

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

PARKTOWN, JOHANNESBURG

10

09 MAY 2019

DAY 91

20

PROCEEDINGS ON 9 MAY 2019

CHAIRPERSON: Good morning Mr Mokoena, good morning everybody.

ADV PHILLIP MOKOENA SC: Good morning Mr Chair.

CHAIRPERSON: Are you ready?

ADV PHILLIP MOKOENA SC: We are ready to proceed. Mr Chair the next witness that we will be calling is Mr Peter Volmink from Transnet. In order to meaningfully canvass the issues arising from his testimony Chair we will be referring to four arch lever files and a supplementary statement which is contained in a separate folder. You will see Chair
10 that we have taken the liberty of marking those files as Exhibit BB2.1A that will be the first file and the second file is Exhibit BB2.1B and the third file is marked Exhibit BB2.1C, the fourth file it is marked Exhibit BB2.1D. There must be a separate folder Chair it is a supplementary witness statement contained in a separate blue folder. That will be the supplementary witness statement of Mr Volmink. In his supplementary statement all that he does is to correct some of the errors that he picked up in his original statement and he is also including a few annexures which he inadvertently omitted in the first witness statement. It does not change any complexion of any other contents of the
20 statement.

CHAIRPERSON: Thank you. Those files or lever arch files that you have indicated will be marked Exhibits BB2.1A, BB2.1B, BB2.1C, BB2.1D respectively.

ADV PHILLIP MOKOENA SC: And then the...

CHAIRPERSON: And then the separate file will be marked Exhibit BB?

ADV PHILLIP MOKOENA SC: 2.2

CHAIRPERSON: 2.2.

ADV PHILLIP MOKOENA SC: Yes Chair.

CHAIRPERSON: Thank you.

ADV PHILLIP MOKOENA SC: Chair the evidence of Mr Volmink set the scene for the evidence which will be led in this stream when we are focussing our attention on the issues relevant to Transnet. He will educate us about the procurement structures and procedures within Transnet. He will also assist us to understand the delegations of
10 authority and the role of a unit called governance function which is critical in the supply chain management of Transnet. He will then comment of specific transactions which might have been eluded to by the Chairperson and also by Mr Pretorius during his opening. He will give flesh to those specific transaction and comment on those transactions. Even though Chair his evidence will be mainly focussing on the procurement structures and procedures it is so fundamental because it dovetails with the evidence of other witnesses who are going to be called to testify on the specific transactions. It will be at that point when we now understand the importance of his evidence and to
20 appreciate how the prescripts pertaining to procurement were either undermined, abused or not attended to Mr Chair. Mr Chair in as far as the evidence of Mr Volmink implicates persons we have complied with the Rule 3.3. Notices. We have Mr – we have Advocate Brown SC and Mr Ngubane who are in attendance on behalf of one of the implicated party Mr Tau Morwe. Maybe I should afford them an opportunity to

place themselves on record.

CHAIRPERSON: Yes thank you.

ADV BROWN: Thank you Mr Chairman I confirm my appearance.

Sorry. I confirm – yes.

CHAIRPERSON: It be recorded.

ADV BROWN: I confirm my appearance on a watching brief

CHAIRPERSON: Yes.

ADV BROWN: On behalf of Mr Tau Morwe.

CHAIRPERSON: Yes.

10 **ADV BROWN**: I am together with my learned junior Mr Sandile Ngubane.

CHAIRPERSON: Yes.

ADV BROWN: We apologise for not coming to meet you – greet you this morning.

CHAIRPERSON: Yes.

ADV BROWN: We did not quite understand what the protocols were but we are here.

CHAIRPERSON: No that is fine.

ADV BROWN: Simply to watch.

20 **CHAIRPERSON**: Yes no that is fine. Thank you.

ADV BROWN: Thank you Sir.

CHAIRPERSON: Thank you.

ADV PHILLIP MOKOENA SC: Mr Chair we are then ready to lead the evidence of Mr Peter Volmink. May the witness be sworn in?

CHAIRPERSON: Yes thank you.

REGISTRAR: Please state your full names for the record?

MR PETER STEPHEN VOLMINK: Peter Stephen Volmink.

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

MR PETER STEPHEN VOLMINK: No.

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

MR PETER STEPHEN VOLMINK: Yes.

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

MR PETER STEPHEN VOLMINK: So help me God.

REGISTRAR: Thank you.

CHAIRPERSON: Thank you.

ADV PHILLIP MOKOENA SC: Yes. Mr...

CHAIRPERSON: Mr Mokoene I just mention that last night I looked for
the statement of the next witness and I did not seem to have it. I do
not know what happened but we can continue.

ADV PHILLIP MOKOENA SC: Yes Chair I was assured that it was
20 delivered to you.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: There were ready as three days ago
already their statements were ready.

CHAIRPERSON: Ja well I do not know if they were put where my
attention was not drawn to but I looked where they were supposed to be

and they were not there.

ADV PHILLIP MOKOENA SC: They were not there.

CHAIRPERSON: Ja. I just had to last weeks' ones.

ADV PHILLIP MOKOENA SC: Yes Chair.

CHAIRPERSON: Okay thank you.

ADV PHILLIP MOKOENA SC: Mr Volmink for the purpose of your evidence you might have heard when I took the Chair through the different volumes that we will be dealing with in order to meaningfully address the issues from your witness statement. You will see that
10 before you you are having four files. They should be marked as indicated to the Chair.

CHAIRPERSON: Well they are still beside him and not before him so...

ADV PHILLIP MOKOENA SC: Next to him.

CHAIRPERSON: So somebody must put them...

MR PETER STEPHEN VOLMINK: Within arms reach.

CHAIRPERSON: Ja.

ADV PHILLIP MOKOENA SC: Yes

CHAIRPERSON: Will he be able to identify them or should somebody assist him?

20 **ADV PHILLIP MOKOENA SC:** Are you able to identify them – are you comfortable to put them there or do you want me to put them on the table?

CHAIRPERSON: Well there must be one on the table at least that he will be using immediately.

ADV PHILLIP MOKOENA SC: Yes.

MR PETER STEPHEN VOLMINK: Yes Chair I have all four files.

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: Within arms' reach.

CHAIRPERSON: And you understand how they are marked.

MR PETER STEPHEN VOLMINK: I understand.

CHAIRPERSON: So when we say BB1A you will know which one to take?

MR PETER STEPHEN VOLMINK: I will Chair yes.

CHAIRPERSON: Okay. Okay thank you.

10 **ADV PHILLIP MOKOENA SC:** Yes and separate from those four files you will have also your supplementary witness statement contained in the folder. It is also marked you know Exhibit BB2.2 do you have it with you?

MR PETER STEPHEN VOLMINK: Correct Chair.

ADV PHILLIP MOKOENA SC: Yes. May I then request you to uplift from that volume if you can put next to you Exhibit BB2.1A.

MR PETER STEPHEN VOLMINK: Yes.

ADV PHILLIP MOKOENA SC: You will see if you open that file the first document there it will be cover page.

20 **MR PETER STEPHEN VOLMINK:** Yes.

ADV PHILLIP MOKOENA SC: And after the cover page it will be an index.

MR PETER STEPHEN VOLMINK: Correct.

ADV PHILLIP MOKOENA SC: And that index will assist both me and you to navigate through the relevant exhibit.

CHAIRPERSON: Hang on Mr Mokoena there is just too much activity that is happening here it is distracting me. Okay thank you.

ADV PHILLIP MOKOENA SC: You will see that there is that index that I have referred you to and immediately after the index there is a document there. Could you please identify that document for the Chair?

MR PETER STEPHEN VOLMINK: Chair the document is Annexure PV1 which is a signed copy of my statement to the commission.

ADV PHILLIP MOKOENA SC: Yes. May I refer you to page 67 of the
10 very same document? Will that be your signature?

MR PETER STEPHEN VOLMINK: Correct Chair that is my signature.

ADV PHILLIP MOKOENA SC: And do you confirm that the contents of your statement are both true and correct?

MR PETER STEPHEN VOLMINK: I confirm.

ADV PHILLIP MOKOENA SC: Do you also confirm that your statement it is in the form of an affidavit? It is being deposed to?

MR PETER STEPHEN VOLMINK: Chair it is in the form of a statement.

ADV PHILLIP MOKOENA SC: Oh it is a statement, yes.

CHAIRPERSON: It does not look like it is an affidavit.

20 **ADV PHILLIP MOKOENA SC**: It is not an affidavit it is a statement yes.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: Now would I be correct Mr Volmink that you were requested by the commission to comment on the procurement structures of Transnet, would I be correct?

MR PETER STEPHEN VOLMINK: Correct.

ADV PHILLIP MOKOENA SC: And also to educate us through the relevant procurement procedures?

MR PETER STEPHEN VOLMINK: Correct Chair.

ADV PHILLIP MOKOENA SC: You will also be testifying on the role of Governance within the supply chain management of Transnet?

MR PETER STEPHEN VOLMINK: Correct.

ADV PHILLIP MOKOENA SC: And in addition you will also deal with the specific transaction which you have identified from paragraph 3 of
10 your witness statement?

MR PETER STEPHEN VOLMINK: Correct.

ADV PHILLIP MOKOENA SC: Just for completeness can you please read those specific transactions into the record?

MR PETER STEPHEN VOLMINK: There are five transactions Chair. They are firstly the Neotel Network Services contract. Secondly the confinement of the CCTV upgrade to Neotel referred to as CCTV1. Thirdly the award of the IT Data Services contract to T-Systems. Fourthly the confinement of the 100 locomotives transaction to China South Rail abbreviated as CSR and the confinement of various tenders
20 to McKinsey Consulting they are referred to simply as the McKinsey contracts.

ADV PHILLIP MOKOENA SC: Yes. Now before we canvas your evidence in any details could you please tell us your qualifications?

MR PETER STEPHEN VOLMINK: Chair I hold the – the degrees are BALLB and LLM.

ADV PHILLIP MOKOENA SC: And before you joined Transnet what did you do?

MR PETER STEPHEN VOLMINK: Before I joined Transnet I – I was a Deputy Director of Public Prosecution in the Asset Forfeiture Unit and later I became the Regional – one of the Regional Heads of the Asset Forfeiture Unit.

ADV PHILLIP MOKOENA SC: Yes. And when did you join Transnet?

MR PETER STEPHEN VOLMINK: I joined Transnet in 2007 originally as General Manager for Legal Services.

10 **ADV PHILLIP MOKOENA SC:** Now could you please share with us your employment history within Transnet itself?

MR PETER STEPHEN VOLMINK: Chair as I have indicated I started out as the General Manager of Legal Services based at the corporate centre in Johannesburg. After a while I developed quite a strong interest in procurement law specifically and that then led me to join the supply chain management unit firstly as a legal specialist in the area of procurement law and secondly as executive manager Governance and I still hold that position.

20 **ADV PHILLIP MOKOENA SC:** Now in your current position what are your responsibilities and functions?

CHAIRPERSON: Just before that Mr Volmink you said your current position is executive manager Governance, is that right?

MR PETER STEPHEN VOLMINK: That is correct Chair.

CHAIRPERSON: Executive Manager Governance?

MR PETER STEPHEN VOLMINK: Governance yes.

CHAIRPERSON: Okay thank you.

ADV PHILLIP MOKOENA SC: And your functions in that capacity?

MR PETER STEPHEN VOLMINK: There are broadly four functions, four areas that the Governance function has to address. I am required to manage of course the function overall. The four functions that I have referred to are basically policies and procedures, secondly providing transactional advice, thirdly training and development and fourthly compliance and monitoring.

ADV PHILLIP MOKOENA SC: Yes. And we will deal with them in much
10 more full details in due course. Now in order for us to appreciate you know the structures of procurement structures within Transnet you have also prepared a presentation, am I correct?

MR PETER STEPHEN VOLMINK: That is correct Chair.

ADV PHILLIP MOKOENA SC: Chair that presentation is contained for your reference from the same exhibit that you are dealing with it starts from page 95.

CHAIRPERSON: Thank you.

ADV PHILLIP MOKOENA SC: Mr Volmink you will see the document that I have referred the Chair to as page 95 could you please simply
20 identify it for the record?

MR PETER STEPHEN VOLMINK: Chair this is a presentation dealing with the evolution of Transnet's procurement processes.

ADV PHILLIP MOKOENA SC: Yes. Now could you please turn to slide number 1. Chair for the purposes it would be on page 97.

CHAIRPERSON: What page number?

ADV PHILLIP MOKOENA SC: 97.

CHAIRPERSON: Thank you.

ADV PHILLIP MOKOENA SC: You can take us also through the – that slide number 1.

MR PETER STEPHEN VOLMINK: Chair this deals with the contents of the presentation and it indicates that I will be addressing the Regulatory Framework applicable to supply chain. Secondly what are the key governance check points in the supply chain management process within Transnet? Thirdly the structure of what is referred to as
10 the PPM which is an abbreviation for Procurement Procedures Manual. The next point will deal with Transnet's evaluation methodology from 2012 to present. The next bullet point relates to current remedial plans that are underway. Then there is a bullet point dealing with recommendations for process control improvements and finally there is a list of various acronyms and abbreviations that appear in the presentation.

ADV PHILLIP MOKOENA SC: Yes. Can you then turn to slide number 3 it is on page 99 Chair? And if you may Mr Volmink then take us through what is on slide number 3?

20 **MR PETER STEPHEN VOLMINK:** Thank you Chair. What this slide depicts is a pyramid which shows the various regulatory requirements.

ADV PHILLIP MOKOENA SC: Yes. Can I request that slide number 3 be shown? Yes proceed.

MR PETER STEPHEN VOLMINK: It shows a pyramid Chair of the various regulatory requirements which impacts supply chain and these

are all the requirements which Transnet as a state owned company and as an organ of state needs to adhere to. Right at the apex of the pyramid is Section 217 of course of the Constitution.

ADV PHILLIP MOKOENA SC: Yes.

MR PETER STEPHEN VOLMINK: I mention Section 217 but of course that is not the only provision in the constitution which impacts procurement Section 33 dealing with just administrative action. Section 195 dealing with the broad values which are to animate the administration that is also of course covered.

10 **ADV PHILLIP MOKOENA SC:** Yes.

MR PETER STEPHEN VOLMINK: Then the next layer Chair deals with the various pieces of primary legislation which impacts supply chain as well. Most notably of course the PFMA Public Finance Management Act, the Preferential Procurement Policy Framework Act, PAJA Promotion of Administrative Justice Act, PAYA and various other primary pieces of legislation.

ADV PHILLIP MOKOENA SC: And all of them they are central in the procurement policies of Transnet and they must be adhered to, am I correct?

20 **MR PETER STEPHEN VOLMINK:** That is correct Chair.

ADV PHILLIP MOKOENA SC: Yes.

MR PETER STEPHEN VOLMINK: The next layer then depicts various pieces of secondary legislation. There are various national treasury regulations which must be adhered to. Various PPPFA regulations, standards for uniformity. Various national treasury instructions which

have been issued and all of these must be adhered to. The next layer then depicts various policies and guidelines which are issued by various government entities from time to time. Most notably the national treasury's own implementation guides.

ADV PHILLIP MOKOENA SC: Yes.

MR PETER STEPHEN VOLMINK: The competitive supplier development programme issued by the Department of Public Enterprises. The black industrialist's policy, new growth path and various other pieces of legislation which must be taken into account.

10 Then the layer at the bottom reflects Transnet's own internal policies and procedures because all of these rules have to be captured Chair in a set of policies and procedures which are implementable and can be applied on a day to day basis in our various transactions.

ADV PHILLIP MOKOENA SC: Now when we interrogate specific transactions later on definitely one would want to see whether in the procurement of services and goods whether this pyramid that you are setting out here whether those levels of prescripts were adhered to or not.

MR PETER STEPHEN VOLMINK: That is correct Chair.

20 **ADV PHILLIP MOKOENA SC:** Yes. Now can you please turn to slide 5 because ...

MR PETER STEPHEN VOLMINK: Chair before we turn to slide 5 could I just mention one other thing.

ADV PHILLIP MOKOENA SC: Yes.

MR PETER STEPHEN VOLMINK: On this slide and it is about what this

framework seeks to achieve.

MR PETER STEPHEN VOLMINK: Yes.

MR PETER STEPHEN VOLMINK: And Chair what – what the framework seeks to achieve is to give effect to a constitutional vision as to how procurement was – is supposed to be done in this country. And starting from Section 217 I think that there are two critical principles in 217 which I think I just need to mention if you would permit me?

ADV PHILLIP MOKOENA SC: Yes, yes proceed.

MR PETER STEPHEN VOLMINK: The first relates to fair treatment and
10 cost effectiveness and other related principles. And the second deals with preferencing and other measures designed to promote historically disadvantaged individuals. And those two principles are quite fundamental because my reading of the provision is that there is no contradiction in the constitution between a system that respects the rule of law, that promotes fair treatment of bidders and integrity in the process on the one hand and a system that is designed to promote social and economic inclusion on the other. Of course the other points that are mentioned there is also quite important they – the framework requires us to drive greater fiscal discipline, to promote legality and to
20 apply objectivity and uniformity in our decision making. I thought I should perhaps just mention some of those items.

ADV PHILLIP MOKOENA SC: Yes that is key. Now we can turn to slide number 4. In slide number 4 Mr Volmink even though you have identified those relevant pieces of legislation on slide number 3 you then deal with the key challenges. Can you please take us through

them?

MR PETER STEPHEN VOLMINK: Chair what I...

CHAIRPERSON: I am sorry. I am sorry Mr Mokoena. I am sorry Mr Volmink. The one we have dealt with was that slide number 3?

ADV PHILLIP MOKOENA SC: 3 yes now we are going to slide number 4 which is on page 100.

CHAIRPERSON: Oh. Oh did you do 1 And 2 or not really?

ADV PHILLIP MOKOENA SC: No.

CHAIRPERSON: Oh there is – they are there. 1 and 2?

10 **ADV PHILLIP MOKOENA SC:** The...

CHAIRPERSON: Slides 1 and 2 is it...

ADV PHILLIP MOKOENA SC: We – the – they depict nothing of significance Chair.

CHAIRPERSON: Oh okay alright.

ADV PHILLIP MOKOENA SC: For instance...

CHAIRPERSON: So ...

ADV PHILLIP MOKOENA SC: If you go to slide number 2 you will just find a beautiful train.

CHAIRPERSON: Yes. Okay.

20 **ADV PHILLIP MOKOENA SC:** Carrying nothing.

CHAIRPERSON: No that is fine. I think the problem was I was trying to see whether on my pages there is a reference to slide number 3 of 2 so it is – is slide number 4 the one immediately after the one we have just dealt with?

ADV PHILLIP MOKOENA SC: Yes Chair. What we will do also during

the adjournment we will try to at least not only rely on the numbers as per pagination but also to indicate the slide number.

CHAIRPERSON: Yes because ...

ADV PHILLIP MOKOENA SC: You will see that the slide number has been – just been written over by the you know the paginated number there. There is a number but you will not see it, it is in red.

CHAIRPERSON: Oh ja and it does not say it is [indistinct].

ADV PHILLIP MOKOENA SC: It does not – exactly.

CHAIRPERSON: Ja

10 **ADV PHILLIP MOKOENA SC**: But what we will do we will just make sure that we depict them correctly.

CHAIRPERSON: Yes. Ja that will help with the reference.

ADV PHILLIP MOKOENA SC: And that we can be able to trace them yes.

CHAIRPERSON: Ja. Okay so slide number 4 – we are not at slide number 4?

ADV PHILLIP MOKOENA SC: Slide number 4 Chair

MR PETER STEPHEN VOLMINK: At 100?

ADV PHILLIP MOKOENA SC: It is exactly – on page 100.

20 **CHAIRPERSON**: Okay.

ADV PHILLIP MOKOENA SC: As I mentioned the slide number I will also carry with me and mention the relevant page number.

CHAIRPERSON: Ja, ja that will help ja.

ADV PHILLIP MOKOENA SC: So..

CHAIRPERSON: Okay thank you.

ADV PHILLIP MOKOENA SC: So you were just about to deal with the key challenges as you identified them from slide number 4.

MR PETER STEPHEN VOLMINK: Correct Chair. You will see that it is the same pyramid that is displayed on slide 4 but it focusses now on some of the key challenges which the regulatory framework poses and I mention a few in the – in the block on the right hand side. Chair the first challenge is that of fragmentation. That there is not one single piece of legislation governing procurement in South Africa. There is a report which I think Treasury brought out in 2015 that identified at least
10 80 pieces of legislation governing procurement. So I think the first difficulty is that one has to trawl through various pieces of legislation to get a comprehensive picture and a proper understanding of what the regulatory requirements are meant to be. The second challenge – sorry before I move onto the second challenge Chair I think that there has been mention made of a procurement bill which is to be passed and it is meant to somehow synchronise and unify the procurement regime but I think it was first mentioned in 2015 but there is no sight of the procurement bill as yet. The second challenge Chair relates to – to
20 misalignment particularly between police expectations and what the legislation requires. So I have indicated that there are various policies which should require us to take measures to advance historically disadvantaged individuals and promote social inclusion and economic inclusion. But that must be done in accordance with a regulatory framework. And one of our – one of the challenges is that the regulatory framework does not enable the effective application of some

of the policies which have been issued. The third challenge Chair relates to the mandatory nature of the – of the system. It allows for almost little to no discretion. I think the underlying intent is to introduce a system where discretion is kept to a minimum for fear that discretion is very often abused in the supply chain framework. But even a system that allows for little or no discretion can itself be abused where we find that suppliers can be eliminated for sometimes immaterial non-compliance of some or other provision that has been set out in the – in the various procurement documents. Chair I also

10 mention ambiguity. The fact that the rules are not well written in many instances that they are sometimes quite opaque that one has to engage with the authors of the rule and sometimes you get more than one interpretation from the authors of the rules. And I also mention that the – the procurement environment has a strong punitive character where any misstep can often result in – well it does result in irregular expenditure and of course disciplinary processes that goes with that. Now here is no difficulty with taking strenuous measures against people who abuse the – the system but the – the atmosphere – the punitive atmosphere is something that I am quite concerned about because it is

20 creating an environment where people are reluctant firstly to join the supply chain community and secondly to take decisions. One finds an avoidance of decision making an avoidance of responsibility and I am concerned about the – the impact operationally that this growing climate of fear is creating within the organs of state.

ADV PHILLIP MOKOENA SC: Yes. I am sure Mr Volmink that the

Chair when he formulates his recommendations he will definitely take cognisance of these challenges and see how best they can be tailored in order to ensure that procurement rules are synchronised in the manner that you have actually articulated. May I then refer you ...?

CHAIRPERSON: Maybe before you proceed Mr Mokoena of course it is very important that the legislative framework be clear ...

ADV PHILLIP MOKOENA SC: Hm.

CHAIRPERSON: And as far as possible certain so that everybody knows what falls outside the framework – legislative framework and
10 policies and what fall – what falls within because then if you have that kind of certainty then nobody can say I did not know.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Everyone who does something that falls foul of the legislation or the prescripts knows that they are doing something that is in breach of the law. Of course you always have this tension between certainty and flexibility because if you have certainty you are likely to have a certain amount of rigidity and – and sometimes that maybe – that maybe fair but sometimes it may produce unfair results that rigidity and then you want fairness on the other side. Now fairness cannot
20 work with rigidity.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Fairness needs to take into account different circumstances for different cases and I guess that with any legislation relate and policies relating to procurement those issues are always here but there can be no doubt that there should as far as possible no

be 80 pieces of legislation dealing with this – with the same subject. So probably there is a need to try and bring it down. I do not know if it can be one piece of legislation. Probably not maybe two or three but 80 is certainly too much too many. So – so all of those things would be – would need to be looked at but to the extent that what we are concerned with is acts of corruption and state capture. Mostly what one would be dealing with there are not people who – who are going to go outside the legislation because they are confused by the multiplicity of pieces of legislation but one is dealing with people who do not want
 10 to comply with any legislation or who want to create the impression that they comply when they actually know that they do not comply. You – you may or may not know because of your job maybe you do know to what extent problems of procurement related to people who genuinely do not understand the legislative requirements and policies as opposed to people who – who know what the position is or who do not care what the position is but simply want to achieve illegal objectives. I am - I am - if you know you can tell me. If you do not know I will understand. Namely at a practical level maybe within the context of Transnet how much is the problem one of people not understanding policies and
 20 legislation when it comes to procurement irregularities that may – that are found?

MR PETER STEPHEN VOLMINK: Thank you Chair. I think there is a good mixture of both scenarios that you have referred to. One the one hand there are ordinary hardworking officials – buyers - at ground level so to speak – who – who battle to understand all the procurement

requirements that are imposed on them and very often we find that deviation from the regulatory requirements is as a result of administrative bungling – for lack of a better term. Individuals who just do not have a proper understanding of the multiplicity of – of requirements. It is another category of people who – perhaps I will use the term wilful ignorance - where it is not that they did not understand. They do not want to understand what the requirements are or to put it differently they do not want to be bound by what the requirements are unless it is a convenient rule which they do not mind complying with.

