But also is the position not that if you get a tender that is limited to a certain amount you do not just go on and submit a claim for a higher amount you would have to approach the company and say well this amount that you have set aside is not enough, here are the reasons we suggest that the price be increased and then you hear whether there is agreement on that. You do not just keep on working and go beyond the amount.

ADV MAHLAPE SELLO: Indeed Chair and the question is, is it a case
20 of to go – the question really is whether Transnet is in a position to determine whether the contract is being delivered on fully. And Transnet should have – should be able to make that determination because it has paid 225 million. But as we indicated earlier the difficulty with the MSA concluded by Transnet does not detail precisely what services are included into – in the 225.

CHAIRPERSON: But strictly speaking is the position not that the company that is claiming the amount is the one which must show that

1. There was a contract for the work that it did and

2. That it did the work and that the work is

ADV MAHLAPE SELLO: Exceeded the contracted formality.

CHAIRPERSON: Is equal to that amount.

ADV MAHLAPE SELLO: Indeed Chair.

CHAIRPERSON: H'm.

ADV MAHLAPE SELLO: Indeed Chair. And that is the issue now that
10 Transnet is facing but as I indicated Transnet is resisting this claim. The second leg of the Legor Report starts at page 82 and this is what is commonly referred to as the asset buy back. Briefly back in 2007 Transnet sold certain assets to Transtel – to Neotel and subsequently and in particular on 19 December 2014 that is the second bullet point at page 82. The MNS included a portion in the contract in terms of which Transnet would buy back the same assets from Neotel. The contract is silent on the rationale for such a buy back on the valuation of the assets to be bought back but it is that obligation is in the contract and it rests on Transnet to buy those assets. The assets have
20 been valued at 200 million but the process of valuation has not set out in any documentation that can be understood. This matter is dealt with at page 83 as an outstanding issue and we – the commission recommends in this regard on the second bullet point at 83...

CHAIRPERSON: The legal team? You mean the legal team?

ADV MAHLAPE SELLO: The investigators.

CHAIRPERSON: Oh the investigators.

ADV MAHLAPE SELLO: They conclude that there is nothing further to investigate on this matter but there is certain action that Transnet is recommended must take.

CHAIRPERSON: Which investigators are we talking about now?

ADV MAHLAPE SELLO: They are – we are talking about the Ligor investigators.

CHAIRPERSON: Ja. Okay.

ADV MAHLAPE SELLO: The report. And it suggests that Transnet
10 considered taking action against Mr Brian Molefe and in this particular
respect that I referred to which is the buy-back that is in bullet 2 for
signing the operational agreement between Neotel and Transtel – and
Transnet on 10 April 2015 which was subsequent to the payment of 200
million excluding VAT made by Transnet to Neotel on 23 December
2014. The sum total of what is set out there is that the 200 million that
found its way into the MSA was paid on the 23 December 2014. A – an
operational agreement was concluded five months later – four months
later on 10 April 2015 by Mr Molefe on behalf of Transnet and Neotel
and this is after the 200 million itself had been paid to Neotel. The –
20 from page 84 for what it makes other recommendations and in this – at
page 84 it recommends that Transnet consider take action against Mr
Karl Socikwa for signing the MSA between Transnet and Neotel in his
capacity as acting GCE in terms of which the 225 million was paid and
the subsequent 200 million for the asset buy-back was paid to Neotel
by Transnet. So that is 425 million. At page 85 it is recommendations

as against Mr Singh and once again Legor recommends that Transnet should consider taking action against Mr Singh for other transgressions but in particular on the topic we are on second bullet point is the approval of the payment of the 225 million that he approved before the signing of the MSA which had been submitted to him as CFO by Mr Karl Socikwa. And lastly Chair at 86 it is further steps that are recommended be taken against Mr Singh and these include the fact that on payment of the 200 million Transnet was working off a list that reflected wrong assets to – that were being purchased. The value of
10 the assets being reacquired by Transnet was unknown and yet 200 million was agreed upon. This 200 million was agreed upon on the 4 December 2014 at a meeting without any valuation having being undertaken and the invoice paid in December 2014. The correct list of assets actually that would have formed part of the buy-back was only finalised on the 28 September 2015 almost nine months after the payment of the 200 million.

CHAIRPERSON: So payment was made by whoever made payment on behalf of Transnet without knowing the actual list?

ADV MAHLAPE SELLO: Indeed Chair.

20 **CHAIRPERSON**: Of items that they were buying or would get?

ADV MAHLAPE SELLO: Yes Chair because the original list that the – was presented was an – reflected incorrect assets.

CHAIRPERSON: H'm.