10 So I think Chair the – there is a number of instances where have seen irregular expenditure occurring in Transnet that comes about as a result of bungling but the big ticket items - especially those that originate from the levels of the Board and the Exco - it is very difficult for me to believe that people at that level just simply did not know what the – what the rules are especially if one looks at the nature of the breaches which have occurred. It is hardly a complex rule which was not followed. Sometimes it is just changing an evaluation criteria in the middle of an evaluation process. So – so I think that there is certainly both of those scenarios.

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

ADV PHILLIP MOKOENA SC: Yes. Mr Volmink can you now turn to slide five and take us through – and you can do that in a summary form because you are still going to deal with it much more comprehensively at a later stage. (Intervenes).

CHAIRPERSON: That is page 101?

ADV PHILLIP MOKOENA SC: Page 101 Mr Chair.

MR PETER STEPHEN VOLMINK: Chair this just shows the regulatory - how the regulatory or legislative landscape has changed for Transnet and other major SOCs over time. So on the far left hand side of the slide it shows the position before 20 – well *ja* – before 2011 and at that point the PPPFA and its various regulations did not apply to Transnet. Transnet was at liberty to determine its own procurement systems and methodologies of course in compliance with the PFMA and the Constitution and the like.

10 **ADV PHILLIP MOKOENA SC:** Yes.

MR PETER STEPHEN VOLMINK: The significant change happened in 2011 when the PPPFA Regulations were applied to Transnet and at that point the Minister of Finance had indicated that Schedule 2 entities had to comply but he exempted ...

ADV PHILLIP MOKOENA SC: Transnet.

MR PETER STEPHEN VOLMINK: The Schedule 2 entities for a period of – I think – one year from 7 December 2011 until 7 December 2012. There were some provisions which applied immediately such as local content and the provisions governing tax compliance – I think – applied
20 immediately but the SOCs major Schedule 2 SOCs were exempted for a period of time. Then in 2015/2016 we saw a significant number of instructions being rolled out and applied to the Schedule 2's which did not apply before and I just mention some of them such as the use of an e-tender publication portal, a central supply database, rules on construction procurement – so called SIPDM – the rules around the

restriction of suppliers, use of emergencies, contract variations, deviations from the competitive bidding process. These all applied in a number of instructions that were issued.

ADV PHILLIP MOKOENA SC: And they were issued by National Treasury?

MR PETER STEPHEN VOLMINK: By National Treasury.

ADV PHILLIP MOKOENA SC: Yes.

MR PETER STEPHEN VOLMINK: And then the last column on the far right hand side shows the current position. Of course these
10 instructions still apply but in addition the National Treasury issued new regulations under the PPPFA in 2017 and they cover things like the use of prequalification criteria to advance various designated groups. Also it relates to the importance of prices that must be market related and you cannot award a bid that is not market related and various other provisions are dealt with in the 2017 regulations.

ADV PHILLIP MOKOENA SC: Yes but as and when those instructions are being issued it would mean that Transnet must also confirm with those instructions and make sure that their SCM Policies are in line with those instructions?

20 **MR PETER STEPHEN VOLMINK:** That is correct Chair. Unless Transnet applies for a specific exemption it is bound by the – these instructions as well.

ADV PHILLIP MOKOENA SC: Yes. Now slide six Chair page 102 it also talks about the same issues that you are conversing. Am I correct?

MR PETER STEPHEN VOLMINK: That is correct.

ADV PHILLIP MOKOENA SC: Yes and slide seven so that the Chair must not say that I have skipped any slide. It is just a beautiful good screen. I am not sure what it is carrying. Slide ...

MR PETER STEPHEN VOLMINK: I think it is just meant to depict the next – the next heading of the presentation.

ADV PHILLIP MOKOENA SC: Yes.

MR PETER STEPHEN VOLMINK: Which is Governance Checkpoints.

ADV PHILLIP MOKOENA SC: Now let us go to slide eight and please
10 take us through the bodies responsible to ensure governance – good governance of the processes.

MR PETER STEPHEN VOLMINK: So Chair when the policies and procedures are written various bodies are created who are meant to perform – let us call it - watchdog or checkpoint functions throughout (intervenes).

CHAIRPERSON: Kind of oversight?

MR PETER STEPHEN VOLMINK: Exactly.

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: Chair the first body is referred to as
20 the Cross Functional Sourcing Team or CFST for short and the responsibility of that body is to ensure that when specifications ...

CHAIRPERSON: (Indistinct).

ADV PHILLIP MOKOENA SC: Chair if you go to page 124.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: I also had the same difficulties of

understanding these acronyms.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: And I requested that there must be a full list ...

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: Explaining these names in full.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: And if you go to page 124 you will be able to find ...

10 **CHAIRPERSON**: To find the full names?

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Okay.

ADV PHILLIP MOKOENA SC: Full names of them.

CHAIRPERSON: Okay, thank you.

MR PETER STEPHEN VOLMINK: Okay.

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: So I was saying Chair that the responsibility of this Cross Functional Sourcing Team ...

CHAIRPERSON: Hm.

20 **MR PETER STEPHEN VOLMINK**: Is to write specifications and evaluation methodologies in a way that ensures that the criteria is objective.

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: That they are unbiased.

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: That they are fit for purpose.

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: It starts there. How is the procurement document written ...?

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: And that is the first checkpoint ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: In the governance process.

CHAIRPERSON: Hm.

10 **MR PETER STEPHEN VOLMINK:** If you have a badly written RFP ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: That is riddled with ambiguity, vagueness ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: Or worse infected by bias ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: Then it affects the legality of whatever follows thereafter. So that is the first body. The ...

20 **CHAIRPERSON:** With regard to it is what would happen at a practical level this that somebody in some department at Transnet would formulate for example specification but before it can be sent out it should come to this body for them to check whether it is okay or do they check that afterwards or how does it happen ...?

MR PETER STEPHEN VOLMINK: Yes. This is ...

CHAIRPERSON: Or are the ones who do the drafting?

MR PETER STEPHEN VOLMINK: Correct Chair.

CHAIRPERSON: So every – every specification or request for proposals that goes out they would take responsibility – so to speak – they would have done that?

MR PETER STEPHEN VOLMINK: The drafting of it ...

CHAIRPERSON: *Ja.*

MR PETER STEPHEN VOLMINK: Originates with the Cross Functional Sourcing Team...

CHAIRPERSON: Yes. Yes, okay.

10 **MR PETER STEPHEN VOLMINK:** But it then has to go through various ...

CHAIRPERSON: Other.

MR PETER STEPHEN VOLMINK: Approval levels.

CHAIRPERSON: Okay.

MR PETER STEPHEN VOLMINK: So there are various individuals ...

CHAIRPERSON: Okay.

MR PETER STEPHEN VOLMINK: Or bodies

CHAIRPERSON: Okay.

MR PETER STEPHEN VOLMINK: With delegation of authority ...

20 **CHAIRPERSON:** Yes.

MR PETER STEPHEN VOLMINK: Which I will come to in a little bit later on ...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: To give the clearance ...

CHAIRPERSON: Okay.

MR PETER STEPHEN VOLMINK: That we are now ...

CHAIRPERSON: Okay.

MR PETER STEPHEN VOLMINK: Good to go.

CHAIRPERSON: Okay.

MR PETER STEPHEN VOLMINK: That this tender can be issued to – to market.

CHAIRPERSON: Okay. So they start the process of drafting but they are not the final word?

MR PETER STEPHEN VOLMINK: hey are not the final word ...

10 **CHAIRPERSON:** Yes.

MR PETER STEPHEN VOLMINK: On whether it ...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: Should be released or not.

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: But I – I refer to them Chair because ...

CHAIRPERSON: Yes.

20 **MR PETER STEPHEN VOLMINK:** They also bear responsibility for – for good governance. The way they write that document. They cannot say no someone else – it is someone's responsibility to approve its release to the market. They are the individuals who must take responsibility for ensuring that it is unambiguous, fair and objective in terms of the criteria that are listed.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Okay.

ADV PHILLIP MOKOENA SC: You may proceed to another one.

MR PETER STEPHEN VOLMINK: Chair the – the next body that I mention and as I have indicated earlier I will talk a little bit later about the bodies who also have to approve these things but I mention the Cross Functional Evaluation Team of CFET for short and what the CFET does is they must now evaluate the tender. It has been written by the CFS Team. It has been issued to the market. Bids have been received and now it must come to this body – the Cross Functional Evaluation Team. They are the ones ...

10 **CHAIRPERSON:** Well ...

MR PETER STEPHEN VOLMINK: Who are responsible for ensuring that the evaluation of the tender must be in accordance with the RFP. They cannot stray ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: From the terms of the RFP. They must ensure that scoring is ...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: Followed fairly, rationally and – and so on and so forth.

20 **CHAIRPERSON:** Yes. Well Mr Mokoena I do not know whether it is your plan or Mr Volmink's one I would prefer to hear about the bodies to which – for example – request for proposal goes to after the CFS Team has done it before I hear about a body such as CFET which ...

ADV PHILLIP MOKOENA SC: Okay.

CHAIRPERSON: Looks at it after it has gone out and come back.

ADV PHILLIP MOKOENA SC: Sure, yes.

CHAIRPERSON: That for me would make it easier.

MR PETER STEPHEN VOLMINK: *Ja.* I am ...

CHAIRPERSON: Okay.

MR PETER STEPHEN VOLMINK: Yes, I am happy to do that.

ADV PHILLIP MOKOENA SC: Please proceed to do that.

CHAIRPERSON: *Ja.*

MR PETER STEPHEN VOLMINK: Yes.

CHAIRPERSON: If you can do that that would – that would ...

10 **ADV PHILLIP MOKOENA SC:** Then we will come back to slide eight.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: But it will give the Chair ...

CHAIRPERSON: So I just want to follow in sequence.

ADV PHILLIP MOKOENA SC: An appreciation, yes.

CHAIRPERSON: *Ja.*

MR PETER STEPHEN VOLMINK: So Chair after the tender document
has been written by the CFST ...

CHAIRPERSON: Yes.

20 **MR PETER STEPHEN VOLMINK:** The tender document would be of
course the – the RFP itself ...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: But also the procurement strategy ...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: That informs the – the RFP.

CHAIRPERSON: They would draft everything relating to the tender ...?

MR PETER STEPHEN VOLMINK: Correct Chair.

CHAIRPERSON: That must be – that must be in place before the request for proposals goes out?

MR PETER STEPHEN VOLMINK: Before it goes out.

CHAIRPERSON: Okay.

MR PETER STEPHEN VOLMINK: They have to set out the record what does Transnet require.

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: What is the evaluation methodology?

10 **CHAIRPERSON:** Yes.

MR PETER STEPHEN VOLMINK: How will the price preference be applied?

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: A range of things must ...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: Be dealt with in these documents.

CHAIRPERSON: Yes. Okay, alright.

MR PETER STEPHEN VOLMINK: To just deal with your question Chair ...

20 **CHAIRPERSON:** Yes.

MR PETER STEPHEN VOLMINK: As to the approval bodies ...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: There are various levels ...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: Of approval ...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: Depending on the value of the tender.

CHAIRPERSON: Okay.

MR PETER STEPHEN VOLMINK: So for example if the tender is under - and it is quite a high amount but under 500 million ...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: The Chief Procurement Officer who is the Head of Procurement in the various operating divisions ...

10 **CHAIRPERSON:** *Ja.*

MR PETER STEPHEN VOLMINK: Must sign to say that he or she is satisfied that the requirements of the tender are clearly spelt out ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: That the requirements are fair, unbiased and fit for purpose. Also Chair the Head of the – what we call the End User Department – the Engineering Department ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: Or whoever it is that ...

CHAIRPERSON: Hm.

20 **MR PETER STEPHEN VOLMINK:** Required the specifications or rather who required the goods and services ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: They are often the ones who help to write the specifications ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: And the Head of that department ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: Must sign off before it can be released ...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: To say that these specifications are not biased and it will meet the needs of the organisation etcetera.

CHAIRPERSON: That would be any tender any request for proposals would relate to a particular unit or department - whatever you call them

10 – within Transnet. Is that right?

MR PETER STEPHEN VOLMINK: Yes Chair.

CHAIRPERSON: So there would be a unit of division or some section of Transnet to which it relates?

MR PETER STEPHEN VOLMINK: Correct.

CHAIRPERSON: But whatever the unit, whatever the department, whatever the section is the only body that can draft at first instance the specifications and the request for proposals would be this CFST that you told me about.

MR PETER STEPHEN VOLMINK: That is ...

20 **CHAIRPERSON:** Is that correct?

MR PETER STEPHEN VOLMINK: That is correct.

CHAIRPERSON: And then you say from there it does not go out – the request for proposals. It goes to various approving levels and bodies and only when it – it has been approved by all of them or the final one that has the final say does it then go out?

MR PETER STEPHEN VOLMINK: That is precisely ...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: Correct.

CHAIRPERSON: And – and you have mentioned to at this stage after the CFST has drafted one is – if I understand you correctly – the Chief...

ADV PILLIP MOKOENA SC: (Indistinct).

CHAIRPERSON: Did you say Chief Procurement Officer – would it be of the section or unit where the tender is needed?

10 **MR PETER STEPHEN VOLMINK:** Yes Chair.

CHAIRPERSON: Where work or goods are required?

MR PETER STEPHEN VOLMINK: Yes. It would be the Chief Procurement Officer of the operating division like Transnet Freight Rail has its own Chief Procurement Officer. There may be various units within ...

CHAIRPERSON: Oh underneath.

MR PETER STEPHEN VOLMINK: Within TFR.

CHAIRPERSON: Oh, so it would be the operating – the Chief Procurement Officers of the operating unit under which the operating
20 vehicle – company or whatever – under which the particular section that needs the work or goods the services or goods falls?

MR PETER STEPHEN VOLMINK: Correct.

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: We refer to them as End User...

CHAIRPERSON: End User.

MR PETER STEPHEN VOLMINK: End User Departments.

CHAIRPERSON: Okay, yes.

MR PETER STEPHEN VOLMINK: So it could be engineering ...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: HR.

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: It could be legal. A range of units ...

CHAIRPERSON: Yes.

10 **MR PETER STEPHEN VOLMINK:** Who operate within that operating division.

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: When they require goods and services they would typically provide people who can help to write the specifications. They sit on the CFS Team.

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: But they have to take it to a delegated body ...

CHAIRPERSON: Yes.

20 **MR PETER STEPHEN VOLMINK:** To approve its release to the market and this was introduced precisely because we had experienced in the past that tenders were issued to the market without proper oversight ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: Without anyone checking and then ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: The difficulties are picked up ...

CHAIRPERSON: Later.

MR PETER STEPHEN VOLMINK: After it has been (intervenes).

CHAIRPERSON: Hm. So from the Chief Procurement Officer of the End User Department they go to the Head of the End User Department. Is that right?

MR PETER STEPHEN VOLMINK: Hm.

CHAIRPERSON: The request of proposals or not yet? I thought you mentioned the Head as well.

MR PETER STEPHEN VOLMINK: No, no, no. There are two ...

10 **CHAIRPERSON:** Yes.

MR PETER STEPHEN VOLMINK: And maybe let me just ...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: Take us through this again.

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: So the Chief Procurement Officer ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: Is the one who is going to sign off on the RFP as a whole.

CHAIRPERSON: Hm.

20 **MR PETER STEPHEN VOLMINK:** To say I am happy ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: That this RFP ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: Can be released to the market.

CHAIRPERSON: Huh-uh.

MR PETER STEPHEN VOLMINK: There is the Head of the End User Department.

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: What that person must do is to confirm in writing ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: That the specifications – the technical specifications ...

CHAIRPERSON: Hm.

10 **MR PETER STEPHEN VOLMINK:** That is listed in the RFP ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: That he confirms that those specifications are unbiased and it is fit for purpose etcetera ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: And the – that was introduced with a very specific purpose in mind. It very often happened that RFPs were issued to the market and then later the End User Department says but no these specifications ...

CHAIRPERSON: Hm.

20 **MR PETER STEPHEN VOLMINK:** Do not suit our needs.

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: You must cancel and you must start again etcetera.

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: Which is why require firstly the End

User – the Head of the End User Department signs off on those specifications.

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: The specifications gets incorporated into the RFP ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: And the RFP is then taken to the CPO ...

CHAIRPERSON: Hm.

10 **MR PETER STEPHEN VOLMINK:** Under a certain value ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: For the CPO to say he or she is happy for the RFP to be issued to the market.

CHAIRPERSON: And the CPO being – I am no looking at page 124. The full – full name or title – CPO?

MR PETER STEPHEN VOLMINK: The Chief Procurement Officer.

CHAIRPERSON: Oh, okay, okay, okay. That one now is it the one for the whole of Transnet or only – or the one you referred to earlier?

MR PETER STEPHEN VOLMINK: For the operating division.

20 **CHAIRPERSON:** Oh, for the operating.

MR PETER STEPHEN VOLMINK: Yes.

CHAIRPERSON: So does the Head sign after the CPO has signed or the CPO signs first then the Head?

MR PETER STEPHEN VOLMINK: Hm.

CHAIRPERSON: Or the Head first or the CPO?

MR PETER STEPHEN VOLMINK: Well the Head of the End User Department signs off first to say that the specifications are in order ...

CHAIRPERSON: Okay, yes.

MR PETER STEPHEN VOLMINK: And after that of course as I said the specifications get incorporated into the RFP document ...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: And then it gets taken to the CPO.

CHAIRPERSON: Yes, okay.

MR PETER STEPHEN VOLMINK: To say this is now the complete ...

10 **CHAIRPERSON:** Yes.

MR PETER STEPHEN VOLMINK: RFP ...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: Either say yay or nay that you are happy with this (indistinct).

CHAIRPERSON: And then if he or she is happy what is the next step?

MR PETER STEPHEN VOLMINK: The next step is that the tender is then ...

CHAIRPERSON: Released or set out?

MR PETER STEPHEN VOLMINK: Released – advertised ...

20 **CHAIRPERSON:** Okay.

MR PETER STEPHEN VOLMINK: And made available on the e-tender portal.

CHAIRPERSON: Okay.

MR PETER STEPHEN VOLMINK: And it then becomes a public – a public document.

CHAIRPERSON: So – so the steps are not many in terms of once after the CF – CFST. It is the Head of the End User Department and the CPO?

MR PETER STEPHEN VOLMINK: And then it gets – and then it gets released.

CHAIRPERSON: It gets to the CPO first?

MR PETER STEPHEN VOLMINK: After it gets it to the CPO ...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: And CPO approves it ...

10 **CHAIRPERSON**: *Ja*.

MR PETER STEPHEN VOLMINK: It will be released ...

CHAIRPERSON: It will be released yes.

MR PETER STEPHEN VOLMINK: After that.

CHAIRPERSON: *Ja*.

MR PETER STEPHEN VOLMINK: Yes.

CHAIRPERSON: Those – those steps do they change depending on the amount of the value?

MR PETER STEPHEN VOLMINK: Correct Chair.

CHAIRPERSON: Yes.

20 **MR PETER STEPHEN VOLMINK**: So for a higher value ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: Tenders the entity who has to approve the – say between 500 and 700 million ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: CPO will not give the ultimate

approval.

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: CPO will recommend ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: To an Exco member ...

CHAIRPERSON: Okay.

MR PETER STEPHEN VOLMINK: And the Exco member is then the entity who will sign off.

CHAIRPERSON: Okay.

10 **MR PETER STEPHEN VOLMINK:** For yet higher values ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: Say between 700 and a billion ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: Again it follows the same...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: Process – CPO...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: Drafts, it goes to the Exco member ...

CHAIRPERSON: Yes.

20 **MR PETER STEPHEN VOLMINK:** Then it serves before – what is known as a Procurement Committee which is the – a Sub Committee of Exco ...

CHAIRPERSON: Okay.

MR PETER STEPHEN VOLMINK: Who has to approve between 700 million and a billion ...

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC:

MR PETER STEPHEN VOLMINK: And then any tender above a billion

...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: The tender document itself ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: Follows all of those processes but ultimately ...

10 **CHAIRPERSON:** Hm.

MR PETER STEPHEN VOLMINK: It has to be approved by – by Exco.

CHAIRPERSON: Okay.

MR PETER STEPHEN VOLMINK: In terms of – of the – our most ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: Delegations of authority.

CHAIRPERSON: Okay. No that - that is very helpful.

ADV PHILLIP MOKOENA SC: Yes Chair.

20 **CHAIRPERSON:** Then we can talk about what happens when the –
after the request for proposals has gone out to the market and then so
on. Thank you.

ADV PHILLIP MOKOENA SC: Prior to that Chair it will be also
important for us to appreciate what is contained in slide eight because
those relevant bodies become also critical ...

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: When we deal with specific transactions

and also they dovetail with the evidence of other witnesses that we scheduled for this session.

CHAIRPERSON: Hm.

ADV PHILLIP MOKOENA SC: If I may refer you back to slide eight.

MR PETER STEPHEN VOLMINK: Yes.

ADV PHILLIP MOKOENA SC: You have comprehensively taken the Chair through the CFST and the CFET. Now there is this creature that is normally referred to as the Acquisition Council.

MR PETER STEPHEN VOLMINK: Yes.

10 **ADV PHILLIP MOKOENA SC:** Please tell the Chair about it.

CHAIRPERSON: Well I am sorry I interrupted him while – when he was beginning to talk about CFET.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: But I do not know whether there is much to say other than what is written there.

MR PETER STEPHEN VOLMINK: I think the point is simply that this is the body that must ensure...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: That the evaluation of a tender ...

20 **CHAIRPERSON:** Hm.

MR PETER STEPHEN VOLMINK: Is done in accordance with the – what is set out in the tender document ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: And of course with the PPM as a whole.

CHAIRPERSON: Hm.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: But do they carry out the actual evaluation or is it somebody else who carries out the evaluation and they must just check whether the evaluation has been done properly?

MR PETER STEPHEN VOLMINK: No they are the actual evaluators.

CHAIRPERSON: Evaluators.

MR PETER STEPHEN VOLMINK: The cross-function evaluation.

CHAIRPERSON: Ja, okay, thank you.

10 **ADV PHILLIP MOKOENA SC:** We can move on Mr Volmink to the Acquisition Council.

MR PETER STEPHEN VOLMINK: Yes, Chair then we have a body referred to as the Acquisition Council, I think in the rest of the public sector it is referred to as the Bid Adjudication Committee. I think in previous years it was called a Tender Board, and this is the Body who is responsible for ensuring that the award of the tender is fair and legally compliant, so it is typically made up of fairly senior people within the operating division. There will be an Acquisition Council in
20 senior managers, or general managers within that department or rather within the Operating Division and it is their responsibility to ensure that before a tender is awarded that they are satisfied that the process is compliant with the regulatory framework and that the selection of the successful tenderer that it followed a fair and equitable process.

CHAIRPERSON: So there would be a number of Acquisition Council

within Transnet because each Operating Division has its own Acquisition Council, is that right?

MR PETER STEPHEN VOLMINK: That's correct Chair.

CHAIRPERSON: Does that principle apply to CFET's and CFST's as well or are those Transnet wide bodies?

MR PETER STEPHEN VOLMINK: No Chair they also apply in each Operating Division.

CHAIRPERSON: Oh.

MR PETER STEPHEN VOLMINK: So there isn't, there wouldn't be a
10 standing Transnet wide committee.

CHAIRPERSON: Yes, yes, okay.

MR PETER STEPHEN VOLMINK: But it is constituted in the various operating divisions as the need arises.

CHAIRPERSON: Oh so when I look at this slide I must just bear in mind that what it represents is in relation to each Operating Division.

MR PETER STEPHEN VOLMINK: To each Operating Division.

CHAIRPERSON: And not in relation to ...(intervention)

MR PETER STEPHEN VOLMINK: Overarching.

CHAIRPERSON: ...Transnet as a whole.

20 **MR PETER STEPHEN VOLMINK:** Correct.

CHAIRPERSON: Okay, thank you.

ADV PHILLIP MOKOENA SC: Yes Mr Volmink you can proceed to explain the next important committee.

MR PETER STEPHEN VOLMINK: Chair then the next committee, I have referred to earlier already, it is a sub-committee of Exco, it is referred

to as the Procurement Committee, and it was established recently with our recent delegations of authority framework. They typically have delegation to adjudicate on very high value tenders, I mentioned earlier between R700million and a Billion and they are empowered to award tenders, they are empowered to approve the release of RFP's to the market for that value and various other delegations are given to this Procurement Committee as well.

Chair then ...(intervention)

CHAIRPERSON: I'm sorry, can I take you back to the Acquisition Council on this slide, you see when the slide says responsible for ensuring that the award of a tender is fair and legally compliant, it gives the impression that somebody else does the actual awarding but they must just check that that has been done correctly, whether as what you are saying is they are the ones who do the actual awarding, but obviously in doing that that they must make sure that they comply with all the legislation and policies and so on?

MR PETER STEPHEN VOLMINK: Yes I understand what you are saying ...(intervention)

CHAIRPERSON: That meaning that I'm attaching to it.

20 **MR PETER STEPHEN VOLMINK:** I understand, Chair we use the word ensuring somewhat deliberately.

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: Because the Acquisition Councils they are the first group of people who must ensure that when a tender gets awarded that it complied with the legislative requirements and it's

fair etcetera. There may be other bodies such as the High Value Tender Review Committee which I will touch on a little bit later on, who will do independent assurance and I refer to them sort of at the bottom of the slide I will come to them, but when I say that the Acquisition Council must ensure that the award of tender is fair we say that because we want to impress upon them that it their responsibility first and foremost to make sure that the process followed is correct.

CHAIRPERSON: (Inaudible – microphone off)

ADV PHILLIP MOKOENA SC: No I do understand Chair, they will
10 become even much more clearer when we deal with other slides because yes, I understand the questions, they are relevant.

CHAIRPERSON: Ja.

ADV PHILLIP MOKOENA SC: Mr Volmink the Procurement Committee, you were still dealing with it.

MR PETER STEPHEN VOLMINK: Yes I was saying Chair that their delegation is for higher value tenders, typically between R700million and a Billion and they have responsibility firstly to approve that Transnet can issue a tender to the market, also to adjudicate on tenders which fall within their delegation R700million to a Billion, ie
20 they for lack of a better word Chair they are the Acquisition Council for those mega transactions, R700million and above.

ADV PHILLIP MOKOENA SC: Is this where one would locate those transactions such as the locomotives?

MR PETER STEPHEN VOLMINK: Chair the – this is a very recent creation, so this Procurement Committee was established under the

...(intervention)

ADV PHILLIP MOKOENA SC: Post to those transactions.

MR PETER STEPHEN VOLMINK: Post the transactions. So this Committee would not have existed at that time.

ADV PHILLIP MOKOENA SC: Yes, and then the next one?

MR PETER STEPHEN VOLMINK: The next one the letters are FIC, this is the Finance and Investment Committee, they are a sub-committee this is a sub-committee of the Board, Chair they do not perform actual ...(intervention)

10 **ADV PHILLIP MOKOENA SC:** It's page 104 Chair.

CHAIRPERSON: Sorry?

ADV PHILLIP MOKOENA SC: Page 104.

CHAIRPERSON: Okay, I was there but I wasn't sure that I was on the right page yes, yes you may continue.

MR PETER STEPHEN VOLMINK: Yes, I was referring to the Finance and Investment Committee which is a sub-committee of the Board. Now Chair this Body plays really an assurance role for all transactions that are meant to be migrated to Exco, so I will tell you in a moment that Exco has delegation to approve tenders above a Billion, but the FIC or
20 the Finance and Investment Committee really is an assurance body, they would want to be given the assurance that for those very big tenders above a billion that everything is done as it is supposed to be and they would want to have that comfort to say that before this goes to Exco that is going to be the point in the process where the FIC expresses its satisfaction or its comfort that the process was done

correctly, it is an important checkpoint in the process for the award of the mega tenders.

ADV PHILLIP MOKOENA SC: The next committee that we're dealing with?

MR PETER STEPHEN VOLMINK: The next one Chair relates to Exco and as I have indicated Exco is the for lack of a better word the Acquisition Council now for those tenders that are above a billion, they will approve the approach to market, ie they will approve that the tender can be released to the market, they will also adjudicate on
10 transactions and they will conclude contracts with the winning bidder for tenders that fall into that bracket and then of course the Board, the Board doesn't, under the new delegations of authority the Board will not exercise any delegation to award tenders or to award the – or to approve the release of tenders to the market, but of course being the Board they assume final accountability for whatever happens within the organisation.

ADV PHILLIP MOKOENA SC: Yes. And from slide number nine, page 105 ...(intervention)

CHAIRPERSON: I'm sorry before you get to that on that slide number
20 eight there is that arrow between the Acquisition Council and the Procurement Committee.

MR PETER STEPHEN VOLMINK: Yes Chair.

CHAIRPERSON: It suggests that things that have come before the Acquisition Committee from there move onto the Procurement Committee, is that correct?

MR PETER STEPHEN VOLMINK: It is not ...(intervention)

CHAIRPERSON: It's not correct?

MR PETER STEPHEN VOLMINK: I don't think that is meant to depict necessarily a process flow.

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: I think it just shows the various bodies that are appointed within Transnet to perform functions at various levels, but it doesn't always happen that an award first has to go through the Acquisition Council before it comes to the
10 ...(intervention)

CHAIRPERSON: Ja, I think that would cause confusion because when you see an arrow you say – it tells you where to go, and if there's another arrow you follow the arrows.

MR PETER STEPHEN VOLMINK: Correct.

CHAIRPERSON: Now I understood that in regard to maybe they shouldn't be there, I don't know, because also from CFST things don't go to CFET straight, but CFET is there for when a request for proposal has gone out to the market and there are responses to it as I understand the position.

20 **MR PETER STEPHEN VOLMINK:** That's correct.

CHAIRPERSON: So we might have to just reflect what needs to be done to make sure that one doesn't get confused.

ADV PHILLIP MOKOENA SC: What I will propose to Mr Volmink we can remove the arrows Chair because when you go to slide number 14 it will tell you properly about the Procurement cycle and also give –

slide number 15 it will give about the procurement process, with the relevant arrows showing where does one go from - what different stages does a tender have to go up until approval.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: So here she was merely depicting those committees without having to suggest that Chair must follow the arrows.

CHAIRPERSON: Ja, so maybe if you remove the arrows then what one sees is different bodies.

10 **ADV PHILLIP MOKOENA SC:** Bodies yes.

CHAIRPERSON: And what happens about those bodies and what they are, and what their functions are one looks at your evidence, whereas if the arrows are there one says they aren't there to decorate things, they are there for some meaning, they are there to say something moves from one point to the next point but that's not what you meant.

MR PETER STEPHEN VOLMINK: Point taken yes.

CHAIRPERSON: Okay thank you.

20 **ADV PHILLIP MOKOENA SC:** We will adjust it accordingly. Mr Volmink on slide number nine you are dealing with issues that you have superficially touched on when you were debating these issues or when you're clarifying your evidence to the Chair, can you please elaborate on those delegations of authority?

MR PETER STEPHEN VOLMINK: Chair so what we see on slide nine are the there are three areas within Supply Chain that are addressed in the delegation of authority framework, it tells us firstly who are the

persons or committees that must approve that a tender can be released, we call it approval to approach the market. I have dealt with that at some length earlier, and the delegations of everyone from the CPO, Exco members, Procurement Committee and Exco they are all outlined in the Delegations of Authority Framework.

The next section in the Delegation of Authority Framework covering Supply Chain Management relates to bid adjudication or who is empowered to award a tender. I have mentioned that the Acquisition Councils have authority up to a certain level, then above that we have
 10 the Procurement Committee and above those – above the Procurement Committee you have Exco to adjudicate on tenders above a billion. The third aspect of the Delegation of Authority Framework deals with who has power to sign off a contract, so it has gone through the process, it has been adjudicated and awarded but not anyone can sign the contract, so again it stipulates for example the General Manager of an end user function has delegations say up to R300million, Exco member between R300 and R700, Procurement Committee members higher delegations and even Exco members above a billion.

Now Chair I want to perhaps mention under this section
 20 dealing with contract award and sign off, although we give delegations for individuals to sign off a contract they can't jump the gun, they must wait for a tender process to be completed to run its course and it may sound like an obvious point but I will tell you Chair at a later stage in my evidence that for example with McKinsey contract, or certain of the McKinsey contracts that contracts or letters of award were issued and

yet the tender process was still underway, and that is a clear breach and so it is quite important that even though people with delegation to sign off contracts that they are vested with that delegation that it is important that they only exercise that delegation after adjudication has happened.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Well we – I guess we will deal more with that kind of situation when you give evidence about it, but it seems unlikely that a person whose role in a tender is the signing off, of the contract
10 wouldn't know that the process hasn't reached him or her because I guess that he or she would know that things come to me when they have been to A, B, C, D and all of those people have done what they are supposed to do then I come in.

MR PETER STEPHEN VOLMINK: Chair that is exactly right, whoever exercises delegation of authority to conclude a contract they normally first receive a resolution from the Adjudication Committee to say we have awarded the contract, awarded the tender, you can now proceed to conclude the contract, so it is a clear breach to simply jump the gun.

CHAIRPERSON: Yes.

20 **ADV PHILLIP MOKOENA SC:** I will deal with them in detail in due course. If you go to slide number 10 you are giving a very fundamental comparison between 2016 Transnet SCM and the DOA's as compared to the 2019 and could you please take us through them because they are quite important and relevant to the issues to be canvassed later.

MR PETER STEPHEN VOLMINK: Thank you Chair. What I say on this

slide as I draw a comparison between what the current DOA's require and what the previous DOA's ...(intervention)

CHAIRPERSON: These acronyms, I have to go to page 124 to check.

MR PETER STEPHEN VOLMINK: Oh my apologies, no, no Chair it stands for Delegation of Authority.

CHAIRPERSON: Ja, no I have checked.

MR PETER STEPHEN VOLMINK: My apologies, Transnet is full of acronyms and please just remind me if you hear something that I say that you're not familiar with.

10 **CHAIRPERSON:** 124, I will go to page 124, unless it's not there, okay you may proceed, DOA's are Delegations of Authority yes.

MR PETER STEPHEN VOLMINK: That's correct. So Chair what it indicates is that the – how things have changed between 2016 and 2019, I don't deal with all aspects of the DOA's, but I highlight a few. The first is that the Board and a sub-committee of the Board called the ADC, which stands for the Adjudication and Disposal Committee, it was previously called the BADC Board Acquisition and Disposal Committee.

ADV PHILLIP MOKOENA SC: Yes, Acquisition and Disposal Committee.

20 **MR PETER STEPHEN VOLMINK:** Yes, the B got dropped at a certain point and it was simply called the ADC, but in 2016 the Board and the ADC had delegation to make various procurement decisions, so they were given delegation to approve confinements, to approve the award of tenders, to assign contracts etcetera, and I make the point that under the 2019 delegations the current Board is not involved in

procurement decisions *per se* ie making tender awards. I have indicated Chair that those functions have now been delegated to either a sub-committee of the Board called the Procurement Committee, or for tenders above a billion to Exco with FIC being the sub-committee performing that oversight or assurance role.

ADV PHILLIP MOKOENA SC: Why was it necessary to ... (intervention)

CHAIRPERSON: I'm sorry Mr Mokoena we started at nine, so I don't think we should wait until quarter past eleven for the tea break, maybe
10 we should take the tea break at quarter to eleven, from quarter to eleven to eleven o'clock. Does that sound fine, okay thank you.

ADV PHILLIP MOKOENA SC: I wanted to know, you mentioned about this, you referred to these changes why was it critical or crucial for Transnet to effect these changes, if you look at 2016 and 2019 delegations of authority, whereby now when you look at 2019 the Board it's not longer involved in procurement decisions.

MR PETER STEPHEN VOLMINK: Yes, Chair I think that the Board would probably be able to explain the underlying rationale in more detail, but in essence there have been pronouncements made at
20 various levels, particular in the State of the Nation Address and also the speeches made by the Minister of Finance and so on, that the Boards of SOC should not be playing a role in procurement decisions, I have no doubt that that influenced the decision to delegate those critical procurement roles to management with the Board performing that important oversight role.

CHAIRPERSON: Yes I am sure that that's the reason, it's management which must make these decisions and the Board must play the oversight role because they can't play oversight role over themselves. They are the ones who must make decisions.

MR PETER STEPHEN VOLMINK: Correct.

ADV PHILLIP MOKOENA SC: Take us through other changes.

MR PETER STEPHEN VOLMINK: Chair then what we saw in 2016 and even in earlier delegations is what I can only refer to as something of an aberration, there were certain individuals who were granted the
10 power to award tenders. Now Chair a tender is supposed to be awarded by an Acquisition Council, it's a multi-disciplinary body made up of legal, compliance, commercial, finance, risk and compliance etcetera, but the way these delegations read in 2016 and even earlier is that – well if you look at the 2015, the 2016 delegations these acquisition councils had delegation up to R50million. Then above
...(intervention)

CHAIRPERSON: Is that 15 or 50?

MR PETER STEPHEN VOLMINK: That's 50.

CHAIRPERSON: 50, okay R50million.

20 **MR PETER STEPHEN VOLMINK:** R50million.

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: Chair then the Chief Supply Chain Officer was given the power of an Acquisition Council up to R500million so it did not serve before an Acquisition Council to approve the award of the tender, it went to a Chief Supply Chain Officer, then Chair for

higher values we ...(intervention)

CHAIRPERSON: But that's quite strange, maybe that's why you said it was an aberration for a tender whose value is R50million you needed a number of people to sit in an Acquisition Council to make the decision, but for a tender that is R500million, much more, you need only one person to make a decision?

MR PETER STEPHEN VOLMINK: Chair it gets stranger than that, for up to R750million that could go to the Chief Operating Officer, or the – some other individuals, they were mentioned in the delegation of
10 authority framework, for up to a billion it could be the Chief Financial Officer.

ADV PHILLIP MOKOENA SC: Making the decision alone?

MR PETER STEPHEN VOLMINK: Yes, acting as the Acquisition Council.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: (Inaudible – microphone off)

ADV PHILLIP MOKOENA SC: Chair your mic is off.

CHAIRPERSON: Oh, I'm sorry, the one who was given authority to make decisions in relation to a tender that was above R50million but
20 not above R500million was the Chief – did you say Chief Financial?

MR PETER STEPHEN VOLMINK: Chief Supply Chain Officer.

CHAIRPERSON: Supply Chain Officer.

MR PETER STEPHEN VOLMINK: Yes.

CHAIRPERSON: And then if it was above that it went to whom?

MR PETER STEPHEN VOLMINK: Then it went to the Chief Operating

Officer.

CHAIRPERSON: The COO?

MR PETER STEPHEN VOLMINK: Yes.

CHAIRPERSON: Yes?

MR PETER STEPHEN VOLMINK: Up to 750.

CHAIRPERSON: Up to 750.

MR PETER STEPHEN VOLMINK: Correct.

CHAIRPERSON: And there too it was just him or her alone making the decision?

10 **MR PETER STEPHEN VOLMINK:** In terms of the Delegation of Authority that person was the Adjudication Committee.

CHAIRPERSON: Was that person in the delegations said to be so to speak making those decisions as the Acquisition Council or it – the delegation simply said he or she was the one to make the decisions, when you refer to – when you say he or she was the Acquisition Council that's what you say because he or she was performing the duties similar to those of an Acquisition Council, so in other words I'm asking whether one can find somewhere, a document that was saying something like for purposes of a tender that is between R500million and
20 R700 or up to R750million the person occupying this position shall be deemed to be the Acquisition Council?

MR PETER STEPHEN VOLMINK: Chair the way it was written is it is under the heading in the delegation of authority framework which I will be happy to make available.

CHAIRPERSON: Yes, yes.

MR PETER STEPHEN VOLMINK: It is under the heading called process approval. I mentioned earlier Chair that the delegations deal with approaching the market, bid adjudication and contract award. This concept of process approval falls under bid adjudication because it is in the process of bid adjudication that the person with delegation must say I am happy with the process that was followed, and I've got no difficulty so when you turn to the section in the DOA framework dealing with process approval it tells us that the first level is the Acquisition Councils but they only have R50million and then it mentions all the
10 others, and I think there's a footnote at the bottom which explains what this function entails.

Chair there's no doubt in my mind that the functions of an – of tender adjudication or tender award were delegated to individuals rather than to proper – properly constituted acquisition councils.

CHAIRPERSON: But what – what that – but what that means is simply that the higher the value the less the number of people involved in making the decisions.

MR PETER STEPHEN VOLMINK: That I think would be the implication.

CHAIRPERSON: Ja that would be the ...

20 **MR PETER STEPHEN VOLMINK:** Until it got to – under the 2016 delegations.

CHAIRPERSON: H'm.

MR PETER STEPHEN VOLMINK: I think when the values were above 3 billion it would serve before the ADC the subcommittee of the board and I think above 3 billion to the board itself. So there would be point

when the highest values

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: Would serve before committees but there is a whole range of values of tenders between 50 and up to 3.

CHAIRPERSON: Billion.

MR PETER STEPHEN VOLMINK: Billion which serves where the adjudicatory process could be carried out by individuals.

CHAIRPERSON: H'm.

MR PETER STEPHEN VOLMINK: Now Chair I should perhaps add

10 **CHAIRPERSON**: H'm.

MR PETER STEPHEN VOLMINK: That what we sought to do to avoid the huge risk involved entrusting tender adjudication to an individual is we wrote certain rules in the – what is called the PPM the Procurement Procedures Manual which sought to mitigate this – the situation and - and...

CHAIRPERSON: When you say we who?

MR PETER STEPHEN VOLMINK: Well the governance.

CHAIRPERSON: Unit oh yes okay.

20 **MR PETER STEPHEN VOLMINK**: Yes. So we stated there that before a tender can serves before what we refer to as the one man or one person acquisition councils they had to serve before the main acquisition council of whatever operating division it comes from. So even though they only have power up to 50 to award we said they have got to look at the transaction and recommend if they are happy with it. Once it passes that main acquisition council it then must serve before

the head of risk – the head of legal governance. So in effect we constituted a sort of a virtual acquisition council to check on the transactions before it served before these individuals.

ADV PHILLIP MOKOENA SC: But were those rules always followed? I mean there might be the rules and you know as a matter of fact Mr Volmink that there are contracts which were awarded without governance.

MR PETER STEPHEN VOLMINK: Ja.

ADV PHILLIP MOKOENA SC: Council being involved.

10 **MR PETER STEPHEN VOLMINK:** Chair now again what is written and what is followed are not always the same thing and we will deal with that later on.

CHAIRPERSON: But the rules that you have just told me about that came from your unit, the governance unit were they a reaction to these delegations that you have talked about which you said appeared to be apparitions or would they come – were they there when these delegations were made?

MR PETER STEPHEN VOLMINK: No – Chair they were as a result of these delegations because...

20 **CHAIRPERSON:** Yes.

MR PETER STEPHEN VOLMINK: The unit was deeply

CHAIRPERSON: Concerned.

MR PETER STEPHEN VOLMINK: Concerned.

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: And uncomfortable.

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: It is – it is unheard of in public sector procurement. Where you have a three committee system, a bid specification committee, a bid evaluation committee and a bid adjudication committee.

CHAIRPERSON: H'm.

MR PETER STEPHEN VOLMINK: And as I say this was not something which sat well with the unit.

CHAIRPERSON: Now the bodies that you have talked – you have told
10 me about the including the acquisition council and the procurement and the CFET and CFST are those bodies provided for in policies and procedures manuals – policies and procedure manuals relating to procurement within Transnet or are they contained in something of a higher legal status than that such as regulations under some legislation relating to Transnet? What kind of instrument establishes those bodies?

MR PETER STEPHEN VOLMINK: Chair within the – within the Transnet environment that is dealt with in terms of the internal policies which Transnet has put in place.

20 **CHAIRPERSON**: Okay, okay.

MR PETER STEPHEN VOLMINK: National Treasury has of course issued

CHAIRPERSON: Ja.

MR PETER STEPHEN VOLMINK: Certain prescripts or guidelines

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: Which applies largely in the public sector.

CHAIRPERSON: Yes, yes.

MR PETER STEPHEN VOLMINK: The state departments.

CHAIRPERSON: Ja.

MR PETER STEPHEN VOLMINK: Government departments and so on and so forth.

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: And we certainly draw from that but
10 the detail of how these committees the CFST, the CFET, the Acquisition Council and so on how those committees are to be conducted that is dealt with in our internal

CHAIRPERSON: Policies and documents?

MR PETER STEPHEN VOLMINK: Correct.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: But when you –

CHAIRPERSON: Okay thank you.

ADV PHILLIP MOKOENA SC: But when you refer to the three stage
process of the bid evaluation specification and adjudication those are
20 not merely rules but those are dealt with in terms of the legislation, am I correct?

MR PETER STEPHEN VOLMINK: That – that is correct.

ADV PHILLIP MOKOENA SC: Despite that but you still had those single individuals with authority to – can grant tenders of that particular [indistinct] within Transnet?

MR PETER STEPHEN VOLMINK: Ja.

CHAIRPERSON: And the delegations that you told us about a few minutes ago they came from the board or

MR PETER STEPHEN VOLMINK: That is correct Chair.

CHAIRPERSON: Did they come from [indistinct].

MR PETER STEPHEN VOLMINK: No, no they come from the board.

CHAIRPERSON: From the board.

MR PETER STEPHEN VOLMINK: Yes.

CHAIRPERSON: Ja. Okay.

10 **MR PETER STEPHEN VOLMINK:** Chair the last thing I want to mention on this slide unless there is anything

ADV PHILLIP MOKOENA SC: No slide number 10.

MR PETER STEPHEN VOLMINK: Slide number 10 yes. Is that there was also provision made in the 2016 delegations for – well for confinements but then also for what was referred to as confidential confinements. Now...

CHAIRPERSON: What was that?

MR PETER STEPHEN VOLMINK: A confinement in itself is a deviation from an open bidding process.

20 **CHAIRPERSON:** Yes, yes.

MR PETER STEPHEN VOLMINK: But a confidential confinement is something that could go straight to the GCE without any other person or body reviewing the confinement. Now a normal confinement Chair

CHAIRPERSON: H'm.

MR PETER STEPHEN VOLMINK: Would require multiple levels of

review within Transnet. So if you ...

CHAIRPERSON: So a normal confinement is subject to transparency?

MR PETER STEPHEN VOLMINK: Correct.

CHAIRPERSON: Is that right? But a confidential confinement seems not to have been subject to the same transparency, is that right?

MR PETER STEPHEN VOLMINK: That is – that is absolutely correct.

CHAIRPERSON: H'm.

MR PETER STEPHEN VOLMINK: And you then have...

CHAIRPERSON: And not subject to various checks and – checks by
10 different people to see if it is fine, it just goes straight.

MR PETER STEPHEN VOLMINK: The normal confinement. Yes. The normal confinement.

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: You have to go to the acquisition council.

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: Firstly it must come from the operating division itself.

CHAIRPERSON: Yes, yes.

20 **MR PETER STEPHEN VOLMINK**: Group or the corporate centre cannot decide we going to – we need a confinement.

CHAIRPERSON: H'm.

MR PETER STEPHEN VOLMINK: If it does not come from the end user function or the operating division.

CHAIRPERSON: H'm.

MR PETER STEPHEN VOLMINK: Even there it must pass the CPO.

CHAIRPERSON: H'm.

MR PETER STEPHEN VOLMINK: It must pass the ODC CEO. It must serve before the acquisition committee.

CHAIRPERSON: H'm.

MR PETER STEPHEN VOLMINK: Who must say that they are satisfied with it before it comes to group where it gets reviewed by the CPO and various other – the group chief supplier chain officer and various other bodies.

10 **CHAIRPERSON:** H'm.

MR PETER STEPHEN VOLMINK: And that is to ensure that the confinements are not abused.

CHAIRPERSON: And of course one way in which those various stages and various steps protect proper procurement process even with a confinement you know is that if one person makes a mistake and does not pick up something wrong it is likely that somebody else will pick it up? And also it means that if somebody corrupts one person that might not work because others who are not corrupted will pick things up. But if you have only one person making the decision if he or she makes the
20 mistakes that is it. If he or she is corrupted that is it. Is that right?

MR PETER STEPHEN VOLMINK: Chair that is exactly right. The – to put it in laymen's terms we wanted as many pairs of eyes on any confinement as we could get quite frankly.

CHAIRPERSON: H'm.

MR PETER STEPHEN VOLMINK: And – but if you call it a confidential

confinement

CHAIRPERSON: H'm.

MR PETER STEPHEN VOLMINK: Then it sails straight from the OD CEO straight to the GCE.

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: There is no review that takes place and I – the reason I mention this Chair is that I will tell you in the course of my evidence that certain of the McKinsey confinements were approved as confidential confinements. They did not go through the
10 normal confinement process that one would expect.

CHAIRPERSON: But this concept of confidential – of a confidential confinement was that first put in policies before it was implemented or did that just come from some delegations?

MR PETER STEPHEN VOLMINK: No it was...

CHAIRPERSON: Where did it come from?

MR PETER STEPHEN VOLMINK: It was contained in the – it was contained in the delegation of authority frame.

CHAIRPERSON: It was never part of any policy?

MR PETER STEPHEN VOLMINK: It was then – then had to be brought
20 into policy as well.

CHAIRPERSON: Oh.