ADV MAHLAPE SELLO: So yes the Chair be correct that then they do not know the correct assets that were being acquired for 200 million

– were being bought back for 200 million.

CHAIRPERSON: H'm.

ADV MAHLAPE SELLO: And in circumstances where – and the Chair should recall that these are assets that were taken over by Neotel in 2007.

CHAIRPERSON: H'm.

ADV MAHLAPE SELLO: This is seven years later.

CHAIRPERSON: H'm.

ADV MAHLAPE SELLO: And there was no valuation process
10 undertaken.

CHAIRPERSON: Neotel had bought them for how much?

ADV MAHLAPE SELLO: I would – we would have to go back there. That detail does not appear.

CHAIRPERSON: Oh okay.

ADV MAHLAPE SELLO: Yes but it appears in the – in the report.

CHAIRPERSON: Because it would – it would be important to compare the two prices.

ADV MAHLAPE SELLO: Yes. To my recollection Chair and I speak
under correction it was like the price paid in 2014 did not take appear
20 to take into consideration any ...

CHAIRPERSON: Depreciation.

ADV MAHLAPE SELLO: Depreciation of the asset. It seems to be insensitive to elements such as depreciation subject to confirmation Chair.

CHAIRPERSON: H'm.

CHAIRPERSON: And that Chair – that would then conclude the forensic reports under Section B. The last section is what we call judgements and cases and that is – continues on Volume 17 Chair and starts at 8 – page 88 my apologies Chair. Page 88 is Project Daffodil my apologies.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: That is the second preliminary report to the board of Neotel. This report was commissioned by Neotel itself and the investigation was done by Werksmans and it relates in the main to an –
10 a payment by Neotel to Homix of R41 million and odd and that is at page 89. And the enquiry was to determine the justification for Neotel appointing Homix and the – to negotiate a – to finalise negotiation on the – in the contract between Transnet and Neotel for which Homix received 41 million. At page 90 we point out that this is a draft report. It does not make any recommendation or conclusions and this must be investigated further and is being investigated further by the commission. So this is definitely a draft report. It is a 2015 report it is unlikely that any further work will be undertaken on this investigation to bring the report to a level of it being final.

20 **CHAIRPERSON:** So what is its – what is the value of including it?

ADV MAHLAPE SELLO: The value of it is – the investigators of the commission can finalise the report and see whether or not they can draw any conclusions from the investigations conducted by Werkmans here.

CHAIRPERSON: Should it not be outside of here and they can do that

and then when they have finalised then you can see what comes in here?

ADV MAHLAPE SELLO: Yes we included it Chair because it highlighted a number of issues and ours was to identify the gap and the gap is the finalisation. But if the Chair would rather ...

CHAIRPERSON: Ja because the other reports you have put in here are reports where there were investigations and certain findings were made based on certain evidence.

ADV MAHLAPE SELLO: Yes Chair.

10 **CHAIRPERSON:** And – and this is a draft. A draft report should it not just be handed over to the commission's investigators to look at it and see of what – how much use it will be to them. It may be that it will be of much use but the product of what they will do after making use of it then might be what might end up here is it not?

ADV MAHLAPE SELLO: Indeed Chair except..I.

CHAIRPERSON: Because it has got no findings it is a just a draft report. Somebody's draft.

ADV MAHLAPE SELLO: The issue of Homix being appointed to negotiate between Transnet – to conclude the negotiations between
20 Transnet and Neotel is also covered in other reports. So the information contained in the Werksmans Reports is relevant and one would say has been confirmed by other reports although that information – the conclusion then drawn on that appointment of Homix is not directly as a result of investigations there but a mandate from the Werksmans Report as it is.

CHAIRPERSON: Ja I still say what is the value of us putting it in here?

ADV MAHLAPE SELLO: We...

CHAIRPERSON: The others are findings, those findings if they are justified by the material that on which they are based they may be useful they may be helpful and implicated persons may have to tell me what is wrong with those findings.

CHAIRPERSON: Yes Chair.

CHAIRPERSON: But if it is a draft report.

ADV MAHLAPE SELLO: We are happy to withdraw it Chair.

10 **CHAIRPERSON**: H'm.

ADV MAHLAPE SELLO: And we shall revert...

CHAIRPERSON: Ja maybe reflect on it...

ADV MAHLAPE SELLO: With the view of the investigators...

CHAIRPERSON: And let ...

ADV MAHLAPE SELLO: Once the investigations are complete.

CHAIRPERSON: Maybe reflect on it and then let me know tomorrow.

ADV MAHLAPE SELLO: Will do so Chair.

CHAIRPERSON: Ja okay.