MR PETER STEPHEN VOLMINK: But its origin is...

CHAIRPERSON: Was the delegation.

MR PETER STEPHEN VOLMINK: Is that it was in the delegation of authority frames.

CHAIRPERSON: So the delegation was talking about something that was unknown to the policies of Transnet at the time the delegation was made?

MR PETER STEPHEN VOLMINK: At the time.

CHAIRPERSON: Ja.

MR PETER STEPHEN VOLMINK: And then it had to be incorporated.

CHAIRPERSON: And then expos facto

MR PETER STEPHEN VOLMINK: Ja.

CHAIRPERSON: It was put in the policies.

10 **MR PETER STEPHEN VOLMINK**: But the point I wanted to make is that under the 2019 delegation there is no

CHAIRPERSON: Such things.

MR PETER STEPHEN VOLMINK: Such thing as a confidential confinement.

CHAIRPERSON: Okay. Thank you.

ADV PHILLIP MOKOENA SC: Yes if you go – you allow me Mr Volmink you can pass through slide 11, 12 and 13 because those will be repeating almost the evidence that you have already canvassed with me this morning. We can move straight to slide number 14 on page 110.

20 **MR PETER STEPHEN VOLMINK**: Yes. Chair what this slide depicts is the procurement – the typical procurement cycle that gets followed within Transnet and I would imagine any other public entity as well. The – this is a slide that deals with how the – the PPM is structured and I make the point in my statement that the PPM follows these various stages in the procurement cycle. So perhaps we could just go

through it briefly.

ADV PHILLIP MOKOENA SC: Ja.

MR PETER STEPHEN VOLMINK: And if need be...

ADV PHILLIP MOKOENA SC: Later on we will deal with the deals.

MR PETER STEPHEN VOLMINK: We will deal with it in more detail.

ADV PHILLIP MOKOENA SC: Yes.

MR PETER STEPHEN VOLMINK: So it depicts Chair that there are really just three stages to the procurement process. The first is a planning stage which we call stage 1 on the slide. The second is the
10 actual procurement stage where we have got to go out and buy and the third is the implementation stage where the contract is now in place and the contract must be implemented.

CHAIRPERSON: The planning stage I am sorry would take place in the end user department?

MR PETER STEPHEN VOLMINK: Typically yes.

CHAIRPERSON: Yes okay.

MR PETER STEPHEN VOLMINK: Chair so in the planning stage we say that the process usually starts with what is called demand planning and management. This is where business requirements are articulated,
20 it must be assessed, it must be validated, it must be checked against budget and so on and so forth and once it passes that stage it reaches what is called the procurement strategy and procurement mechanism. I referred earlier to the CFST that group of people who have to sit and write the procurement strategy and write the – and write the RFP which of course is step 3 which is bid preparation essentially writing the RFP.

Then we reach the procurement stage where we have bids. This is where bids are issued and received and opened. We then get to the stage of bid evaluation, step 5. Shortlisting and negotiation, adjudication of bids, contract award and then we reach the implementation stage which is contract management, continuous improvement and lessons learned. So I mention that because the PPM is largely structured around the typical procurement cycle.

ADV PHILLIP MOKOENA SC: Yes. Now there is a slide that – which you are going to spend much more time on it is slide number 16. Chair

10 I see that it is two minutes before the proposed tea adjournment could we – is it appropriate to take it at this stage?

CHAIRPERSON: Yes let us take the tea adjournment and we will resume at eleven o'clock. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: You may proceed Mr Mokoena.

ADV PHILLIP MOKOENA SC: Yes. Mr Volmink just before the tea adjournment we were just about to deal with slide 16 on page 112

20 Chair.

MR PETER STEPHEN VOLMINK: Correct.

ADV PHILLIP MOKOENA SC: You may proceed to take us through the slide.

MR PETER STEPHEN VOLMINK: Chair this slide deals with the common problems that are encountered in the three stages of the

procurement process that I referred to earlier been the planning stage, the procurement stage and the implementation stage and I would just like to take you through some of the key issues that are experienced at each one of these stages. Chair under the planning phase the problems that are often encountered is that there are inadequate needs assessment. So business would say our need is X and a tender gets drafted on the basis that the need is X and the tender gets awarded on the basis that the need is X but shortly after the award of the tender the need becomes Y and the need increases. So either that is

10 deliberate or it is as a result of just bad planning and inadequate needs assessment of course is linked to the next point I mentioned which is that specifications are poorly developed or biased and the consequence of that is often that tenderers do not know precisely what is required of them and the whole process gets infected with vagueness and ambiguity. Chair there is also the difficulty of – of under budgeting. So the expectation would be that a commodity would cost so much and then as the contract gets implemented when the full scope is then realised this has a knock on effect in terms of the value of what this would cost. Chair I mentioned that there is also deviation from the

20 open bidding process. Now remember we are dealing with a planning stage. At this stage of the process procurement should as a default say we are going open tender. That is the default position. One would expect that in 95 percent plus of cases we would go the open tender route but we have seen in the past how at the planning stage already there is a motivation for a confinement. Even if all the grounds for

confinement for grounds are not met.

CHAIRPERSON: But is part of what you are saying about the planning stage or the people involved at the planning stage that it is – it is not one of the things they should be dealing with whether or not the services of goods must be procured by way of a confinement or open tender? In other words are you saying when they mention that they are encroaching on something that does not fall within their responsibility or are you not saying that?

MR PETER STEPHEN VOLMINK: No. Chair what I am saying is that
10 that group I referred to earlier – the Cross Functional Sourcing Team ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: When they sit down and write the strategy and all the specifications for the tender...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: One of the questions they must ask themselves at that stage ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: Should we go open tender ...

CHAIRPERSON: Hm.

20 **MR PETER STEPHEN VOLMINK:** Or is this something that should be confined to one or a limited number of tenderers...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: And I am saying that very often - perhaps less so now than before – but there used to be a practice of saying well deviate and go the confinement route ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: Even if there is no justification of valid grounds for the confinement.

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: So it does happen at that CFST stage already ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: When the procurement strategy gets (intervenes).

10 **CHAIRPERSON:** But does that stage fall under planning? That is what I am ...

MR PETER STEPHEN VOLMINK: Yes Chair.

CHAIRPERSON: In other words you have no problem with the planning stage including consideration whether it should be open tender or confinement? You have ...

MR PETER STEPHEN VOLMINK: I have no problem with that.

CHAIRPERSON: You do have?

MR PETER STEPHEN VOLMINK: No, no, no.

CHAIRPERSON: Oh you do not.

20 **MR PETER STEPHEN VOLMINK:** I am saying I do not have a problem.

CHAIRPERSON: Yes. Oh you just have a concern where a recommendation or motivation is made that there should be a confinement even where there are no proper grounds for a confinement. That is where your concern is?

MR PETER STEPHEN VOLMINK: That is my concern Chair.

CHAIRPERSON: Okay, alright.

MR PETER STEPHEN VOLMINK: Chair I also mention that it is at this stage in the process where we have seen an inappropriate use of emergency procedures. So we do make allowance for emergencies to – the emergency route to be used. Typically it arises when there is an unforeseen crisis that must be responded to. Normally an immediate threat to life or to property or serious business interruption or a threat to the environment which there is no time to follow a normal tender process. That is allowed for but we find that what gets regarded as an
10 emergency does not always meet those stringent requirements and an emergency is not an emergency just because business really needs this thing urgently or because an Executive has called it an emergency. It must meet that narrow strict definition of what an emergency is.

ADV PHILLIP MOKOENA SC: And it cannot be an emergency if it is before – if it is as a result of poor planning?

MR PETER STEPHEN VOLMINK: If it is result of?

ADV PHILLIP MOKOENA SC: Of poor planning.

MR PETER STEPHEN VOLMINK: Of poor planning – no absolutely not. It must be completely unforeseen and no as a result of poor planning.

20 **CHAIRPERSON:** Well is that – is that accurate? If there was poor planning and it is genuine poor planning and at a certain stage it is realised that if you went – if the company went the open tender there will be time and yet the company needs this thing within – for example – a week but you look at all the documentation and you say but this thing should have been foreseen three months ago that if A, B, C, D

was not done this is where it – where it would come to. Now it is poor planning but you do not suspect criminality, corruption and so on. You just say you have some incompetent Manager somewhere along the line or a few Managers who are incompetent.

MR PETER STEPHEN VOLMINK: He did not do his job.

CHAIRPERSON: *Ja*, but the company does need these goods within a week. You cannot say – can you – because of poor planning the company should rather not have these goods within a week?

MR PETER STEPHEN VOLMINK: Chair I follow – I follow what you are
10 saying. When I look at the National Treasury Instruction on emergencies I think there is a specific provision there that the emergency can be triggered if it is an unexpected event and I am pretty sure they say specifically that it should not be as a result of poor planning. So Treasury seems to say if your - if you have a self-created emergency then you cannot rely on your poor planning as a reason not to follow tender processes and I think we are somewhat constrained - I am appreciative of – of the point that you are making because business may well need this commodity despite the poor planning.

CHAIRPERSON: Yes. You see there would be – well I do not know
20 how wide the ambit would be of self-created emergency – you know – but one form of self-created emergency is somebody who has got some other agenda – you know - and basically manipulates – you know – the processes to make sure that this is not dealt with by so and so before that time because if it is dealt with that – and there is still time – that person will say it must go to open tender and I do not want it to go to

open tender. So he must or she must see it when there is no time – you know – that is one situation but even with that situation there it is an individual. It might be an individual who puts the company in that situation and – and maybe those goods are very critical and if the company were not to secure those goods within a week there would be dire consequences for the company financially. So – so – but I am sure that the – you know – all of those things would be taken into account in terms of what would be the consequences if we insist on open tender when there is no time really left and what would be the consequences if

10 we – we deviate even though some individual maybe responsible for this situation. Obviously such an individual needs to be dealt with ...

MR PETER STEPHEN VOLMINK: *Ja.*

CHAIRPERSON: In whatever way but you also do not want the company as a whole to actually suffer because of that individual.

MR PETER STEPHEN VOLMINK: Chair practically if I were to be confronted with a situation like that my advice would be as follows. Firstly we cannot ignore the National Treasury Prescript that says if it as – if it is as a result of bad planning do not call it an emergency and do not trigger your own emergency processes but having said that to

20 use your example this commodity is needed desperately and if we do not have it there will be far reaching ramifications for the organisation. I would then approach National Treasury and say I need some sort of deviation or I need some accommodation of this scenario and where we put forward a proper case and it is well motivated Treasury is likely to be responsive to that. I do not think Treasury would allow the company

to implode just because of a – of their prescripts. I think that they would accommodate the situation such as that.

CHAIRPERSON: (Indistinct).

ADV PHILLIP MOKOENA SC: Chair the mic.

CHAIRPERSON: I am sorry. Would deviation – would deviation be all encompassing in the sense that confinement would fall under deviation, emergency would fall under deviation or in the sense that in an emergency situation you are saying we are allowed not to use open tender and in a confinement situation you say we are not obliged to use
10 open tender and then there may be other instances of deviation. In other words is deviation like an umbrella under which different situations fall or does emergency and confinement ...

MR PETER STEPHEN VOLMINK: I understand.

CHAIRPERSON: Do they constitute their own separate exceptions to be to the open tender requirements?

MR PETER STEPHEN VOLMINK: Thank you for that Chair. There is an instruction note 3/2015/2016 issued by Treasury where they say you as an organ of State you can deviate without approaching us for prior permission only in two instances. The first instance is when one is
20 dealing with what is called a sole source supply. There is no one else who can provide this commodity except that individual or that company. That is the first instance where I do not need to go to Treasury. Treasury gives Transnet the authority to deviate from an open bidding process provided it can show empirically that there is no one else who can provide this particular service. The second scenario is where we

are dealing with a genuine emergency i.e. as I have explained before there is an immediate threat to life or the environment or to property – did not arise as a result of bad planning and so on and so forth. Then if it is a true emergency I do not need to go to Treasury. I am dealing with a crisis and Treasury would require me to take whatever steps I require to deal with that crisis that I am confronted with. All other deviations maybe it is an “emergency” but it does not quite fit that scenario which I have mentioned or it is confinement not based on sole supplier but I prefer this entity’s methodology to another entity. For all
 10 other deviations Treasury says come to us for prior approval before you can deviate.

CHAIRPERSON: Okay. So deviation would be like wide but with certain specifics accommodated but still leaving enough room for a situation that nobody has thought about to be dealt with as well?

MR PETER STEPHEN VOLMINK: Exactly ...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: And as I say if we put forward a proper case Treasury is likely to grant deviation ...

CHAIRPERSON: Hm.

20 **MR PETER STEPHEN VOLMINK:** From – from the open bidding process.

CHAIRPERSON: Maybe you might help me with one of the things that I have - always have difficulty understanding which you have mentioned which comes from Treasury. Namely that if there is only one person who – to your knowledge – provides that or can provide a particular

service or certain goods then you do not have to go open tender. Now I can understand that where the ground for justification is urgency or is an emergency but I do not understand it when there is nothing about urgency but you say it is one because what harm would it do to anybody to put it to open tender because if they are the only ones - they are the only ones who will put in a bid but just in case you are wrong.

MR PETER STEPHEN VOLMINK: Yes.

CHAIRPERSON: There may be somebody who says no I actually can –
10 can also provide this. I have never understood why that should be a ground not to go to open tender. Do I miss something?

MR PETER STEPHEN VOLMINK: Yes. So ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: Chair I think the – the ground for deviation ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: Based on sole supplier is that there is only one supplier who is uniquely positioned to meet whatever their specific need is of the organ of State. Let me give an example.

20 **CHAIRPERSON:** No, no an example I will understand. What I do not understand is why must you – why must reliance be on your knowledge when you could be mistaken that there is somebody else out there because it is only if you put it out to the public – to the market – that you can be sure. You see if you put it out to the market ...

MR PETER STEPHEN VOLMINK: Ja.

CHAIRPERSON: A request for proposals goes all over and there is only one who – who puts in a bid because there is no other person or business then you are sure and were not relying on your own knowledge. You are sure that we have to give it to one because that is the only one who responded but if we rely on your knowledge ...

MR PETER STEPHEN VOLMINK: *Ja.*

CHAIRPERSON: You say as far as I know there is only one. What if you are wrong?

MR PETER STEPHEN VOLMINK: *Ja.*

10 **CHAIRPERSON:** And then there is somebody else and if you had put the request for proposals out to the public somebody else could have come up. That is my concern because one if you – if you are mistaken there may be prejudice to the company because then it is subjected to one – you know – supplier when actually there could be another one maybe who might have provided a better service or better goods or I mean maybe a better price but if you say well there is no emergency we have three months let us put the request for proposal out to the public. Within 30 days they must come back and if there is only one that is fine. We are where we would have been anyway if we had not put it out
20 because that is the one we knew but just in case we are wrong somebody else will come up.

MR PETER STEPHEN VOLMINK: No I - I appreciate those – those comments and Chair we have seen a misapplication of this deviation ...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: Based on sole source ...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: When in fact there – we have picked up that there were other suppliers. So it is – it is a rule which has been issued by Treasury but it is a wide open to – to abuse. The example I was going to use which I think would illustrate that it can actually be used correctly is where we have acquired a piece of machinery – say – from an OEM. An Original Equipment Manufacturer and no one else makes the spare parts for that machine except the OEM who built the machine. So – and perhaps the OEM also comes
10 with certain warranties and says to us if you deviate and get any other spare parts and put it into this machine you will forfeit your warranties. So that would be a typical example of where I say there is only one entity who can provide me with the spare parts for the machine they built and that is that entity and they are uniquely positioned to meet the needs of the organ of State but the way it ought to be applied is it should be applied very sparingly and only when there is absolute clarity and certainty not based on a quick desktop analysis but on thorough market research that there is really no one else who can provide this particular entity – that particular product.

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

ADV PHILLIP MOKOENA SC: Mr Volmink just to conclude on this stage of planning - should we understand your evidence that you are raising these concerns of the concept such as emergency deviation which were used from time to time flow from your experience that they were abused on a number of occasions?

MR PETER STEPHEN VOLMINK: Chair that is why I am mentioning these things. State capture I think happens through a process that – that is designed to override controls and when we talk about deviation from the opening bidding process - I will talk about a number of others in a short while – it just helps to facilitate capture. It enables those who have all sorts of nefarious motivates to do what they – what they wish to do and it is for that reason that I thought that I should highlight some of these ...

ADV PHILLIP MOKOENA SC: Yes.

10 **MR PETER STEPHEN VOLMINK:** Difficulties here. Perhaps Chair if I can move onto the ...

ADV PHILLIP MOKOENA SC: Yes.

MR PETER STEPHEN VOLMINK: Procurement leg – I have already mentioned the problem being unclear specifications and evaluation criteria. I do not think I am going to (intervenes).

ADV PHILLIP MOKOENA SC: You can move to the second one.

MR PETER STEPHEN VOLMINK: The second one deals with short time for bidders to respond. The requirements are that bidders should be given at least 21 days in a normal tender to respond to the tender but
20 often we find that bidders are given a very short time to respond and either that means that they cannot give a proper response and they may fail certain dates as a result of having given a rushed bid submission or they do not submit because they say look I cannot make your – your stringent timelines. So I think that is one of the difficulties which we have experienced.

CHAIRPERSON: May I ask whether in relation to that particular item of possible abuses whether there were also such abuses in regard to some of the tenders or contracts that we will be dealing with in – in regard to Transnet. I raise that simply because in regard to Bosasa I heard evidence where for example - according to one of the witnesses – a short time was given to bidders because there was collusion between the company that was to be given the bid and a short time was designed to make sure that it was unlikely that anybody would be able to put in a bid other than this company which had long known that there
10 was to be this ...

MR PETER STEPHEN VOLMINK: Yes.

CHAIRPERSON: Request for proposals. Would there have been such situations a Transnet or this is just generally speaking what you have put here?

MR PETER STEPHEN VOLMINK: Chair we have come across ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: Practical instances ...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: Of this in – in actual tenders.

20 **CHAIRPERSON:** Okay.

MR PETER STEPHEN VOLMINK: That specific one does not feature in the five transactions.

CHAIRPERSON: Yes, okay but ...

MR PETER STEPHEN VOLMINK: Which I will be addressing ...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: But other ...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: Of the problems which I will mention

...

CHAIRPERSON: Okay.

MR PETER STEPHEN VOLMINK: Most certainly do feature ...

CHAIRPERSON: Okay.

MR PETER STEPHEN VOLMINK: In those transactions.

CHAIRPERSON: Thank you.

10 **MR PETER STEPHEN VOLMINK:** I - I speak about changing criteria during bid evaluation and bid adjudication where a tenderer bids on 10 criteria – say – and when he is evaluated or at the adjudication stage other extraneous factors which ought to have played on role in the decision making then features quite prominently and I call it evaluation by ambush. It is like you are ambushing a bidder with criteria that he had no idea he was going to be measured against.

CHAIRPERSON: And it may give the impression also to somebody looking at this that at the beginning certain – a certain set of criteria was required and then later on when different bids have been put in it
20 may – it looks like the particular bidder is not going to be able to get this because somebody else has put in a better bid and therefore you now change the criteria to suit the bidder that you want ...

MR PETER STEPHEN VOLMINK: They preferred.

CHAIRPERSON: To ultimately get the – the tender.

MR PETER STEPHEN VOLMINK: That is exactly – that is the ...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: The danger. I mention also in consistent application of disqualification. Bidders A, B and C all three of them fail to meet a certain prequalification criteria yet bidder A is allowed through and bidders B and C are disqualified on the very same grounds and even very recently Chair I have seen this in a – a huge tender that had gone plain sailing through all the reviewing structures where a bidder was allowed through who should have been disqualified right at the get go. Fortunately it has been picked up and that matter
10 will be addressed and reversed in due course but this is a constant challenge. I will just mention a few others. If I can maybe just go down to where it says: “Recommendation of the Evaluation Team Overruled” where an evaluation team made up of experts in the field - very often – who have considered the bid scored the bidder appropriately, made a recommendation as to who the selected or successful bidder should be and it then serves before one or other person or body with delegation to do the tender award and it is at that stage that the person says no I disagree. I do not like who you have – I do not support your reasons or whatever the case maybe and we have
20 put in certain rules as to how that is to be dealt with. We make it clear that the person with adjudicatory powers has no authority to override the – the recommendation that comes from Evaluation Team. Where there is a disagreement it must be escalated further up to either the Chief Executive or Board to resolve the matter.

CHAIRPERSON: Well that is quite important because where the one

body is mean to – where its authority or powers are limited to making a recommendation and another body given the authority or power to make the decision on the one hand you do not want to give recommendations the status of a decision *de facto*. You want recommendations to remain what they are namely recommendations because if the intention is that the recommendation – those who recommend should make the decision then you should give them the power to decide.

MR PETER STEPHEN VOLMINK: *Ja.*

CHAIRPERSON: You know – so if the – if the prescripts say they must
10 make a recommendation then that is what they must make.

MR PETER STEPHEN VOLMINK: Huh-uh.

CHAIRPERSON: If the prescripts say somebody else must make a decision that person must make that decision and that person mustn't necessarily have a situation where what he or she gets is supposed to be a decision when it's recommendations and he or she – it mustn't be like he or she is supposed to rubber stamp.

MR PETER STEPHEN VOLMINK: Sure, sure.

CHAIRPERSON: You want each one to do their job the way they should do it, but at the same time you don't want the person who makes the
20 decision to treat the recommendations as of no value, you want them to give, apply their mind and give proper weight to the recommendations but at the same time be able to say I don't agree where they genuinely don't agree, but then maybe what you say you have recommended namely that they should not overrule but then that you should bring in somebody else, you should escalate to somebody else might be a good

way to bring a balance between the two.

MR PETER STEPHEN VOLMINK: Exactly, so the rationale is this Chair, that it is the SFET as I said made up of the body of experts whose going to look at the matter, point taken that they're not the final decision makers, they are the recommenders.

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: That serves before the decision makers.

CHAIRPERSON: Yes.

10 **MR PETER STEPHEN VOLMINK:** But where the decision maker, being the Adjudication Committee has a different view to what is being placed before them, we have said that the default position should be to refer the matter back for proper – or for re-consideration.

CHAIRPERSON: Yes in the light of the grounds for reservations by the deciding...(intervention).

MR PETER STEPHEN VOLMINK: By the recommending body rather than just substituting its own decision for that of the primary...(intervention).

CHAIRPERSON: That might create a good balance because it gives
20 the recommending body an opportunity to look at the grounds of the reservations of the deciding body just in case they missed something.

MR PETER STEPHEN VOLMINK: Exactly.

CHAIRPERSON: But once they've looked at it, they might say, you're actually right we overlooked this even if they are experts or they might say, no actually we did consider this, it's not good enough, they stick to

their recommendation. Then in that event it's more important to really look at everything properly but that might be a good check and balance.

MR PETER STEPHEN VOLMINK: Exactly and if that stand-off continues between the CFED and Adjudication body then it gets escalated to a higher body.

CHAIRPERSON: Yes, yes.

MR PETER STEPHEN VOLMINK: Who makes a final decision.

CHAIRPERSON: Ja thank you.

ADV PHILLIP MOKOENA SC: But you also address instances, Mr
10 Volmink not only where you are dealing with two bodies that might be having expertise, there are instances when you're dealing with specific transactions whereby you might have that evaluation team with experts recommendation – its recommendation being overruled by one person who has been given power to do that.

MR PETER STEPHEN VOLMINK: Correct ja and that takes me to the next point Chair and that is that we – and maybe just a few points down actually, we talk about – one of the difficulties is the opportunistic use of risk factors as a reason to overlook the top ranked bidder. So a recommendation would be made, the bidder meets all the criteria, it
20 now serves before the Board or the Adjudication Committee, the ADC or whichever adjudicatory body this and it is at that point that this body raises all kinds of risk factors and says, no but that recommended company poses this risk and that risk, very often risks that were taken into account during the functionality stage, the evaluation stage but now gets revisited as a reason to overlook the tenderer and I mention

that because I will come back to this when I deal with the award of the Data Services tender to T-System when Gitjima was in fact the recommended body but Gitjima was overlooked based on certain identified risks which were adequately dealt with and also in the award to T-Systems, when Neotel was the recommended body and Neotel was overlooked based on certain alleged risks that were identified, so that is a key card.

ADV PHILLIP MOKOENA SC: Yes any other thing that you wish to highlight under the procurement stage?

10 **MR PETER STEPHEN VOLMINK:** Perhaps not – no I don't under the procurement leg, perhaps just under the implementation leg, I'll be very brief on that...(intervention).

ADV PHILLIP MOKOENA SC: But can I take you to the last bullet point under procurement for you to comment and to prefer a far more much clarity on that issue where you say that, "award not made by delegated official", what instances do you have in mind?

MR PETER STEPHEN VOLMINK: Chair what we have picked up is that we have decisions made by officials who act outside of their delegated authority, I've mentioned earlier that we have a delegation of
20 authority framework that says who has authority to approach the market, who has authority to do tender adjudication, who has authority to contract with suppliers and we have instances where officials act outside of that delegation, either in the sense that they act – they award tenders for much higher value than what they are entitled to or they do not wait for their turn in the process. You can't trigger your

delegation until an earlier body has done their job and made their decision that gives you the necessary standing or you are then empowered to trigger your delegation and I mentioned earlier examples of where contracts were already awarded and yet the tender process was still under way.

ADV PHILLIP MOKOENA SC: Exactly, now if you look also at the fifth bullet point from the bottom where you're talking about the multiple repetitive awards, the same supplier, I think that's also relevant, can you take the Chair through that one and explain it, why was it a
10 concern?

MR PETER STEPHEN VOLMINK: Chair I think it is a concern, not in the sense that the procurement prescripts don't allow for more than one award. So if we all run a race and it is a fair race but one of us wins the race more than once, that doesn't render the process unfair but where we have multiple, repetitive awards to the same supplier and it is not clear why that supplier specifically was chosen when there were other equally competent alternatives then it becomes a red flag. I'm not saying that, that in itself renders the process void or invalid but where we do have these multiple awards it does raise a red flag to us.

20 **CHAIRPERSON:** And they should be looked into to check whether everything was done fairly and transparently.

MR PETER STEPHEN VOLMINK: And we will return to this, I think, with McKinsey.

ADV PHILLIP MOKOENA SC: And when this multiple awards are made to the same supplier under confinement what do you say?

MR PETER STEPHEN VOLMINK: Well then it becomes even more problematic, and that is exactly the McKinsey scenario where you have, I think it was eight confinements totalling either 1.6 or 1.9 billion rand in value awarded to one entity. Now if we are dealing with this phenomenon of multiple awards and it is in the context of a confinement, well that takes it to a whole different level of seriousness.

ADV PHILLIP MOKOENA SC: Yes...(intervention).

CHAIRPERSON: I'm sorry Mr Mokoena, well you can deal with this later if you plan to deal with it later but I'm keen to try and understand
10 the justification that was provided by the Board in giving this delegated authority providing for confinement. So if they are going to be dealt with later on I'm happy to wait.

ADV PHILLIP MOKOENA SC: Mr Chair, maybe you should wait.

CHAIRPERSON: I will allow you to say I must wait Mr Mokoena.

ADV PHILLIP MOKOENA SC: It is a very rare moment that I can do it, to tell the Chair to wait.

CHAIRPERSON: You must just promise to cover it.

ADV PHILLIP MOKOENA SC: It will be covered Chair because it's quite important and it deals with specific awards of different suppliers.
20 Now I know that you want to move to the implementation block but before you go there, there are other things that I think that you are simply skipping that are very crucial to the evidence – to your testimony that you will be adducing before this Commission. Now if you go to the second bullet point from the bottom you talk about "pressure from above".

MR PETER STEPHEN VOLMINK: Yes, yes.

ADV PHILLIP MOKOENA SC: If you can explain and elaborate to the Chair what are you are attempting to convey by saying that.

MR PETER STEPHEN VOLMINK: Pressure from the above...(intervention).

CHAIRPERSON: And the above is in inverted commas.

ADV PHILLIP MOKOENA SC: It is in inverted commas yes.

MR PETER STEPHEN VOLMINK: Chair what this relates to is pressure that gets brought to bear on procurement officials from vary
10 senior people within the organisation, it could be at the level of the Board, it could be at the level of Exco or possibly the GCE or CFO etcetera and this often takes the form of saying to officials that there is no time for a long process that we have got to bring this process to an end and you've got to speed up the process etcetera and very often these junior officials are fearful. They don't have the seniority or the assurance – the self assurance to say to whoever, that this is not the way it is going to be done and this is in essence when we refer to about “pressure from above” where we have undue influence, really, brought to bear on officials in the course of their work.

20 **ADV PHILLIP MOKOENA SC:** Yes.

CHAIRPERSON: And that pressure from above could be genuine or not genuine I imagine, it could be genuine but mistaken or it could be not genuine and intended to serve illegal purposes.

MR PETER STEPHEN VOLMINK: Ja exactly so not all pressure is necessarily bad.

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: Although wearing the process hat I have strongly advised the Executives not to interfere simply because they think that the process is taking longer than they would prefer and evaluation of a tender often is a time consuming process and if it is to be done correctly time and effort and resources must be invested in that exercise. I'm not suggesting for a moment that we should allow tenders to take as long as they do before they get awarded, some of it is unacceptably long but we do have interference in the sense that

10 people want to get to the result quickly without any corrupt motive. I have less of a problem with that, I have more of a problem when there is a specific outcome in mind and there's being pressure being brought to bear on the recommending team and I will come to that in the context of the award to Neotel where the initial – the CFET made recommendations to say let us award to Neotel, T-Systems is not the one we want to award to and the Board constantly rejected that and eventually the recommendation changed and it came back as, let us then make this award to T-Systems. So I think that is a good example of pressure from above.

20 **ADV PHILLIP MOKOENA SC:** You can now move on to the implementation and just be brief on it.

MR PETER STEPHEN VOLMINK: I'll be brief Chair I'll mention – if there's any bullet points that I skip and counsel, please, if there's anything that you want me to deal with in more detail, please do so but I will cherry-pick perhaps...(intervention).

ADV PHILLIP MOKOENA SC: Yes.

MR PETER STEPHEN VOLMINK: A few of the points I wanted to mention. I think the first is just poor contract management where we are now in the contract stage – we are in the implementation stage, the contract is supposed to be properly managed but we find that penalty clauses, breach clauses are not enforced despite the fact that we have sub-standard service being provided and undertakings that are made that are not adhered to but because of poor contract management there is no energy put into enforcing these breach clauses. We also have
10 suppliers who made price very differently to the pricing that they gave us in the tender phase. So we get overcharged, overpriced – goods are overpriced and I think because of poor contract management, sometimes, our organs of State are seen as cash cows and we pay far more than we ought to, had there been a focused and diligent effort to manage contracts. The second pertains to abuse of variation procedures, I've mentioned this earlier where a contract gets awarded for X rand and before you know it this contract has been increased in value. Sometimes the amounts, when compared to the original amount are quite staggering and Chair even recently in the context of provision
20 of legal services we have seen how a contract awarded to a firm to provide X service grows in scope and in value which is a very troubling matter for me but that is one of the issues which I think is of great concern...(intervention).

CHAIRPERSON: But in those cases where the price changes or the scope increases, there would have had to be somebody within the

company who is the one who must agree to – or the expansion of the scope or the increase of the price because the service provider, whether it's a law firm or any other service provider would have no right to unilaterally increase the price or the scope isn't it?

MR PETER STEPHEN VOLMINK: That is correct, a contract – a process of contract variation is meant to follow – there's an ordered – an orderly process that is supposed to be followed. If you want to add on a certain value to a contract it must be approved before that amendment is made by the person with delegated authority for contract
10 amendment that I spoke – for contract award that I spoke about earlier. Then treasury says, if your variation exceeds 15% or 15million of the original contract value then you as Transnet can't make this decision by yourself, it must then be escalated to treasury for prior written approval before you can proceed and my concern is that in the instance that I have in mind, I haven't seen evidence of that.

CHAIRPERSON: Because I would imagine that absent an agreement from anybody from the company to the expansion of the scope or the increase of the price, the company would not be obliged to pay for the expanded part of the scope or to pay the price that falls outside the
20 agreed price.

MR PETER STEPHEN VOLMINK: Chair that is correct, I mean, there has to be a legal process for that contract amendment to be properly enforced. The situation that I had in mind is when payment has to happen and let's say the supplier charged us R10.00 a unit in his RFP document he sites R10.00 a unit but when the invoice comes it is

perhaps at say R12.00 a unit and because of our inadequate contract management processes we don't always pick up that price variation.

CHAIRPERSON: Yes so that could be a situation where there are just genuine weaknesses within your system or you could be dealing with a situation where somebody within the system has corrupt motives.

MR PETER STEPHEN VOLMINK: Again, both of those scenarios apply, it could just be poor but innocent practices.

CHAIRPERSON: Yes, yes.

MR PETER STEPHEN VOLMINK: Or mistakes but very often there's
10 a darker motive that leads to this. Chair and maybe the last item I'll mention, the second last perhaps is, unexplained sessions to third parties. There's nothing inherently wrong with a session but when a tender gets awarded to A) you expect A) to be providing this service, yet often we see that A) cedes that contract or part of the contract to B), now it has to be with Transnet's prior knowledge and approval but company B) is not the company that went through the rigorous tender process and I think there needs to be a higher level of vigilance before agreeing to a session that goes from the winning tenderer to some other entity that hasn't gone through that evaluation process.

20 **CHAIRPERSON**: I wonder – I wonder whether a session such as the one you're talking about is compatible with the whole nature of a tender, is it compatible with the whole nature and purpose of a tender because what's the point of selecting from let say 10 bidders – a particular bidder if that bidder can subsequently ensure that, that job is done by somebody – somebody else and not by it and somebody was

not even among the 10 who had put in bids.

MR PETER STEPHEN VOLMINK: Yes and it's a very interesting question that you raise and I must say I'm not aware off-hand of any case law that has specifically addressed whether a session is compatible with a fair tendering process. I know that when these RFP's are issued to the market it comes with standard terms and conditions and usually a draft contract which contains a clause which says that with Transnet's prior approval that the tenderer could cede or that session would be permitted subject to Transnet's prior approval which
10 is a fairly common practice I suppose in the commercial world but I think the question you are raising is if I followed a tender process to select company A) and company A) has met all the requirements but now company A) cedes that contract to company B) who I have not evaluated, is that still a fair tender process, I think what would be required is that if we were to agree to this cedent stepping in that there would have to be a robust and thorough evaluation of all the criteria that applied when we awarded to company A). So there can't just be a quick, very superficial assessment of the capacity of the cedent.

CHAIRPERSON: And it certainly could open an avenue for abuse,
20 certainly in certain circumstances, maybe not in all but certainly in certain circumstances could open an avenue for abuse that could undermine the whole tender process.

MR PETER STEPHEN VOLMINK: And also collusion Chair, because company A) may well have a back-to-back agreement with company B) to say, if I win the tender I will just open the door for you to come in.

CHAIRPERSON: Yes, yes.

MR PETER STEPHEN VOLMINK: I thing session, while it is not an uncommon practice, I think if there isn't a sufficient level of vigilance we can open ourselves up to very abusive practices in this regard.

ADV PHILLIP MOKOENA SC: Yes, Mr Volmink I'm now going to short-circuit your evidence, there are certain slides I will take the liberty of not taking you through because I feel that the issues might have already been thoroughly interrogated by itself, can I take you through slide number 18 and you can give us a summary of what you are
10 conveying in that slide.

MR PETER STEPHEN VOLMINK: Chair what I'm conveying in this slide is the evaluation methodology that was followed in Transnet before the PPPFA applied to Transnet. I mentioned that on the 7th of December 2011 already the Minister of Finance indicated that the Preferential Procurement Framework Act and its regulations would apply to Transnet but exempted Transnet for a period of 1 year until 7 December 2012. So what the – what this slide depicts is the methodology that was followed in Transnet around about 2012 and prior. Chair you will see that there are two methods, it's referred to as
20 method 1 and method 2. Method 1 was the default method and it follows the classic 2 phase methodology of the public sector. Phase 1 being that you must clear certain thresholds and phase 2 being you'll now be evaluated on price and preference, that's the typical 2 stage process but because Transnet was not bound by PPPFA there were certain variances that were introduced on that classic 2 stage

methodology. So if you look at method 1 Chair, there is a first threshold which is marked in red and the word – and the letters LC appear next to it. LC simply stands for local content and where local content was required, for example with certain designated sectors, treasury gave a long list of designated sectors where a bidder had to commit at a certain percentage of its bid price would be spent in RSA and only those bidders who met that minimum would then pass to the second gate. The second threshold Chair, was made up of a combination of what is referred to as SD which stands for supplier

10 development and the BEE score card. So under supplier development a bidder would be asked to indicate how many – let's say how many new jobs they would create as a result of the award of the tender. How many jobs would be preserved, how many artisans would be trained, how many local suppliers would be used. There was a whole bucket of indicators which fell under the heading supplier development and then points were given for that as well as the BEE score cards. So if you got – if you were a level 1 you would get your full points and that would form a combined number of points. You would be told for example as a bidder you need to meet 40% based on a combination of SDBEE and

20 only those bidders who then passed would get to the – to being assessed on functionality or quality. This is the typical technical requirements. When bidders passed all those gates they would then get to the second phase of the tender where price was scored. As well as SD and preference would be scored at phase 2. In phase 1 it is simply a disqualifier. You need to meet a minimum threshold. In phase

2 the idea was to differentiate between bidders who give a superior SD offering and those who just met, met the basics. That was the underlying rationale. And under preference points would be given based on the scorecard as well as terms which I think are probably unique Transnet terms at that point. We said in addition to the scorecard. Points would be given for what was called FRC current and FRC simply means Further Recognition Criteria. The idea was to say we see your BEE scorecard but your BEE scorecard could have been issued up until a year ago. Because a BEE scorecard is valid for a
10 year. So if I evaluate the scorecard today it may depict your situation a year ago or up to a year ago. But the idea with FRC current was to say tell us what is your current black ownership or your current management control or employment equity. And to the extent that you exceeded certain minimum targets that were set you could earn a few extra let us just call it bonus points for lack of a better word. That was referred to as Further Recognition Criteria current and then also there was something called FRC future Further Recognition Criteria future. This would apply where a bidder may have a very low BEE score at the moment but he says over the course of this contract period in future by
20 the end of this contract I give an undertaking which you can incorporate into the contract with me I give an undertaking to improve my black ownership, black management to certain levels. That was I think the concept around method 1. Method 2 I will not really deal with that. That is really where quality was brought into operation again in phase 2. That was very seldom if ever applied.

ADV PHILLIP MOKOENA SC: Yes.

MR PETER STEPHEN VOLMINK: But that is basically the methodology which applied.

ADV PHILLIP MOKOENA SC: And slide 21.

CHAIRPERSON: I am sorry before that..

MR PETER STEPHEN VOLMINK: You said 21.

CHAIRPERSON: I am sorry before that in slide 18 you do have reference to quality both under method 1 and method 2.

MR PETER STEPHEN VOLMINK: Yes. So, so I think with method 1 we
10 test quality once. It is by way of a threshold.

CHAIRPERSON: Oh the threshold oh okay.

MR PETER STEPHEN VOLMINK: Yes if you make that..

CHAIRPERSON: Everything under method 1 is for threshold, basic requirements?

MR PETER STEPHEN VOLMINK: Correct. So quality would be by way of one threshold. You must make that threshold being 70%.

CHAIRPERSON: Oh okay.

MR PETER STEPHEN VOLMINK: Or whatever.

CHAIRPERSON: Okay.

20 **MR PETER STEPHEN VOLMINK:** With method 2

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: There were certain instances where we said we want to not to just check who meets the basic

CHAIRPERSON: Ja you want to see how much above the basic

MR PETER STEPHEN VOLMINK: The basic exactly

CHAIRPERSON: You go.

MR PETER STEPHEN VOLMINK: Exactly and certain points

CHAIRPERSON: Ja.

MR PETER STEPHEN VOLMINK: Were then allocated under phase 2.

CHAIRPERSON: Okay. Okay.

MR PETER STEPHEN VOLMINK: Now because we were excepted from PPPFA I think the courts at one stage had said you cannot revisit this

CHAIRPERSON: Ja.

MR PETER STEPHEN VOLMINK: Quality again but we were not
10 subject to PPPFA so there was a degree of flexibility.

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: Around that.

CHAIRPERSON: Okay thank you.

ADV PHILLIP MOKOENA SC: We can now go to slide 21.

MR PETER STEPHEN VOLMINK: Did you say 21?

ADV PHILLIP MOKOENA SC: Yes 21.

MR PETER STEPHEN VOLMINK: 21 yes.

ADV PHILLIP MOKOENA SC: On page 117.

MR PETER STEPHEN VOLMINK: Chair this is ...

20 **CHAIRPERSON**: I am sorry on what page?

ADV PHILLIP MOKOENA SC: 117, page 117.

CHAIRPERSON: Okay thank you.

ADV PHILLIP MOKOENA SC: Now you are dealing with the situation around 2013/2015.

MR PETER STEPHEN VOLMINK: 2013/2015 Chair.

ADV PHILLIP MOKOENA SC: Yes.

MR PETER STEPHEN VOLMINK: This is now when PPPFA applied to us so we cannot ignore PPPFA. And what this simply depicts is a series of steps which is now more aligned to PPPFA. What we show is that bidders first had to move through a prequalification or a responsiveness test. So you had to provide all your relevant documents, meet minimum prequalification criteria before you could enter now phase 1 being the threshold phase. And phase 1 would consist again of local content and functionality or technical criteria.

10 We were – we engaged senior counsel on whether supplier development could also be incorporated as a threshold at that phase 1 and based on counsel's interpretation of the legislation they felt that it would not be incompatible to allow for that threshold to be applied in phase 1 so SD was brought in in phase 1. And then in phase 2 Chair it was more classic PPPFA where we awarded simply on price and BEE. No FRC or anything like that was then taken into account because that was not compatible with the legislation. We would then invite bidders to provide us with what is called bafo's or best and final offers. And then a final evaluation based on either 80/20 or 90/10 and that is when
20 the – the award would be made.

ADV PHILLIP MOKOENA SC: Yes. May I now refer you to your slide 24 when you talking about the Transnet current remedial action plans?

MR PETER STEPHEN VOLMINK: Yes. Chair I think what I simply mention on this slide is that there have been various remedial...

CHAIRPERSON: And that is the one on page 120?

ADV PHILLIP MOKOENA SC: It is 120 Chair.

MR PETER STEPHEN VOLMINK: 120.

ADV PHILLIP MOKOENA SC: 120.

CHAIRPERSON: Ja.

MR PETER STEPHEN VOLMINK: The – there have been various remedial steps that have been taken by the current board and management to address the issues within Transnet. I will mention only a few of them. In the fourth bullet point I talk about the fact that this sub-committee of the board, the acquisition and disposals committee
10 that was delegated to award tenders that that committee has been dissolved. In the next bullet point I mentioned the establishment of the finance and investment committee with a mandate to include oversight of processes for high value tenders. The next bullet point talks about an integrated assurance plan where assurance needs to be provided by a number of role players within supply chain. Not just one particular role. So management must understand what is its assurance role? What can it assure when a tender passes say the CPO? Then the CPO says this tender we can issue this tender to the market, what is the assurance that must be provided? What is the role of legal risk and
20 compliance and how do they all work in this integrated way? That is what the integrated assurance plan talks about. I also mention that the delegations of authority have been revised to identify those weaknesses that have been exploited in the past as well and maybe the last bullet point the implementation of a lifestyle audit policy which has been applied recently. Chair the last slide – sorry Mr Mokoene I am not

sure if you are there.

ADV PHILLIP MOKOENA SC: The last slide the one where you are dealing with your recommendations. It is slide 26 Chair it is page 122.

MR PETER STEPHEN VOLMINK: Chair so on this slide I make a couple of recommendations because I have been observing this for a while. And the first recommendation that I make is that supply chain needs to be elevated to the level of the EXCO. At the moment supply chain is represented by the Chief Financial Officer at EXCO. And I think the Chief Financial Officer will do his best to articulate whatever
10 the concerns are of supply chain. But supply chain needs a voice at the highest level of the organisation which is the board well apart from – and I – which is the EXCO apart from the board of course. And it is at that level where I think we need to ensure that there is representation. The second bullet point Chair that I recommend is that the boards and the EXCO's must receive in-depth supply chain management training. We have seen that...

CHAIRPERSON: I am sorry Mr Volmink can we go back to your first recommendation.

MR PETER STEPHEN VOLMINK: Yes.

20 **CHAIRPERSON:** At a practical level how should that happen namely providing representation at – of SCM at EXCO level?

MR PETER STEPHEN VOLMINK: I think practically Chair there is a position that is referred to as the Group Supply Chain Officer. This is the CPO for lack who has broad oversight over the other CPO's and this is a position currently at the corporate level. And I am suggesting

that that individual who occupies that position should in fact be part of the EXCO team. Supply chain is not a back office function. If we get supply chain wrong it has far reaching ramifications for the organisation and I think it would appropriate for supply chain to be represented at the EXCO level.

CHAIRPERSON: Maybe there could be one of two possible – there could be two possible scenarios. Maybe one would be representation of SCM at EXCO level in the sense that one of the EXCO members must be an SCM person which may be what you are having in mind.

10 But another one may well be that there need not be that kind of representation at EXCO level but that whenever EXCO has to deal with SCM matters they should be in such a meeting somebody with SCM expertise. Are you – are you married to any particular one of that kind of voice at EXCO level SCM voice or not necessarily but you might prefer one or the other or either should be adequate.

MR PETER STEPHEN VOLMINK: H'm. I think that both – both models are acceptable. I am more inclined to the first model where there is a permanent presence of SCM at the EXCO level. When if a particular matter gets raised by Executive X the SCM person can alert the EXCO

20 to certain supply chain implications or ramifications rather than saying we will call in that person as and when there is an item on SCM's specifically to be discussed. Very often decisions that are made have supply chain ramifications. It may not be under the heading on the agenda that says supply chain but if there is a permanent presence on EXCO it is probably more likely that EXCO could be alerted to supply

chain ramifications or implications of its decisions.

CHAIRPERSON: Well one thought which comes to mind is that while a permanent SCM representation at EXCO might be good but one argument against it might be that there may be other streams, units within the entire company which also feel that they should be represented at EXCO level and – and the concern would arise how big will this EXCO end up being if it is going to do that? Whereas if you say even if we are not talking about permanent representation but in regard to certain matters that fall under these EXCO must bring in an
10 SCM person to – to be part of that discussion so that whatever decision is taken they have the benefit of that input. Then you do not have that other argument in that case.

MR PETER STEPHEN VOLMINK: I hear you Chair. Of course the difference with SCM

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: Is that it poses such a – a critical risk

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: To the company.

20 **CHAIRPERSON**: Yes.

MR PETER STEPHEN VOLMINK: Perhaps unlike all the other functions.

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: They could potentially want to be there as well.

CHAIRPERSON: Yes, yes. Ja it may well be that it is the right way to go.

MR PETER STEPHEN VOLMINK: Yes.

CHAIRPERSON: I am just putting possible arguments for reflection.

MR PETER STEPHEN VOLMINK: And I think that both ought to be considered.

CHAIRPERSON: Yes. Yes okay.

MR PETER STEPHEN VOLMINK: I was making the point of course that in the second bullet point that it is really at the level of board and
10 EXCO that we have seen the most spectacular breaches of governance processes happens there.

CHAIRPERSON: At Transnet?

MR PETER STEPHEN VOLMINK: Yes.

CHAIRPERSON: Yes. That is where the most breaches or the most serious breaches as far as you are aware were happening?

MR PETER STEPHEN VOLMINK: Correct.

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: And I am not saying that it does not happen at the official levels.

20 **CHAIRPERSON**: Yes, yes.

MR PETER STEPHEN VOLMINK: Certainly officials have made their fair share of contribution to

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: To this but the most spectacular examples have happened there.

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: And it is at that level

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: Where almost no input, no training, no awareness of supply chain.

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: And it is the multiplicity of rules governing supply chain.

CHAIRPERSON: Yes.

10 **MR PETER STEPHEN VOLMINK:** Is not – is not brought to the attention.

CHAIRPERSON: Okay.

MR PETER STEPHEN VOLMINK: I mention of course transparency. Now we have laws governing transparency but treasury has recently indicated in one of the instruction notes that they actually reserve the right to invite the public to a bid adjudication committee and it may well be something which should take on greater momentum as we – as we go forward. I make the point that the regulatory framework needs to be fixed Chair. I have indicated that we just need far greater coherence
20 and far greater clarity on this ocean of regulatory requirements which governs supply chain. We need a lot more – we need the whole process to be rationalised a lot more. I also mentioned this notion of addressing the bullying culture. I have spoken earlier about pressure from above. What I am really talking about is bullying where employees are bullied to comply with things that they know to be

wrong. And I have even suggested that it – that the legislature should perhaps consider that it should be a dismissible offence for a – for a senior executive or anyone else to bring undue pressure to bear on officials to do things which are contrary to the regulatory requirements.

CHAIRPERSON: But that must be a dismissible thing without any...

MR PETER STEPHEN VOLMINK: Probably without.

CHAIRPERSON: Legislature.

MR PETER STEPHEN VOLMINK: Ja.

CHAIRPERSON: Because I mean obviously if the undue pressure well I
10 do not know if it would be undue but if the pressure is based on legitimate considerations and there really is nothing nefarious about that.

MR PETER STEPHEN VOLMINK: Ja.