20 **ADV MAHLAPE SELLO**: The last report then in the forensic section starts at page 91. It is a Transnet commission report. It is an investigation conducted by Deloitte's into the National Ports Authority security upgrade project. At page 92 this deals – we set out the mandate of Deloitte's and what it was to investigate. The first being the process leading to the award. Most importantly is at item 5, 6 and 7 it is review of payments made on this contract, verification of the

work performed at 6 and 7 the necessity to perform a physical verification of the installation at all of the six ports to identify if it is necessary to make any changes thereto. At page 9 – from page 93 we list the key findings made by Deloitte's. At 29 at page 93 states:

“Deloitte's could not verify maintenance claimed paid for by the various ports to the supporting maintenance reports and documentation. Deloitte were only informed that these payments were made on instruction from head office.”

- 10 So the payment – the payments were made but the basis thereof is not determinable. At 30 Deloitte's in its report pointed out – pointed to the fact that the entity appointed ESS that is an Engineered System Solutions PTY Limited did not deliver on some of the critical services provided for in the maintenance agreement. At 31 we highlight Deloitte's finding that various port personnel informed Deloitte during the course of his investigation that the excessive equipment purchased was used as spares. So instead of buying the quantity required of the equipment actually ex – more equipment was purchased and that equipment was put up as spares. Deloitte's suggest is that is the case
- 20 the validity of the extension of the warranty's agreement claimed for by ESS and the amount paid for such warranties of 48 million plus is questionable in these circumstances because the spares used were already from equipment acquired. At 94 one of the key findings by Deloitte's is that Transnet should consider taking corrective action regarding the 20 million payment.

CHAIRPERSON: Actually it is a recommendation ne.

ADV MAHLAPE SELLO: It is a recommendation

CHAIRPERSON: As opposed to a finding.

ADV MAHLAPE SELLO: As a recommendation that is correct Chair. There are two payments for which it is suggested that Transnet must take corrective action. It is a payment of R20 million which deemed to be unauthorised expenditure and an irregular expenditure of R127 000 plus. This report is final Chair and we recommend that it be accepted. Chair that then brings me ...

10 **CHAIRPERSON**: You must consider deleting that heading on page 94 which says “Outstanding Issues” because it looks like you do not have outstanding issues here.

ADV MAHLAPE SELLO: Yes.

CHAIRPERSON: Or do I misunderstand?

ADV MAHLAPE SELLO: Well it is not outstanding issues for the commission. It really is recommendations to Transnet because all the material is available in the report to take the corrective measures.

CHAIRPERSON: Ja.

ADV MAHLAPE SELLO: Yes.

20 **CHAIRPERSON**: I think all that you need is – because in the end what recommendations Transnet accepts or does not accept might really be their issue. Probably you should just have recommendation because that is all that is on that page.

ADV MAHLAPE SELLO: I will do so Chair. Thank you Chair. That then Chair brings us to the last part of the presentation and these are

the Section C under the heading “Court Matters”. We start at page 96. This is an application brought by Mr Litha Nyhonyha and Mr Pillay amongst others being the two directors of Regiments against Mr Eric Wood to declare him a delinquent director. The proceedings were instituted on the 8 November 2016. It does not appear that the matter has been disposed of so there is no judgment in the matter. The relevance of these papers as that Mr Nyhonyha, Mr Pillay and Mr Wood have made important allegations under oath in court...

CHAIRPERSON: Sorry Mr Sello.

10 **ADV MAHLAPE SELLO**: Yes Sir.

CHAIRPERSON: I think it would – it would make life easier if in regard to judgments and court applications what one sees immediately is names of the parties as we are all used to Sello versus Pretorius case number so and so, what court then the rest can come because then – then we – rather than the way it shows here.

ADV MAHLAPE SELLO: We – we have the front page of the papers is too small we will put it on a bigger page.

CHAIRPERSON: Well I am looking at page 96.

ADV MAHLAPE SELLO: 96.

20 **CHAIRPERSON**: You have got a report name and then you have got Notice of Motion case number declaring

ADV MAHLAPE SELLO: Yes.

CHAIRPERSON: So you talking about the relief when I am looking for the names of the parties. So in other words I am saying tell me the names of the parties about this court application and the case number

and in which court before you tell me anything else.

ADV MAHLAPE SELLO: Indeed Chair at 96 it indicates the first two applicants. There is a range of applicants listed there.

CHAIRPERSON: Ja it is always that side. That is not how we – you know that is not how court judgments and court papers are like. The first thing you look at – you have the heading even if you do not have the heading here in what court, in what matter. At least the names of the parties you say Sello versus Pretorius case number so and so, South Gauteng divisional high court then that is complete. Then you

10 tell us what was it about.