CHAIRPERSON: It may be taken as legitimate pressure on subordinates for example to not to delay certain things.

MR PETER STEPHEN VOLMINK: Ja.

CHAIRPERSON: Without saying they must not comply with procedural requirements. But once you have pressure that is being put on subordinates for illegitimate reasons, for nefarious reasons that must
20 be dismissible.

MR PETER STEPHEN VOLMINK: Ja. I fully agree so I mean even at the moment.

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: It would not assist someone charged with this sort of bullying.

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: To say no but there is no – there is no legislation.

CHAIRPERSON: Ja.

MR PETER STEPHEN VOLMINK: That covers it. What I am saying is to make it – to make it clearer and to send a clear message at the executive level even if it is in the form of a national treasury instruction or something that we can say this is the expectation of you. You will not bring your seniority to bear to get supply chain people to do things
10 which are contrary to the prescripts. I think it would help to focus the mind.

CHAIRPERSON: Ja. Well part of what is important is to make sure that at the top you have the right people. People who have integrity.

MR PETER STEPHEN VOLMINK: Ja.

CHAIRPERSON: Because if you have the right people at the top and somebody below tries to do something wrong a subordinate will know that if I report to the top what this one is doing to me, putting undue pressure they will deal with this properly. But if the subordinate knows that if I go to the top they are – they are not people of integrity then
20 the employee, the subordinate does not have the incentive to – to report this. So – but it may be that it is a combination of things that needs to be looked at.

MR PETER STEPHEN VOLMINK: Combination. Correct.

CHAIRPERSON: And no particular one is an answer to all problems.

MR PETER STEPHEN VOLMINK: Yes precisely. I maybe just mention

one more and that is there should perhaps be some independent body that is created to review procurement decisions particularly when there are complaints which comes from unsuccessful bidders. At the moment suppliers must run to – to court for review. We do have an internal ombud function where complaints are referred to external attorneys for review and consideration but if there is an official body which could serve as some sort of adjudicatory body with decision powers I think it would – it would give greater confidence to suppliers to bring their complaints forward.

10 **CHAIRPERSON**: Well that – that might be quite helpful because when these matters go to courts they take long to be resolved.

MR PETER STEPHEN VOLMINK: Yes.

CHAIRPERSON: Because the court system takes long and – and in the meantime you might have a community that is entitled or expects a certain service to be rendered and that service cannot be rendered for x number of years because there is still a dispute going through the courts. But of course – well I happen to know that the leadership of the judiciary, the heads of the superior courts, the high courts, the appeal courts and the constitutional court did take a decision a few years ago

20 to say to the effect that heads of court must be able to expedite certain matters and I think some of those matters are tender matters if I am not mistaken so that they should not have followed the long route and maybe lawyers do not use that or are not aware of that because the attempt is to try and make sure that you know these tender disputes do not take too long before they are resolved.

MR PETER STEPHEN VOLMINK: Correct.

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: And Chair I think that we would always want to ensure that there is access to the courts of course that an aggrieved bidder knows that it is his ultimate refuge but the internal processes can be – can be speeded up but if there is – before we even get to courts if there is an alternative mechanism in place a credible mechanism hopefully even with statutory powers I think it would help aggrieved bidders.

- 10 **CHAIRPERSON:** Of course while that might be helpful what will have to borne in mind is that you could well end up with even a longer waiting period because what you would be saying is if you are dissatisfied with the decision to award a tender to X before you go to court you must go to this body and this body takes a certain time makes a decision and maybe you are still dissatisfied so you must still go to court anyway so you have made the process much longer.

MR PETER STEPHEN VOLMINK: Ja.

CHAIRPERSON: So – but all of them needs to – need to be considered to see how best to take your various interests.

- 20 **MR PETER STEPHEN VOLMINK:** Ja.

ADV PHILLIP MOKOENA SC: Take us through your next recommendation.

MR PETER STEPHEN VOLMINK: I think the only remaining ones I will mention is the importance of continuous assessment of competencies and ensuring continuous training and development. Chair I think that

the ordinary supply chain buyer wants to be developed. They want to do the right thing but very often they – training and development does not happen as frequently as is required and I think there needs to be possibly full time capacity built into the SOC's to ensure that there is ongoing assessment of competencies and an enhancement of skill. I mentioned earlier that whilst many of our problems are due to nefarious motives and corruption a good chunk of our problems is as a result of innocent bungling and administrative mistakes. And I think if we can lessen that by heightening the level of skills and awareness I think we
10 would do well. Perhaps I will stop on this point.

ADV PHILLIP MOKOENA SC: Yes. Now may I refer you to Exhibit BB2.1A the very same document but please go to page 4.

MR PETER STEPHEN VOLMINK: I am on page 4.

ADV PHILLIP MOKOENA SC: You will see...

CHAIRPERSON: Well Mr Mokoene I cannot help but say that it feels like after we have gone that far like going back to square one. Yes.

ADV PHILLIP MOKOENA SC: It will be – if you go to page 4 Mr Volmink you will see that through the slides you have covered quite a great deal of your evidence.

20 **MR PETER STEPHEN VOLMINK:** Yes.

ADV PHILLIP MOKOENA SC: We are not going to repeat those things that you have said under governance and you can then go to page 8 just for completeness to give us the structure of the governance function.

MR PETER STEPHEN VOLMINK: Chair the – on page 8 I simply

highlight how the governance function is structured. I make the point that the governance function reports into the chief supply chain officer and at the moment at the corporate centre it consists of a very small team.

CHAIRPERSON: Sorry my – my copy is not very clear in terms of what is at the top. There is it CSCO?

MR PETER STEPHEN VOLMINK: C – it is CSCO which stands for Chief.

CHAIRPERSON: Chief.

10 **MR PETER STEPHEN VOLMINK**: Supply Chain Officer.

CHAIRPERSON: Okay. Thank you.

MR PETER STEPHEN VOLMINK: Governance reports into the Chief Supply Chain Officer and there are various managers who report into my function one for policy and standards, one for risk and compliance, one for transactional advice and so on. Chair I should also point out that at the operating that at the level of the operating divisions there are also governance capacity or people who will perform governance functions at the operating division level. My – the two concerns I highlight on – in paragraph 21.

20 **CHAIRPERSON**: Yes.

MR PETER STEPHEN VOLMINK: Is that firstly many of the – the staff are relatively junior. I mean I would be the first to say that at the operating division level there are some very good people a – who perform governance functions but many are relatively junior and they are more susceptible to being ...

CHAIRPERSON: To pressures?

MR PETER STEPHEN VOLMINK: To pressures.

CHAIRPERSON: Bullying?

MR PETER STEPHEN VOLMINK: Exactly.

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: The second is that they report into the Chief Procurement Officer who is the very end or that is the very function that – where the governance individuals are supposed to perform a watchdog or some sort of oversight body. So those are the
10 two weaknesses that I have identified.

ADV PHILLIP MOKOENA SC: Yes and if you turn to page 9 you will see that from paragraph 22 you are dealing with the delegations of authority framework. We have already canvassed that ...

MR PETER STEPHEN VOLMINK: We have.

ADV PHILLIP MOKOENA SC: At length.

MR PETER STEPHEN VOLMINK: Yes.

ADV PHILLIP MOKOENA SC: Mr – you do not need to go back there.

MR PETER STEPHEN VOLMINK: No.

ADV PHILLIP MOKOENA SC: And if you go to page 11 as well you will
20 see that you have already canvassed with the Chair the procurement process. We even dealt with the procurement circle. Am I correct?

MR PETER STEPHEN VOLMINK: Correct.

ADV PHILLIP MOKOENA SC: Yes. Now go to page 13 ...

MR PETER STEPHEN VOLMINK: Yes.

ADV PHILLIP MOKOENA SC: From paragraph 35 you are also

addressing the issues relevant to the bid evaluation process. Those have been comprehensively dealt with unless there is something that you which to highlight. We can pass through them.

MR PETER STEPHEN VOLMINK: Chair there is nothing further that I want – it really deals with the evaluation process as I discussed earlier.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: Where I want to take you Mr Volmink it is page 15 – 1-5.

10 **MR PETER STEPHEN VOLMINK:** Yes.

ADV PHILLIP MOKOENA SC: Because there you are raising serious issues and addressing areas of concern. If you can please take us through those concerns in relation to the experiences that you encountered at Transnet.

MR PETER STEPHEN VOLMINK: Yes. Chair so what this section of my statement deals with are the concerns which we had and which we sought to address in our procurement manual being the Procurement Procedures Manual or the PPM. The first concern is mentioned at the bottom of page 15 and that is in paragraph 45.1 ...

20 **ADV PHILLIP MOKOENA SC:** Yes.

MR PETER STEPHEN VOLMINK: And that relates to the applicability of the procurement rules. I make the point or the PPM then makes it clear that procurement rules apply to all acquisitions regardless of value. Now that and again may seem self-evident but this was written at the time when the Board had begun to assume key decision making

powers for procurement and we thought it was necessary to make it clear that procurement rules applies from the lowest value to the highest value transaction within the organisation and that is one of the – the issues that is dealt with. Chair the second concern deals with the so called One Person Acquisition Council. I have dealt with that earlier in my evidence but that is referred to in paragraphs 45.2 and following and I made the observation that this is not best practice at all. That it needs to be a multidisciplinary body and what steps were taken to ensure that by the time it gets to this One Person Acquisition Council
 10 that it has gone through various individuals and – and bodies who have – would could review it.

ADV PHILLIP MOKOENA SC: Yes.

MR PETER STEPHEN VOLMINK: I could move onto the next one Mr Mokoena.

ADV PHILLIP MOKOENA SC: The next one yes – the confinement.

MR PETER STEPHEN VOLMINK: The next one deals with confinements and here Chair I make the point that the – the default rule is supposed to be open tender processes. I make the point here that confinements are a deviation and the point I want to emphasise is a
 20 section in the PPM that warns against the abuse of confinement as it would have the effect of entrenching monopolies. If I give multiple awards through a confinement process to one particular entity I am entrenching monopolies and the PPM in fact specifically said that you need to be vigilant about confinements because if it is abused it creates a monopolistic situation.

CHAIRPERSON: Well I guess this is the time when you must tell me what justification is put forward for confinements because I cannot understand your complaint or concern about its abuse if I do not know the justification that is being put forward.

MR PETER STEPHEN VOLMINK: Yes. So Chair I think that the justification for confinement - firstly let me say that confinement is not unknown even universally. So if I look at the – the UN's model law on confinement they allow for what is called restricted bidding under certain narrowly defined circumstances. Treasury of course as well but
10 in the Transnet environment ...

CHAIRPERSON: So – so – but maybe let us – let us start with the definition of confinement. You – it is not the same as the one source exception or is it the same? Is it simply – is it simply that it is a tender but not an open tender? It is a restricted tender in the sense that only a few bidders are allowed?

MR PETER STEPHEN VOLMINK: Chair it is – it is the latter. So it is – it is a – it is a deviation from the open bidding process. It is allowed to permit only a few or possibly only one bidder to participate. One of the grounds may well be that it is the sole supplier situation. Another –
20 another scenario could be that we are – are dealing with an extremely urgent matter that needs to be dealt with quickly and in fact Chair the grounds for confinement are dealt with on page 18.

CHAIRPERSON: Yes, okay.

ADV PHILLIP MOKOENA SC: If you go to – Chair if you go to paragraph 45.4 but where you see the footnote 11 I think that is where

you start defining confinements. Am I correct?

MR PETER STEPHEN VOLMINK: Sorry. Just the reference again (intervenes).

ADV PHILLIP MOKOENA SC: If you go to page 17, 1-7 ...

MR PETER STEPHEN VOLMINK: Yes.

ADV PHILLIP MOKOENA SC: You will see that from paragraph 45.4 – if you go to the last sentence – are you there?

MR PETER STEPHEN VOLMINK: Yes.

ADV PHILLIP MOKOENA SC: After the word Transnet – then starting
10 from where it says confinements were thus (indistinct).

MR PETER STEPHEN VOLMINK: Yes.

ADV PHILLIP MOKOENA SC: That is where you want to take the Chair?

MR PETER STEPHEN VOLMINK: Correct.

ADV PHILLIP MOKOENA SC: Yes. You can proceed then to ventilate those issues.

MR PETER STEPHEN VOLMINK: So Chair the – the grounds for confinement that prevailed in Transnet for – for a number of years covers these areas. So - firstly if there is genuine urgency as I
20 mentioned and business – it is not as a result of bad planning and something needs to be acquired urgently that was recognised as one of the grounds for deviation from the open bidding process.

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: The ...

CHAIRPERSON: You spoke earlier on about an emergency and that is

where we talked about self-created emergency and poor planning. So why do we have a different term now confinement? Why do we not stick to emergency?

MR PETER STEPHEN VOLMINK: Yes. No, no I understand what you are saying Chair.

CHAIRPERSON: I am not blaming you. I am trying to understand the distinctions.

MR PETER STEPHEN VOLMINK: Yes.

CHAIRPERSON: When do you call this confinement? When do you call
10 it an emergency?

MR PETER STEPHEN VOLMINK: An emergency, yes – and an emergency is I think a term that gets used to refer to the most extreme forms of – of urgency. Typically where there is a threat to life or to property or serious business disruption or whatever it is.

CHAIRPERSON: Yes, okay. So – so then you have another scenario where – which may not fit in with – within the ambit of emergency but nevertheless is urgent?

MR PETER STEPHEN VOLMINK: It is urgent ...

CHAIRPERSON: *Ja*, okay.

20 **MR PETER STEPHEN VOLMINK:** For – and it must not of course result from bad planning and all of those things ...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: But that was then recognised as ...

CHAIRPERSON: That would then fall under confinement?

MR PETER STEPHEN VOLMINK: Correct.

CHAIRPERSON: Okay, alright.

MR PETER STEPHEN VOLMINK: Correct. The – the other ground is where there is limited supplier source. I cannot – let us say it is a particular commodity that only one or a few entities are able to provide. That was recognised as one ground for confinement – a second ground. A third ground related to standardisation. If – if the company has standardised through a particular model or a particular way of – of doing things. Then if I needed services that needed to interface with this model I would confine it to those who services are compatible.

10 Otherwise you could have issues where what we acquire is not – it does not interface easily with what is already there.

CHAIRPERSON: Of course – and I may be going back to the issue that I raised about the one source – one supplier ...

MR PETER STEPHEN VOLMINK: Yes.

CHAIRPERSON: Clause – if you talk about standardisation where you need a supplier who can provide you with something that meets your particular standard or a particular standardisation that you have in your company then of course if there is no urgency again I would see no reason why you cannot put up to the mark and – and say this is what I
20 want and if it is that particular supplier who is the only one who responds or those – those two or three that is fine but what if you are closing – you are excluding somebody by not putting out – putting the tender out to the market excluding somebody that you might not know ...

MR PETER STEPHEN VOLMINK: Yes.

CHAIRPERSON: Who might be able to give you exactly what you want

...

MR PETER STEPHEN VOLMINK: And ...

CHAIRPERSON: At a cheaper price maybe.

MR PETER STEPHEN VOLMINK: Yes and Chair it is exactly for that reason ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: That we said a confinement cannot just go straight to the GCE for approval. It needs to go through these
10 various levels of review ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: So that the questions that you are raise ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: If it is not asked by ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: One individual or one body ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: It could be asked by the next one.

20 **CHAIRPERSON**: Different people, *ja*.

MR PETER STEPHEN VOLMINK: So that confinement is not simply there for the asking ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: And it just gets – but there may well be instances.

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: Let us take – I will just use an example perhaps off the top of my head.

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: It may not be the best example ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: But let us take a brake block ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: On a train ...

10 **CHAIRPERSON:** Hm.

MR PETER STEPHEN VOLMINK: Where we have standardised through a particular type of train and a particular type of brake block.

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: So if I need more brake blocks I cannot issue necessarily an open tender for ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: Any other kind of brake block.

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: It will be in compatible with that ...

20 **CHAIRPERSON:** Hm.

MR PETER STEPHEN VOLMINK: Model of train.

CHAIRPERSON: Hm.

ADV PHILLIP MOKOENA SC:

MR PETER STEPHEN VOLMINK: So that may well be an example of where standardisation ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: Would justify a decision to say only those suppliers that meet that requirement we are going to go to.

CHAIRPERSON: Yes. No - I think as long as one you – you make it open to whoever can give you what you want. Then that is fine. I think the problem arises when you confine it to maybe one or two but if you were to make it open – if the position is only those two can give you what you want then those are the only two who would respond. Therefore you would be fine but just in case ...

10 **MR PETER STEPHEN VOLMINK:** There are others.

CHAIRPERSON: There is somebody who can actually give you the same or even better if you make it open you might actually get better value.

MR PETER STEPHEN VOLMINK: And I think that is why Treasury has now said you can decide your confinements only on ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: The ground that there is only one ...

CHAIRPERSON: *Ja.*

MR PETER STEPHEN VOLMINK: A sole supplier.

20 **CHAIRPERSON:** Yes.

MR PETER STEPHEN VOLMINK: If there is any other ...

CHAIRPERSON: *Ja.*

MR PETER STEPHEN VOLMINK: Reasons.

CHAIRPERSON: Open it.

MR PETER STEPHEN VOLMINK: You must come to...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: Either to Treasury ...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: To approve ...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: That you can confine or

CHAIRPERSON: *Ja.*

MR PETER STEPHEN VOLMINK: Issue an open tender ...

CHAIRPERSON: Okay, thank you.

- 10 **MR PETER STEPHEN VOLMINK:** And I think that the other ground was where goods and services are highly specialised and largely identical to those that were previously procured from the supplier. So let us say I just want a continuation of a particular service and it is a highly complex nature. I want to add on a certain component then I can confine to the entity to whom I have given the initial contract.

ADV PHILLIP MOKOENA SC: Yes but for you to go on confinement you have to ensure that this specific standards or criteria exist before you can even decide whether or not to go on confinement?

- MR PETER STEPHEN VOLMINK:** That is absolutely correct Chair. The
20 grounds for confinement had to exist and they had to be properly scrutinised before they would be approved precisely because of all the warnings in the PPM about its potential for abuse and the creation of monopolies etcetera. These grounds had to be met.

ADV PHILLIP MOKOENA SC: Yes. Now some of the concerns that you are raising Mr Volmink you have already also canvassed them.

MR PETER STEPHEN VOLMINK: Yes.

ADV PHILLIP MOKOENA SC: If you go to page 19.

MR PETER STEPHEN VOLMINK: Yes.

ADV PHILLIP MOKOENA SC: You have spoken about the contract variation. Am I correct?

MR PETER STEPHEN VOLMINK: Correct. We have dealt with that.

ADV PHILLIP MOKOENA SC: You do not have to deal with it. That is the reason why we had to take much more time ...

MR PETER STEPHEN VOLMINK: *Ja.*

10 **ADV PHILLIP MOKOENA SC:** With the slides and if you go to page 20 preferential procurement and supply development.

MR PETER STEPHEN VOLMINK: Yes. I think I have dealt with that as well.

ADV PHILLIP MOKOENA SC: We have dealt with that yes. Page 21 paragraph 45.8 you have also dealt with that.

MR PETER STEPHEN VOLMINK: 45.8 yes again we talk about FRC and all the things I dealt with in my presentation.

ADV PHILLIP MOKOENA SC: Yes and page 22 – 45.9 we have dealt with all those issues.

20 **MR PETER STEPHEN VOLMINK:** All of those have been dealt with.

ADV PHILLIP MOKOENA SC: Yes. Up until you go to page 24.

MR PETER STEPHEN VOLMINK: Yes.

ADV PHILLIP MOKOENA SC: You have addressed the Chair with the – on the issues of the risk factors ...

MR PETER STEPHEN VOLMINK: Correct.

ADV PHILLIP MOKOENA SC: And we have also dealt with the changes – you know – of the PPM ...

MR PETER STEPHEN VOLMINK: Is that on pages 25

ADV PHILLIP MOKOENA SC: 25.

MR PETER STEPHEN VOLMINK: And following?

ADV PHILLIP MOKOENA SC: Yes.

MR PETER STEPHEN VOLMINK: Yes.

ADV PHILLIP MOKOENA SC: We have addressed those issues.

MR PETER STEPHEN VOLMINK: We have addressed those issues

10 Chair.

ADV PHILLIP MOKOENA SC: Yes. Through the slides Chair we have done that and page 28 we have done the same ...

MR PETER STEPHEN VOLMINK: Yes we have covered.

ADV PHILLIP MOKOENA SC: And you have also dealt with your observations and recommendations - page 31.

MR PETER STEPHEN VOLMINK: That is correct Chair.

ADV PHILLIP MOKOENA SC: Yes. Where I want to take you it is the Part 2 of your statement - from page 34 Chair - where we are now dealing with specific contracts.

20 **MR PETER STEPHEN VOLMINK:** Yes.

ADV PHILLIP MOKOENA SC: Now the first transaction that you are dealing with here is in relation to the Neotel Network Service Contract. Am I correct?

MR PETER STEPHEN VOLMINK: That is correct.

ADV PHILLIP MOKOENA SC: And what type of services were required

from Neotel?

MR PETER STEPHEN VOLMINK: Well I think network services would cover a range of IT related services largely ensuring that the network capabilities within Transnet can meet its operational requirements.

ADV PHILLIP MOKOENA SC: And when these services were required were you consulted or was governance involved in this?

MR PETER STEPHEN VOLMINK: In this particular tender Chair governance was required to make input on this.

ADV PHILLIP MOKOENA SC: Yes. Can you take us through the input
10 or the involvement of governance?

MR PETER STEPHEN VOLMINK: So Chair the RFP was issued in 2013 for various network services. A number of bidders responded to this tender but at an early stage in the tender evaluation process there were two concerns that were raised and where governance in put was required. I will take you through what those concerns were and what the governance view is on it ...

ADV PHILLIP MOKOENA SC: Yes.

MR PETER STEPHEN VOLMINK: But this is the tender that eventually was awarded to Neotel but then overturned by the Group Chief
20 Executive and awarded to T-Systems and I will deal with that aspect at length in a while.

ADV PHILLIP MOKOENA SC: Yes. Let us now address – you know – the address ...

MR PETER STEPHEN VOLMINK: The first ...

ADV PHILLIP MOKOENA SC: Issues that you – you say that there

were issues of concern. The first one being the conflict of interest.

MR PETER STEPHEN VOLMINK: Yes. The first issue I deal with in paragraphs 82 and following and this related to a conflict of interest between T-Systems South Africa (Pty) Ltd which was the bidder that responded to this tender of 2013 and another company called Datacon International. They shared a common parent company – T-Systems. The German based company and I summarise what the issues were as follows Chair. I point out that T-Systems International was the majority shareholder - of course of this South African bidding company called T-
 10 Systems South Africa and it is all – it was also the shareholder of Datacon. Now before this tender was issued during 2012 Transnet issued another tender for a service provider to conduct a comprehensive due diligence exercise on its network services and the outcome of that due diligence – I think informed this tender – and Datacon won that particular tender for the due diligence exercise. The RFP which Datacon responded to and where they won the tender that contained the clause that said and I quote it at the end of page 34.

ADV PHILLIP MOKOENA SC: Yes. Paragraph 82.1 Chair.

MR PETER STEPHEN VOLMINK: 82.1 – the clause that Datacon – the
 20 clause in the RFP that Datacon responded to there was a clause which advised bidders as follows. It said:

“Should they be successful with regards to this RFP for due diligence they will then be excluded from tendering, partnering or advising bidders for the main network services tender.”

The tender that was then to follow and as I mentioned Datacon was awarded this due diligence tender. Chair the – there difficulty here is that the letter of intent that was then issued to Datacon - when it won the tender – it went much further than the terms of the RFP. The RFP said if you as the bidder – if you win this tender you cannot participate in the network services tender that is coming because you are doing the due diligence but the letter of intent went further and stated that the service provider and/or its affiliates agrees to being excluded. Now remember T-Systems was not a respondent on the due diligence tender

10 Datacon was but Transnet and Datacon – when Transnet issued an LOI or Letter of Award to Datacon a clause was added that you and your affiliates are not allowed to participate.

CHAIRPERSON: In the ultimate tender?

MR PETER STEPHEN VOLMINK: In the ultimate tender ...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: That was to come.

CHAIRPERSON: Which would – which should mean T-Systems because of the parental ...

MR PETER STEPHEN VOLMINK: Because of the common ...

20 **CHAIRPERSON:** Parental connection?

MR PETER STEPHEN VOLMINK: Because of the common parent.

CHAIRPERSON: Ja, should not be able to tender ...

MR PETER STEPHEN VOLMINK: To tender.

CHAIRPERSON: For the ultimate tender.

MR PETER STEPHEN VOLMINK: Correct, correct Chair ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: And in fact the high value tender is a team of – of external – an external audit firm ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: Who does reviews on some of the high value tenders. They also felt that T-Systems ought to have been eliminated because of their affiliation with – with Datacon.

ADV PHILLIP MOKOENA SC: Chair you do not have to go there. For reference purposes that report of the high tender value team is
10 contained in EXHIBIT BBC – BB 2.1C on – from page 840 but Mr Volmink has already summarised its ...

MR PETER STEPHEN VOLMINK: Yes.

ADV PHILLIP MOKOENA SC: Findings and so it is not necessary for us to go through them. You may proceed from paragraph 82.4 ...

MR PETER STEPHEN VOLMINK: So ...

ADV PHILLIP MOKOENA SC: Where you identify the two risks.

MR PETER STEPHEN VOLMINK: Yes. So I think that there – this issue was extensively debated and for – from a governance perspective I think that there were two risks that had to be accommodated or
20 addressed. The first was that if T-Systems was to be disqualified based on the fact that it was an affiliate of Datacon there was a concern that they might well have had some reason to challenge its disqualification on the following grounds and I list those grounds in 83.4.1 and following. It could have been argued that the terms of the LOI were invalid to the extent that they purported to incorporate

obligations that were not contemplated in the RFP to which Datacon had responded and as I had stated there was concern that whilst the due diligence RFP prohibited only the successful bidder from participating the LOI now went further and also disqualified affiliates.

ADV PHILLIP MOKOENA SC: Hm.

MR PETER STEPHEN VOLMINK: So I think that was the one – the one concern but the second concern that we had Chair is that this disqualification ...

CHAIRPERSON: But I am – I am just not sure – I am just thinking
10 about that the concern about that disqualification. Would not – is the position not that the rationale behind the prohibition that if you have done due diligence you should not avail yourself for the ultimate tender?

MR PETER STEPHEN VOLMINK: Ja.

CHAIRPERSON: Is that through due diligence you would gain certain advantage ...

MR PETER STEPHEN VOLMINK: Information.

CHAIRPERSON: And you would be privy to certain information?

MR PETER STEPHEN VOLMINK: Yes.

20 **CHAIRPERSON:** Now if you are going to be privy to certain information your – and your sibling if you want – your sibling is going to be allowed to – to put in a bid there is a risk that you share that confidential information with your sibling because you have one parent.

MR PETER STEPHEN VOLMINK: And I think that was - that was exactly one of the concerns which – which we were troubled by ...

CHAIRPERSON: Yes and if...

MR PETER STEPHEN VOLMINK: But ...

CHAIRPERSON: If that – if that – if that is the rationale for saying if you have done the due diligence you cannot tender for the ultimate tender then it must follow that if anybody connected with you should not be able to – to tender for the ultimate tender.

MR PETER STEPHEN VOLMINK: *Ja.*

CHAIRPERSON: Hm. With or without an expanded letter of intent.

MR PETER STEPHEN VOLMINK: Yes.

10 **CHAIRPERSON:** Hm.

MR PETER STEPHEN VOLMINK: Chair I – I am with you.

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: I think there was an additional concern though ...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: And that is that the RFP to which T-Systems had responded – the main – the main network services – it did not contain a similar disqualifying condition. Now R – T-Systems is responding yes its sister company did respond to the due diligence but
20 now it as a company T-Systems is responding and it reads this RFP and there is no provision in that RFP that disqualifies it on the basis of its affiliation or it does not say any entity that responded to that bid or any entity which is affiliated to a company which responded will be similarly disqualified and Chair I think that that was one of the – we were concerned ...

CHAIRPERSON: *Ja.*

MR PETER STEPHEN VOLMINK: About the fairness of the disqualification ...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: And we had (intervenes).

CHAIRPERSON: It was factors that were weighing upon your team?

MR PETER STEPHEN VOLMINK: It did – it did weigh upon us.

CHAIRPERSON: *Ja.*

MR PETER STEPHEN VOLMINK: Eventually I think that T-Systems was
10 asked to go on affidavit ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: To indicate under oath ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: Whether they had received any kind
of information ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: And they provided an affidavit ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: To the effect that that was not the
20 case.

CHAIRPERSON: Hm.

ADV PHILLIP MOKOENA SC: And on page 37 paragraph 83 ...

CHAIRPERSON: Well it looks like it is the right time to ...

ADV PHILLIP MOKOENA SC: It is the right time to ...

CHAIRPERSON: Take the break

ADV PHILLIP MOKOENA SC: We will deal with that after the lunch adjournment Chair.

CHAIRPERSON: Yes. It is 1 o' clock. Let us take the lunch break and we will return at 2 o' clock. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: You may proceed Mr Mokoena.

ADV PHILLIP MOKOENA SC: Thank you Mr Chair. Mr Volmink just
10 before the lunch adjournment we are just about to deal with the second predicament that you are facing, you identify that from page 37, paragraph 83 of your witness statement, could you please take the Chair through that?

MR PETER STEPHEN VOLMINK: Thank you. Chair what this issue relates to is a further concern regarding the evaluation of T-Systems' bid. The first issue was the conflict of interest which I dealt with before lunch and the second issue pertains to the rounding off of scores that T-Systems were given for functionality. Now I should point out that there was a threshold for technical compliance which was set
20 at 70%, sometimes referred to as the functionality threshold and T-Systems had missed that threshold by a fraction. T-Systems had scored 69.93% and not 70. We then had regard to the – what the regulations said about this and we saw that the 2011 regulations had a provisions dealing with how scores are to be rounded off. It is contained in regulation 11.4 of the PPPFA regulations of

2011...(intervention).

ADV PHILLIP MOKOENA SC: May I refer you to Exhibit BP 2.1 C it will be a different file.

MR PETER STEPHEN VOLMINK: That is file B is it?

ADV PHILLIP MOKOENA SC: BP 2.1 C and then if you may turn to page 874.

MR PETER STEPHEN VOLMINK: Yes I am there.

ADV PHILLIP MOKOENA SC: Is that the regulation that you are referring the Chair to?

10 **MR PETER STEPHEN VOLMINK:** That is correct Chair.

ADV PHILLIP MOKOENA SC: And then may you turn then to page 885 with particular reference to paragraph 11.4, you may read it into the record and confirm whether that does that accord with your evidence?

MR PETER STEPHEN VOLMINK: Chair the regulation reads as follows...(intervention).

CHAIRPERSON: I'm sorry, what regulation and what paragraph.

ADV PHILLIP MOKOENA SC: We're at page 885 with particular reference to 11.4.

20 **CHAIRPERSON:** Oh regulation 11 sub regulation 4?

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Okay thank you.

MR PETER STEPHEN VOLMINK: Chair the regulation reads as follows, it says:

“Points scored must be rounded off to the nearest two decimal

places”.

ADV PHILLIP MOKOENA SC: So this is what you are referring to that raised serious concern with the scoring the T-System?

MR PETER STEPHEN VOLMINK: That is correct Chair, because even if you round off 69.93% to the nearest two decimal places, regardless of what that third decimal would have been, if you round it off T-Systems still doesn't make the functionality threshold.

CHAIRPERSON: What does rounding it off to the nearest two decimal places – what does that mean?

10 **MR PETER STEPHEN VOLMINK:** Well if you look at this example here Chair, if you look at someone who scores 69.93% to round it off to the nearest two decimal places, my understanding is, one would have to look at what the third decimal is, so let's say the third decimal was 6, so it is 69.936 because that 6 is higher than a 5 it would have changed the 3 to a 4 but that still would not have had a knock-on effect to change the overall score from 69.93 to 70.

CHAIRPERSON: I'm sorry what do you understand the application of that sub regulation would be if you applied it to 69.93%?

MR PETER STEPHEN VOLMINK: What I understand this to be Chair is
20 that to round it off to the nearest two decimal places, one would then see, well what would that second decimal place – how do you round it off to that second decimal place being the...(intervention).

CHAIRPERSON: I'm very bad with anything mathematical, I only did arithmetic and a little bit of maths at school. So remind me what we are talking about when you talk about a decimal or two decimals –

decimal places.

MR PETER STEPHEN VOLMINK: Chair let me try my best...(intervention).

CHAIRPERSON: That is if you know, I'm assuming that you know.

MR PETER STEPHEN VOLMINK: Yes so if one has to round off to the nearest – the intent here is to see whether this score of 69.93 can be rounded off to 70% because if they make 70% then they are through...(intervention).

CHAIRPERSON: Ja but now you are talking about – of course I spoke
10 about this specific example, let's start with the general. What is two decimal places, what is one decimal place?

MR PETER STEPHEN VOLMINK: Okay so the first decimal place would be the decimal place after the point, so under – if you look at 69.9 the 9 would be the first decimal...(intervention).

CHAIRPERSON: The first 9 would be the first decimal after the point?

MR PETER STEPHEN VOLMINK: After the point.

CHAIRPERSON: Yes and then the digit that comes after 9 whatever it is would be the second decimal...(intervention).

20 **MR PETER STEPHEN VOLMINK:** That would be the second decimal.

CHAIRPERSON: Yes so – but then if it says round it off to the nearest second – what second – nearest two decimal places it – what does it mean. It doesn't seem to say to me, maybe it's because of my not understanding issues of decimal – it doesn't say anything like, round it off to the nearest 10/10 for example. So if it said that and it

was 69.92 you would bring it back to 69.90 I would imagine, more or less but if it is 69.97 then you'd bring it closer – to what is closer which would be 70, that's my kind of thinking, this is what I'm looking for...(intervention).

ADV PHILLIP MOKOENA SC: Lets deal with it on practical terms, let's take the score of 69.93 and then let's say that you wanted to apply what the regulations be, what would the score of T-systems?

MR PETER STEPHEN VOLMINK: Just before I answer the question, the one way to round off is just to round off to the nearest whole
10 number.

CHAIRPERSON: Yes, yes.

MR PETER STEPHEN VOLMINK: So if I have to round off 69 – let's say 69.9 to the...(intervention).

CHAIRPERSON: Ja if it – say round it off it's clear you must go to 70.

MR PETER STEPHEN VOLMINK: Exactly because that 9 is above 5 and that has a knock-on effect which then changes 69.9 to 70, when it says I must round it off to the second decimal place I would – for that decimal place of 69.93 for that to change I'd have to look at what the
20 third decimal is because if the third decimal is under 5 it stays as a 3. If the third decimal is above 5 then the 3 becomes a 4 but even if that 3 becomes a 4 the 4 is still below 5 so it doesn't have a knock-on effect of changing that 69.9 into a 70.

ADV PHILLIP MOKOENA SC: But even fundamentally doesn't even go to the functional threshold.

MR PETER STEPHEN VOLMINK: And it doesn't pass the functionality threshold.

ADV PHILLIP MOKOENA SC: But then go back to the questions of, I understand what you're saying but the Chair wants to understand what you're saying.

CHAIRPERSON: Well maybe you can help me if you understand.

ADV PHILLIP MOKOENA SC: He has gave you the answer Chair that 69.93 even if you were to apply 11.4 rationally it won't go to the threshold of 70 at best it will be 69.96 or 5.

10 **CHAIRPERSON:** No I think I understand that and that's part – that's part of what he has said but I'm not sure if – I mean if you talk about rounding off you could have a situation where they say round some – a figure off to the nearest 10, well I don't know whether they would say 10 but in terms of what I have in mind is that if somebody has got 12 points and you are required to round off to the nearest – I don't know whether you'd say 10 or something else but you'd have a choice of rounding off and put somebody at 20 or at 10 and if they are below 15 the nearest 10 would be to give them 10 but if they are above 15 the nearest 10 would be 20, if you understand what I mean.

20 **ADV PHILLIP MOKOENA SC:** Chair can we do without having to go to charge you anything for arithmetic 101, can we go to this number for instance. If you can write this number for me, maybe it might make a better example for you. If you a number like 4. – if you can write it down 4.732...(intervention).

CHAIRPERSON: Somebody who knows maths and so on must be

laughing at us, at least a me, laughing at me, yes.

ADV PHILLIP MOKOENA SC: And if you want to move it two decimal places that number it will either round up to 4.73 or 4.74, would I be correct Mr Volmink?

MR PETER STEPHEN VOLMINK: Okay so my understanding is this, use your example of 4...(intervention).

ADV PHILLIP MOKOENA SC: Yes and you'll apply it to the 69.93 very quickly.

MR PETER STEPHEN VOLMINK: Yes 4.732 to round off to the nearest
10 two decimal places I must see what is that third decimal.

ADV PHILLIP MOKOENA SC: Exactly.

MR PETER STEPHEN VOLMINK: Now that third decimal is a 2 which is below 5, it has no knock-on effect so it doesn't change that 3 into a 4 or anything like that. So if I must round off to the nearest two decimal places 7.32, to round off to the nearest two decimal places would remain 4.73.

ADV PHILLIP MOKOENA SC: 4.73 yes at best...(intervention).

MR PETER STEPHEN VOLMINK: It can't become a 5 and that is exactly what the issue was in this particular instance 69.93.

20 **CHAIRPERSON:** No, no that's fine, I think from what you are saying, you're saying whatever application of this regulation, one uses it could never give them 70, comma 70 or rather 70.

MR PETER STEPHEN VOLMINK: Exactly Chair.

ADV PHILLIP MOKOENA SC: I will do my own homework about this but I'm sure with Google and so on, somebody has already Googled and

maybe having – what a decimal is.

MR PETER STEPHEN VOLMINK: Mr Pretorius is trying but he's also hopeless in mathematics, he's giving me numerous numbers so I'm not sure whether to rely upon his examples.

CHAIRPERSON: Lawyers can be very bad with figures.

MR PETER STEPHEN VOLMINK: And I'm not exception.

CHAIRPERSON: No that's fine please continue I'll do my homework.

ADV PHILLIP MOKOENA SC: The essence is what you've captured Mr Volmink that...(intervention).

10 **MR PETER STEPHEN VOLMINK:** The essence is that when you round off to the nearest two decimal places you do not end – you can't change that 69.93 into a – it doesn't become 70 regardless of what that third decimal place...(intervention).

CHAIRPERSON: Do you know what would – what the position would have been if it was 69.7 or 8 - .98 or ...(intervention).

MR PETER STEPHEN VOLMINK: 69.?

CHAIRPERSON: 69.97 or 69.98 do you know whether it would make a difference, in your understanding of how to apply this sub regulation?

MR PETER STEPHEN VOLMINK: Well if it was 69.97 one would again
20 would have had to look at what the third – that third decimal would have it been and let's say – so that 7 only changes if the third decimal is above 5, so let's say that was 69...(intervention).

CHAIRPERSON: Yes but that's what I've given you, maybe I didn't make it clear. If on the number that we've got on your statement we change 3 to 7 or 8 or 9 would it make a difference, would the

application of this other regulation make a difference?

MR PETER STEPHEN VOLMINK: Yes what I'm saying Chair is, that it would only make a difference if you know what that third decimal is because the third decimal would have a knock-on effect, so to use your example 69.9 – say 69.973...(intervention).

CHAIRPERSON: Which third decimal now?

MR PETER STEPHEN VOLMINK: Sorry Chair?

CHAIRPERSON: Which third decimal now, which one is the third decimal – which one is the third decimal that you're talking about?

10 **MR PETER STEPHEN VOLMINK:** Well in the example you gave of 69.97, we only see the second decimal which is 7, you see the first decimal being .9 and then the second decimal, of course is 7.

CHAIRPERSON: Oh yes, ja.

MR PETER STEPHEN VOLMINK: But to know whether that second decimal...(intervention).

CHAIRPERSON: 7 in this case...(intervention).

MR PETER STEPHEN VOLMINK: You've got to look at what is the next decimal, the third decimal.

CHAIRPERSON: Where is the third decimal?

20 **MR PETER STEPHEN VOLMINK:** Whatever that figure is, in your example...(intervention).

CHAIRPERSON: Well you have got here – before the point you've got two digits after the point you've got two digits.

MR PETER STEPHEN VOLMINK: Correct.

CHAIRPERSON: 69.93 that's what you have in the statement.

MR PETER STEPHEN VOLMINK: Yes.

CHAIRPERSON: And you say this can't get you to 70.

MR PETER STEPHEN VOLMINK: Yes.

CHAIRPERSON: Okay so to see whether – to see what could get you to 70 I try to change and say delete 3 and put 7 in the same number or delete 7 and put 8 or put 9, would it make a difference and I think you're saying it would not make a difference.

MR PETER STEPHEN VOLMINK: It make a difference without knowing what the third is because it all has a knock-on effect.

10 **CHAIRPERSON:** Oh okay alright I'm sure after I've done homework I will understand it better, yes.

MR PETER STEPHEN VOLMINK: So that, I think, is the point that it wouldn't have changed 69.93 into 70. Chair we then looked at the – what's called the implementation guide which is a guide which treasury issues to the PPPFA regulation and I make reference to that in paragraph 83.2 of the statement and I think that is set out in PV11 which is on page 891.

ADV PHILLIP MOKOENA SC: 891 of BP 2.1 C but the point...(intervention).

20 **CHAIRPERSON:** I'm sorry page 88?

ADV PHILLIP MOKOENA SC: It's 891.

CHAIRPERSON: 891?

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Okay thank you.

MR PETER STEPHEN VOLMINK: And Chair in particular we looked at

paragraph 13.1.3 and it repeats the principle which 13.1.3 is on page 907.

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: And it says again, “points scored must be rounded off to the nearest two decimal places” but this time Chair, you will see that it is dealt with under the points allocated for price and preference only. There are certain points allocated for price either 80 or 90 and for preference being 20 or 10 and the implementation guide seems to suggest to us that to – that this
 10 principle of rounding off to the nearest two decimal places only applies to that point allocation for price and preference not for that earlier functionality stage which we were concerned about. So then the question is, okay so how do we round off to the nearest – at the functionality gate, if I can round off to the nearest whole number then they pass because it is 69.9 which then easily becomes 70 but if I have to round off to the nearest two decimal places as I earlier conversation indicated that wouldn’t necessarily – that wouldn’t pass then. So to resolve this uncertainty we approached National Treasury to say, treasury we are dealing with rounding off of the score for technical not
 20 for price and preference...(intervention).

ADV PHILLIP MOKOENA SC: But before you approached treasury what was governance view about the idea of rounding off T-Systems score?

MR PETER STEPHEN VOLMINK: Governance was opposed to rounding off T-Systems score to the nearest whole number. It indicated to us

that you had to round off to the nearest two decimal places and our understanding is if that was followed then they still would not have passed, so governance had a concern about that.

CHAIRPERSON: Now when you first referred to the regulation that refers to this rounding off to decimal places you said something like that was a regulation that, I think it was for 2011 or had applied previously, I wanted to check whether that regulation was still applicable at the time that you were dealing with this matter.

MR PETER STEPHEN VOLMINK: Chair the regulation was applicable
10 to this thing.

CHAIRPERSON: Okay, now the regulation or sub-regulation that you drew our attention to earlier that refers to the two place – rounding off to two decimal places, did it apply to the price or did it also apply to functionality because you have just made a comment in relation to what is at page 907 about it applying, I think, to price only not to functionality.

MR PETER STEPHEN VOLMINK: Correct.

CHAIRPERSON: So I want to find out whether that was the same with regard to the regulation as well.

20 **MR PETER STEPHEN VOLMINK:** Yes so if I look at the regulation it doesn't say it applies only to price and preference or functionality...(intervention).

CHAIRPERSON: Yes it's general.

MR PETER STEPHEN VOLMINK: There's a general statement that says, points scored must be rounded off to the nearest two decimal

places.

CHAIRPERSON: Okay.

MR PETER STEPHEN VOLMINK: But treasury issues an implementation guide which explains how those regulations are to be applied in practice...(intervention).

CHAIRPERSON: Yes which is what 907 is about.

MR PETER STEPHEN VOLMINK: Exactly Chair.

CHAIRPERSON: Okay.

MR PETER STEPHEN VOLMINK: And it is in that context that we saw
10 that, that principle of rounding off to the nearest two decimal places applies to the context of price and preference.

CHAIRPERSON: Yes so in other words, in other words if the National Treasury instruction at page 907 wasn't there, then the regulation could be applied even to rounding off the score on functionality.

MR PETER STEPHEN VOLMINK: Correct Chair.

CHAIRPERSON: Because it did not have the restriction that the instruction had.

MR PETER STEPHEN VOLMINK: Precisely.

CHAIRPERSON: And your difficulty was, although the regulation
20 seems to be wide in the sense that it doesn't restrict you to certain items where you can round off a figure there is a specific instruction from treasury which does restrict you, that was your challenge and that's why you referred it back to National Treasury.

MR PETER STEPHEN VOLMINK: You've summed it up perfectly.

CHAIRPERSON: Yes okay.

ADV PHILLIP MOKOENA SC: Now what was the advise that you obtained from treasury?

MR PETER STEPHEN VOLMINK: The advice is set out in paragraph 83.4 which is on page 37 of my statement Chair.

ADV PHILLIP MOKOENA SC: Take us through it.

MR PETER STEPHEN VOLMINK: And it says that – well treasury firstly advised that the manner in which points are to be rounded off should ideally be set out in the RFP itself, we know in this case it wasn't. They then went on to say that if, at the time of evaluation the
10 evaluation committee was dealing with decimals that were not anticipated at the bid planning – I'm quoting from what treasury has actually said and thus not dealt with in the RFP then it said you can decide, you either round off to the nearest whole number or you can round off to the nearest two decimal points, so in essence...(intervention).

CHAIRPERSON: Ja you see when you say rounding off to a whole number, it sounds simpler.

MR PETER STEPHEN VOLMINK: Yes and I think that is what treasury was saying to us they said, if you are dealing with functionality and you
20 have got a situation like this where you've got someone who misses the margin or the threshold rather by a margin, then you decide are you going to round – are you going to stick to this principle of rounding off to the nearest two decimal places or are you going to round off to the nearest whole number and that being the case Transnet then took a decision to round off to the nearest whole number in which case 69.93

rounded off to the nearest whole number became 70.

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: And T-System – the net effect of all of this is that T-Systems passed that functionality threshold.

CHAIRPERSON: Yes okay. With this advice from National Treasury was your unit satisfied because before it was opposed to giving T-Systems 70 on the basis of what the treasury instructions says.

MR PETER STEPHEN VOLMINK: Yes satisfied may be putting it a bit strongly but certainly we engaged the authors of this document and we
10 asked the authors how one should deal with the situation of rounding off at the functionality level.

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: And the authors then advised us that it was our choice and we then implemented that advice.

CHAIRPERSON: Okay, no that's fine.

ADV PHILLIP MOKOENA SC: But Mr Volmink if you go to page 914 Chair of Exhibit PB 2.1 C...(intervention).

CHAIRPERSON: Yes 91?

ADV PHILLIP MOKOENA SC: 914.

20 **CHAIRPERSON:** Yes okay.

ADV PHILLIP MOKOENA SC: And then if you go to page – if you go to – if you look at that document, that is the email which contain what treasury ultimately advised Transnet to do, am I correct?

MR PETER STEPHEN VOLMINK: That is correct Chair.

ADV PHILLIP MOKOENA SC: But I what I don't understand from your

conversation with the Chair whether you're satisfied or not, is the fact that when you look at paragraph 3 treasury says that it is important to emphasise that nothing, and it says nothing, on regulations compels the bid evaluation committee to follow paragraph 2 above as it will be based on the discretion of the evaluation committee and on the facts before them but I thought that, you know, you specifically referred to a regulation that stipulates in express terms what should happen and you also referred to a subsequent communication from treasury as to how this should be applied. Now if treasury says that this does not compel
 10 the evaluation committee to follow that paragraph 2 I don't understand.

MR PETER STEPHEN VOLMINK: Yes so it's not that treasury was saying to us that we were compelled to follow paragraph 2, what treasury was saying is that you – if you look at the two bullet points it gave us an option. It says you may round off to a full number or the nearest whole number or you can borrow that provisions of that regulation in 11.4 and round off to the nearest two decimal places and what it says is that they are not compelling us, they're not compelling the committee to follow that paragraph as it will be based on the discretion of the committee.

20 **ADV PHILLIP MOKOENA SC:** and where does one find in the regulations that you may round to the full number?

MR PETER STEPHEN VOLMINK: No that is not in the regulation. It is not in the regulation.

ADV PHILLIP MOKOENA SC: It is not in the regulation?

MR PETER STEPHEN VOLMINK: No.

ADV PHILLIP MOKOENA SC: Okay.

CHAIRPERSON: Well the answer to the question that Mr Mokoene has asked may mean that rounding off to the nearest whole number which treasury said was an option may mean that it was neither in line with the regulation to which reference has been made nor in line with the treasury instruction to which we have referred. Because the regulation to which reference has been made did not talk about rounding off to a whole number.

ADV PHILLIP MOKOENA SC: A whole number.

10 **CHAIRPERSON:** It – the only reference it made of rounding off was rounding off to two decimal places.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: So if you round off to a whole number if that does not coincide with rounding off to two decimal places you are not in line with the regulation. If and then it would not be in line with the national instruction because the national instruction talked about two decimal points – places. So if you round to – to the nearest whole number provided rounding off to the nearest whole number is not the same as rounding off to two nearest two decimal places then you could be in
20 breach of both the national instruction and the regulation.