ADV MAHLAPE SELLO: We will read you page 96 Chair.

CHAIRPERSON: That will make life easier. Okay.

ADV MAHLAPE SELLO: I am – I was trying to understand the instruction. We will do – we will redo page 96 Chair.

CHAIRPERSON: Ja okay.

ADV MAHLAPE SELLO: It is supposed to reflect the two directors of Regiments – supposed to reflect that Mr Woods was the respondent and that it is in the Gauteng – Johannesburg court.

CHAIRPERSON: Yes.

20 **ADV MAHLAPE SELLO**: And the case number.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: The attempt made here on this page does not – can always be improved upon and we shall Chair.

CHAIRPERSON: Okay.

ADV MAHLAPE SELLO: From 97 we tried to extract from those

proceedings the important issues that are relevant to the work of this commission as made in the various affidavits of the applicants and the respondents Mr Nyhonyha, Mr Pillay and Mr Wood. All of whom are relevant to the allegations made against Regiments in respect of Transnet. In particular at page 98 Chair if the Chair were to look at bullet point 5 under 1. We have previously referred to this invoice the R93 million invoice by Trillian which was paid for the club loan and in the morning when we were discussing this club loan we indicated that some investigations have found that that invoice ought not to have
10 been paid at all because Trillian had done absolutely no work for Transnet in that regard. So that transaction is dealt with in detail by all the parties in those affidavits and that is really the relevance of – of these proceedings. It deals with other aspects of the transaction. The SWAT 2, the SWAT 1, all these are matters that will be ventilated in due course by – by the witnesses and we make the point at page 102 Chair under the heading “Other Commentary” and we state that the matters raised in these – in the affidavits are relevant to the multiple work streams of this Commission and we would like the Chair to take notice thereof. As soon a judgment – if a judgment is handed down in the
20 matter we shall the record. The following document starts at page 103 Chair and I – I believe that it shows better on the screen. It is bigger. We can produce a bigger version in the papers.

CHAIRPERSON: *Ja*, okay but also what is under the report name is better than what we had before ...

ADV MAHLAPE SELLO: Indeed.

CHAIRPERSON: In the other one.

ADV MAHLAPE SELLO: Yes Chair. This is actually a judgment. It is a matter brought by the Transnet Second Defined Benefit Fund v Regiments Fund Managers. At 104 we – we highlight that Transnet Fund had concluded an agreement with Regiments Fund in terms of which Regiments was to administer the funds on behalf of Transnet. In disputes between them certain issues arose that gave Transnet a concern that the assets currently controlled by Regiments could – would be dissipated or there was a likelihood they would be and that

10 Transnet would not be able to recover anything should it be successful in its own main action. So the Transnet fund brought an interdict and the judgment – and was successful in that regard. So the judgment is – is restricted only to the anticipation interdict. The main action is yet to be determined and the third one is at page 105 and this is a judgment again in a matter between Transnet v T-Systems. The Chair will recall that Mr Pretorius this morning made reference to T-Systems and in one of the reports I have referred to the T-Systems Contract is also dealt with. Now Transnet brought this matter before court – just for record purposes to show that the matter was upheld and the award of the

20 contract to T-Systems by Transnet was set aside and the party that was by law entitled to the award of that contract Gijima has since been appointed in its stead. There is no further action to be taken in regard to – to this judgment. Just for noting purposes because T-Systems features significantly in the evidence of witnesses to come Chair and that Chair brings me to the conclusion of the gap analysis. Unless

there are questions from the Chair.

CHAIRPERSON: So what comes – the last bit on that bundle is not for today?

ADV MAHLAPE SELLO: No what I – we have gone through today Chair ...

CHAIRPERSON: *Ja*. Oh, this ...

ADV MAHLAPE SELLO: An attempt to summarise the bulk.

CHAIRPERSON: Oh it is a summary of this? *Ja*.

ADV MAHLAPE SELLO: Yes.

10 **CHAIRPERSON**: Okay.

ADV MAHLAPE SELLO: And the Chair will recall that I gave him a bundle of the – the - yes.

CHAIRPERSON: Yes you did – yes you did. I forgot. Okay. Thank you very much Ms Sello.

ADV MAHLAPE SELLO: Thank you Chair.

CHAIRPERSON: We – we will then adjourn for the day and will start at normal time tomorrow namely 10 o' clock.

ADV MAHLAPE SELLO: Thank you Chair.

CHAIRPERSON: We adjourn.

20 **REGISTRAR**: All rise.

INQUIRY ADJOURNS TO 7 MAY 2019