ADV PHILLIP MOKOENA SC: The regulations.

CHAIRPERSON: Is it not?

MR PETER STEPHEN VOLMINK: Ja. So Chair I think the – the difficulty that was created.

CHAIRPERSON: Hm. I am just testing this because obviously you ask

for advice because you wanted to do the right thing.

MR PETER STEPHEN VOLMINK: Yes.

CHAIRPERSON: But I am just wondering whether the advice you were given was correct?

MR PETER STEPHEN VOLMINK: Ja. Which is why I said – you asked if the ...

CHAIRPERSON: Whether you were satisfied?

MR PETER STEPHEN VOLMINK: My unit was happy?

CHAIRPERSON: Yes, yes.

10 **MR PETER STEPHEN VOLMINK:** And I said that may be putting it a bit

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: A bit strongly.

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: But we ultimately accepted.

CHAIRPERSON: Ja.

MR PETER STEPHEN VOLMINK: That this is the advice that came from – from treasury. The fundamental problem is that the regulation read with the implementation guide deals with the question of rounding off only in the context of price and preference. The implementation
20 guide explains that the principle applies only in price and preference. It does not say anything about how rounding off is supposed to happen at the functionality [indistinct]. So it does not say you can round off to the nearest whole number or you cannot it appears to be silent on it. And the advice of treasury at the time is in fact I think they agreed that it does not – it only deal with price and preference and then they said if

it – when it comes to functionality you decide – you have a discretion to either round off to the nearest whole number or follow the regulations.

CHAIRPERSON: Hm. Well it might not – it might not ultimately be material but one just wonders whether if the regulations are wider you can restrict them by way of an instruction because regulations are made in terms of an act of parliament.

MR PETER STEPHEN VOLMINK: Yes.

CHAIRPERSON: Can you issue a policy or something of a lesser legal status and use it to restrict the circumstances to which it applies.

10 **MR PETER STEPHEN VOLMINK**: Yes.

CHAIRPERSON: But it might not in the end be material – material for our purposes.

MR PETER STEPHEN VOLMINK: There are certainly far more material aspects.

CHAIRPERSON: Oh ja you – you would know better ja.

MR PETER STEPHEN VOLMINK: Yes.

ADV PHILLIP MOKOENA SC: But this reflects the problems that you have – you identified earlier on about certainty of regulations or you know the rules applicable to procurement where they are not clear.

20 **MR PETER STEPHEN VOLMINK**: When the rules are not clear Chair then

CHAIRPERSON: It does create problems.

MR PETER STEPHEN VOLMINK: It creates problems. It is difficult for the organ of state to regulate its own conduct and regulate its own behaviour and to know how it is to apply the rules in a particular

context and then one has to engage with the author of the regulation.

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: In the hope that what one then receives is the correct advice.

CHAIRPERSON: Ja.

ADV PHILLIP MOKOENA SC: Yes. Now from paragraph 84 on page 38 you are now dealing with the award of the tender to Neotel. Mr Volmink could you please take us through that?

MR PETER STEPHEN VOLMINK: Thank you Chair. Um Chair we then
10 come to the stage in the tender where we see that three bidders passed that threshold for functionality. They are Neotel, Dimension Data and T-Systems. They were the only bidders who passed the threshold. There was some uncertainty around the pricing that some of the bidders had given and there was a series of clarification sessions and clarification around the assumptions that were made but after all the clarifications around pricing had been obtained the final ranking of the bidders based on price and preference was firstly Neotel who scored the most points for price 90 at a price of 1.3 billion and then Di Data came second and T-Systems was ranked third. That was the ranking
20 after the pricing had all been clarified and all processes had gone – had been followed. It would appear that after pricing had been clarified T-Systems came and offered to reduce their price by a further R248 million and I referred to that in page – ah sorry in paragraph 85 which you will find at the top of page 39 of my statement. So what happens Chair is that price negotiations were conducted but then you get to a

point where you invite best and final offers. All those offers must be in a box by a closing date and time with clarifications and everything else. As a result of following that process this was the ranking of the bidders. Neotel, Di Data and T-Systems. With T-Systems offer after the best and final offers had closed with T-Systems offer to reduce by a further R248 million it would have placed them in second place instead of Di Data. But the evaluation team I think correctly in my view felt that this could not be considered at that stage of the process and they disregarded the further offer of the R248 million.

- 10 **CHAIRPERSON**: Okay let us – let us just step back, one step back. After the parties had put in their bids with their prices and the bids had been opened then negotiations followed, is that what you saying?

MR PETER STEPHEN VOLMINK: Not immediately at that point.

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: First parties went through that – the functionality

CHAIRPERSON: Yes, yes, yes.

MR PETER STEPHEN VOLMINK: Evaluation.

CHAIRPERSON: Yes.

- 20 **MR PETER STEPHEN VOLMINK**: And then it got to the price and preference stage.

CHAIRPERSON: Yes, yes.

MR PETER STEPHEN VOLMINK: And that is when the team who looked at the pricing.

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: They felt that the pricing there was some ambiguity.

CHAIRPERSON: Could be negotiated down.

MR PETER STEPHEN VOLMINK: And so on and bidders were invited to clarify.

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: Their ...

CHAIRPERSON: Yes okay their pricing?

MR PETER STEPHEN VOLMINK: Their pricing.

10 **CHAIRPERSON:** And then to at – at a certain stage to give their final and best offer.

MR PETER STEPHEN VOLMINK: Exactly.

CHAIRPERSON: And they gave that?

MR PETER STEPHEN VOLMINK: And they gave it.

CHAIRPERSON: Ja.

MR PETER STEPHEN VOLMINK: And that was the end of that

CHAIRPERSON: Of the pricing.

MR PETER STEPHEN VOLMINK: Step in the process.

CHAIRPERSON: Issues yes.

20 **MR PETER STEPHEN VOLMINK:** After that

CHAIRPERSON: Yes, yes.

MR PETER STEPHEN VOLMINK: T-Systems according to the report

CHAIRPERSON: Ja.

MR PETER STEPHEN VOLMINK: That they – they offered a further reduction of R248 million.

CHAIRPERSON: In circumstances where they had not been invited to do so and no other party had been invited to do so.

MR PETER STEPHEN VOLMINK: Precisely Chair.

CHAIRPERSON: They unilaterally reduced their price.

MR PETER STEPHEN VOLMINK: Made the offer.

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: They made the offer. They say we can reduce this price.

CHAIRPERSON: Yes.

10 **MR PETER STEPHEN VOLMINK**: But they had not been invited.

CHAIRPERSON: ja.

MR PETER STEPHEN VOLMINK: And no other party

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: Had been invited to enter yet a further round

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: Of pricing negotiation.

CHAIRPERSON: Yes okay.

20 **MR PETER STEPHEN VOLMINK**: But as I said Chair that amount was not...

CHAIRPERSON: Was disregarded.

MR PETER STEPHEN VOLMINK: Was disregarded.

CHAIRPERSON: If it had been regarded there would have been number 2?

MR PETER STEPHEN VOLMINK: Correct.

CHAIRPERSON: Okay.

MR PETER STEPHEN VOLMINK: And I will tell you in a short while that that offer was then later taken into account by the Group Chief Executive.

CHAIRPERSON: Oh.

MR PETER STEPHEN VOLMINK: Who moved T-Systems up to number 2 and Neotel was excluded based on various risk factors but we will come to that.

ADV PHILLIP MOKOENA SC: We will get there.

10 **MR PETER STEPHEN VOLMINK**: At a later stage.

CHAIRPERSON: Ja okay.

ADV PHILLIP MOKOENA SC: Now you make reference to a memorandum that was prepared and presented to the GCE Ms Sharla Pillay at the time who approached the award. May I refer you to Exhibit BB2.1C Chair on page 967?

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: Yes I am there.

ADV PHILLIP MOKOENA SC: Yes could you please identify that document for us?

20 **MR PETER STEPHEN VOLMINK**: Chair this is the document which was signed by the then acting Group Chief Executive Sharla Pillay in which she approved the award of the tender to Neotel.

ADV PHILLIP MOKOENA SC: Yes. And could you please read where it says purpose or the submission?

MR PETER STEPHEN VOLMINK: That is found on page 967 Chair in

paragraph 1. It says:

“The purpose of the submission is to request the Group Chief Executive to approve the procurement process and award of business to Neotel and then to sign a letter of intent for the preferred bidder to also sign letters of regret for the four unsuccessful bidders and sign the letter to extend the current Neotel contract.”

ADV PHILLIP MOKOENA SC: Yes. And as you have pointed out to the
10 Chair at the time Ms Sharla Pillay was the acting Group Chief Executive, am I correct?

MR PETER STEPHEN VOLMINK: That is correct Chair.

ADV PHILLIP MOKOENA SC: Now may I refer you to page 973.

MR PETER STEPHEN VOLMINK: Yes.

ADV PHILLIP MOKOENA SC: And you will see that there are different individuals occupying different capacities that have recommended and ultimately approved the award, am I correct?

MR PETER STEPHEN VOLMINK: Correct.

ADV PHILLIP MOKOENA SC: And what be the significance of their
20 signatures?

MR PETER STEPHEN VOLMINK: The significance Chair is that it would have gone through various people to review the submission. To ensure that the submission correctly reflects the outcome of the evaluation process and then to take it to the person with delegated authority to approve the award.

ADV PHILLIP MOKOENA SC: Yes. And if you go to page 972 you will see that there is a heading there that says “Approvals and Delegations” can you take us through that paragraph?

MR PETER STEPHEN VOLMINK: Yes it says:

ADV PHILLIP MOKOENA SC: And comment on it?

MR PETER STEPHEN VOLMINK:

10 “That the Group Chief Executive has already provided the following approvals. Approval of the request for proposal and advert to go out on the open tender so that the tender had already long time ago been approved. The Group Chief Executive has also approved to advertise and issue the RFP to the open market for services for three years with an option to extend for another two years and approval to conduct due diligence and negotiations on the network services RFP.”

20 **ADV PHILLIP MOKOENA SC:** Yes. So – and at this time Ms Sharla Pillay was – was acting as a Group Chief Executive officer and clearly she had on the entitlement and the right to approve the tender as she did?

MR PETER STEPHEN VOLMINK: That is correct Chair. These earlier approvals may have been done by the Group Chief Executive that I have just referred to now.

ADV PHILLIP MOKOENA SC: Yes.

MR PETER STEPHEN VOLMINK: But when Ms Sharla Pillay exercised

the delegation to approve the award to Neotel she did so as the Group Chief Executive albeit in an acting capacity.

ADV PHILLIP MOKOENA SC: Yes. And that decision also enjoyed the support of all other senior officials who had the relevant authority to deal with the tender in question and approval?

MR PETER STEPHEN VOLMINK: Correct Chair. The officials come from the Group Strategic Sourcing, the technical people, the Governance people, supply chain officer, the chief information officer, the CFO, everyone had looked at it and were happy for the award to be
10 made to Neotel.

ADV PHILLIP MOKOENA SC: However this decision that has underwent all these lawful structures and received approval from all the levels was ultimately overturned?

MR PETER STEPHEN VOLMINK: That is correct Chair.

ADV PHILLIP MOKOENA SC: Can you tell the Chair how it was overturned?

MR PETER STEPHEN VOLMINK: Chair I deal with that in – on page 39 of my statement in paragraphs 87 and following where I make the comment that on the 20 November 2013 a couple of weeks after Sharla
20 Pillay had signed off on the 20 November Mr Brian Molefe then wrote a memo to Anoj Singh, Mantsika Matooane and Gary Peter in which he informed them about his decision to rescind the award to Neotel and he explained that he was going to award the tender to T-Systems instead.

ADV PHILLIP MOKOENA SC: Yes. May I then refer you to

CHAIRPERSON: Well while Mr Mol – Mr Mokoene – sorry Mr Mokoene.

While Mr Mokoene is looking for the document to which he will refer you tell me did the group CEO Mr Brian Molefe have power to rescind an award that – a tender that had been already granted?

MR PETER STEPHEN VOLMINK: I deal with that...

CHAIRPERSON: In terms of the policies and the...

MR PETER STEPHEN VOLMINK: Yes.

CHAIRPERSON: The prescripts procurement process.

MR PETER STEPHEN VOLMINK: I deal with that a little bit later on Chair.

10 **ADV PHILLIP MOKOENA SC:** Yes. Later on yes.

CHAIRPERSON: Yes. Well tell me whether yes or no you can elaborate later on.

MR PETER STEPHEN VOLMINK: In short in the context of this tender no.

CHAIRPERSON: Okay alright thank you.

ADV PHILLIP MOKOENA SC: May I refer you to page 975.

MR PETER STEPHEN VOLMINK: Yes I am on page 975.

ADV PHILLIP MOKOENA SC: Could you please identify that document for us?

20 **MR PETER STEPHEN VOLMINK:** This is the document that Mr Brian Molefe had put together to explain his reasons for overlooking or rescinding the Neotel award and awarding to T-Systems.

ADV PHILLIP MOKOENA SC: Yes. And if you may refer to page 981. Under the paragraph "Approval" and take us through those paragraphs?

MR PETER STEPHEN VOLMINK: What it says under the heading

“Approval” it says:

“Based on the explanations given above I request the Group Chief Financial Officer, Group Chief Information Officer and Group Chief Supply Chain Officer to note my decisions to award business to T-Systems in terms of Section 20.5 of the Procurement Procedures Manual and I am overriding the recommendation made in the TEAR Report which stands for Tender Evaluation and Recommendation Report.”

10

ADV PHILLIP MOKOENA SC: And who signs the memo?

MR PETER STEPHEN VOLMINK: Mr Molefe signs the memo.

ADV PHILLIP MOKOENA SC: Now may I then refer you back to page 39 of your statement. Exhibit BB2.1A. Are you there?

MR PETER STEPHEN VOLMINK: Page 39 of my statement?

ADV PHILLIP MOKOENA SC: Page 39 of your statement.

MR PETER STEPHEN VOLMINK: Yes.

ADV PHILLIP MOKOENA SC: Paragraph 88 take us through it?

MR PETER STEPHEN VOLMINK: Well I say in page 88 that Mr Molefe based his decision on the fact that the board had sub-delegated the authority to approve the procurement process to him as the Group Chief Executive.

20

ADV PHILLIP MOKOENA SC: And I – ja.

MR PETER STEPHEN VOLMINK: I will make the point later that on a correct reading of the delegation the board delegation it was to

whoever holds the post of Group Chief Executive at the time the decision is taken and not to him personally ja.

MR PETER STEPHEN VOLMINK: Yes.

CHAIRPERSON: In other words not to him after the incumbent or after an earlier incumbent had made the decision?

MR PETER STEPHEN VOLMINK: Precisely Chair.

CHAIRPERSON: If he was the incumbent at the time that the decision was made he could have done what he did but not when somebody who had occupied the same position had already exercised the power one
10 way or another that is what you say?

MR PETER STEPHEN VOLMINK: Chair if I can just add perhaps.

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: Or clarify one thing?

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: Even if he was the incumbent and he exercised his authority at that point

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: Based on the facts of the matter.

CHAIRPERSON: Ja.

20 **MR PETER STEPHEN VOLMINK:** Our view is it would still not have been justified.

CHAIRPERSON: Okay.

MR PETER STEPHEN VOLMINK: To overlook Neotel and award to T-Systems.

CHAIRPERSON: Ja but that goes to justification.

MR PETER STEPHEN VOLMINK: Yes.

CHAIRPERSON: I thought earlier on you were talking about the authority?

MR PETER STEPHEN VOLMINK: Correct.

CHAIRPERSON: That he did not have the authority to make a decision on a tender on which somebody occupying the position before he took the position had already made the decision.

MR PETER STEPHEN VOLMINK: Had already decided.

10 **CHAIRPERSON:** Yes. Because the one point, the latter point, goes to authority.

MR PETER STEPHEN VOLMINK: Correct.

CHAIRPERSON: Whereas the other point you make ...

MR PETER STEPHEN VOLMINK: Is justification.

CHAIRPERSON: Goes to justification.

MR PETER STEPHEN VOLMINK: Correct.

CHAIRPERSON: Okay.

ADV PHILLIP MOKOENA SC: Let us even put context to that – to the – to a discussion with the Chair with reference to page 983 on Exhibit – yes are you there?

20 **MR PETER STEPHEN VOLMINK:** I am there.

ADV PHILLIP MOKOENA SC: And would I be correct that this was the delegation from the board to the GCE?

MR PETER STEPHEN VOLMINK: To approve the...

ADV PHILLIP MOKOENA SC: To approve?

MR PETER STEPHEN VOLMINK: That is correct Chair.

ADV PHILLIP MOKOENA SC: Yes.

MR PETER STEPHEN VOLMINK: This is the delegation and it says that the board resolved to delegate authority to the GCE to approve the network services RFP. It was to whoever the holder of that post ...

CHAIRPERSON: Yes yes.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Yes and an acting GCE is for all intents and purposes a GCE?

MR PETER STEPHEN VOLMINK: The GCE.

10 **CHAIRPERSON:** As long as he or she is acting?

MR PETER STEPHEN VOLMINK: That is exactly my point yes.

CHAIRPERSON: Hm.

ADV PHILLIP MOKOENA SC: But let us even make the point even much more further. Let me refer you to page 987. Now we now know that the board did delegate the power to the GCE but with no uncertain terms what you see on page 987 it is a delegation, sub-delegation to Ms Sharla Pillay, am I correct?

MR PETER STEPHEN VOLMINK: That is correct Chair.

ADV PHILLIP MOKOENA SC: And could you please read on the record
20 what does it say in express terms and also emphasising on the dates?

MR PETER STEPHEN VOLMINK: Chair it says:

“I, Brian Molefe, in my capacity as Group Chief Executive hereby delegate all the power of authority vested in me to Sharla Pillay Chief Executive Transnet Pipelines for the period 28 October 2013 to

1 November 2013.”

And then he just says:

“It requires that a comprehensive report of incidents
and occurrences be forwarded to my office on my
return.”

ADV PHILLIP MOKOENA SC: Yes. While keeping that page open may
I then refer you back to page 973. Now if you look at the sub-
delegation on page 987 and also look at the document, the approval
document on page 973 and you look at the signature of Ms Sharla
10 Pillay at the bottom what was the date when she approved?

MR PETER STEPHEN VOLMINK: On page 973?

ADV PHILLIP MOKOENA SC: Yes at the bottom.

MR PETER STEPHEN VOLMINK: The date is 31 October 2013.

ADV PHILLIP MOKOENA SC: So it fell within the dates of the sub-
delegation in page 987, am I correct?

MR PETER STEPHEN VOLMINK: That is correct Chair on page 987
she is delegated to act from 28 October 2013 to 1 November 2013.

ADV PHILLIP MOKOENA SC: So there is no doubt that at the time
when she signed she had all the full capacity to do so?

20 **MR PETER STEPHEN VOLMINK:** That is correct Chair.

ADV PHILLIP MOKOENA SC: Yes. Now may I refer you back to page
40 of your...

CHAIRPERSON: Maybe just so that I can

ADV PHILLIP MOKOENA SC: Follow.

CHAIRPERSON: Follow what the issues are. As we go forward with

the matter is there any suggestion that Mr Brian Molefe's decision to rescind Ms Pillay's decision or the decision that had been made before? Is there any suggestion that his decision may not have been based on an understanding in good faith that he had the power to do what he did even if that understanding may be mistaken? Is there suggestion of anything beyond that?

MR PETER STEPHEN VOLMINK: Chair there is an indication of that in the memo itself that he signed.

CHAIRPERSON: Hm.

10 **MR PETER STEPHEN VOLMINK:** Where he intimated.

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: That on his reading of the PPM.

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: That he was entitled to override the decision.

CHAIRPERSON: Hm okay.

MR PETER STEPHEN VOLMINK: So if I look only at that memorandum.

CHAIRPERSON: Ja.

MR PETER STEPHEN VOLMINK: That he signed.

20 **CHAIRPERSON:** Yes.

MR PETER STEPHEN VOLMINK: There is a suggestion.

CHAIRPERSON: A suggestion

MR PETER STEPHEN VOLMINK: But he interpreted the applicable rules.

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: So as to allow him to rescind it.

CHAIRPERSON: Yes okay.

ADV PHILLIP MOKOENA SC: You do more than that Mr Volmink may I refer you to page 40 of your witness statement with particular reference to paragraph 90. Are you there?

MR PETER STEPHEN VOLMINK: Yes.

ADV PHILLIP MOKOENA SC: You are saying to the Chair there:

“In my view the GCE’s reasoning was flawed in a number of respects.”

10 **MR PETER STEPHEN VOLMINK:** Yes.

ADV PHILLIP MOKOENA SC:

“He lacked the authority to take the decision. The decision itself was taken in a procedural unfair manner and irrelevant considerations were taken into account when the decision was made. I elaborate on these aspects below.”

Could you please tell us and take us through your observations in relation to the reasoning of the GCE at the time?

20 **MR PETER STEPHEN VOLMINK:** Yes. Chair so I – I point out in my statement and I have already dealt with this to some extent. I say first the power vested in the GCE by the board to award business to Neotel had already been exercised by the acting GCE Sharla Pillay and could not therefore be exercised again. I make the point also in paragraph 90.2 if I go down to the second sentence I say that:

“I agree with the views that were expressed in a

certain legal opinion that was obtained by external auditors. That the board did not delegate authority to Brian Molefe personally but rather to the holder of the post and that when Sharla Pillay exercised her powers as the holder of the post she discharged the sub-delegation that was entrusted to the GCE by the board.”

I think that dealt with the – that deals with the authority issue.

ADV PHILLIP MOKOENA SC: Yes.

10 **MR PETER STEPHEN VOLMINK:** That we were discussing earlier.

CHAIRPERSON: Yes you see I am not sure but you and Mr Molefe would be much more familiar with this file than I am. I am not sure how much value there is in looking at your criticism of the decision if the idea is not to say there was no good faith, misunderstanding of the position here. There was something else. So in other words if you accept that he may have in good faith made a mistake there might not be much value in going through everything but if the idea is to say no, no, no when you look at all of these things there was something else behind this decision, then that is different. So otherwise it becomes
20 just a point of law.

MR PETER STEPHEN VOLMINK: Ja. No, no, no Chair it is more – it is more than that.

CHAIRPERSON: It is more than that.

MR PETER STEPHEN VOLMINK: I did indicate.

CHAIRPERSON: Yes, yes.

MR PETER STEPHEN VOLMINK: Earlier.

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: That if I look at certain paragraphs.

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: In Mr Molefe's statement

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: There is a suggestion that he interpreted ...

CHAIRPERSON: *Ja.*

10 **MR PETER STEPHEN VOLMINK:** The PPM in a way that allowed him ...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: To rescind ...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: And I have explained why that is not ...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: That is not correct ...

CHAIRPERSON: Yes, okay.

20 **MR PETER STEPHEN VOLMINK:** But Chair the – the points which I make a little bit further on ...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: Is if you then look at the substance of the decision ...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: Moving aside ...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: His – his authority ...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: If one considers that he basis his decision on certain risk ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: Factors ...

CHAIRPERSON: Yes.

10 **MR PETER STEPHEN VOLMINK:** Pertaining to Neotel ...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: Which were comprehensively dealt with ...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: By management ...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: Then it suggests at least a level of irrationality or ...

CHAIRPERSON: Hm.

20 **MR PETER STEPHEN VOLMINK:** It - it lacks a ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: A credible basis ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: For how that decision was made ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: To overlook Neotel ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: And go to T-Systems.

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: What precisely motivated ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: Mr Molefe I – I cannot – I am not in a position ...

CHAIRPERSON: Hm.

10 **MR PETER STEPHEN VOLMINK:** To ascribe any motives that I have no knowledge of myself ...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: But looking at the substance ...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: And the justifiability of the decision ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: It strikes me as a patently ...

CHAIRPERSON: Hm.

20 **MR PETER STEPHEN VOLMINK:** Irrational decision.

CHAIRPERSON: Hm - and this Mr Molefe – I apologise Mr Mokoena this is a matter in which there is a judgment of the High Court is it not - T-Systems or is that another matter?

ADV PHILLIP MOKOENA SC: No.

MR PETER STEPHEN VOLMINK: It is the other T-Systems.

CHAIRPERSON: Oh. There are a few T-Systems.

MR PETER STEPHEN VOLMINK: It is the one with (intervenes).

CHAIRPERSON: Oh, okay.

ADV PHILLIP MOKOENA SC: There are a few Chair.

CHAIRPERSON: Okay, alright.

ADV PHILLIP MOKOENA SC: That is why we are interrogating the facts of this one.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: They made from the investigations.

10 **CHAIRPERSON**: But you understand where my thinking is?

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: You will take it into account.

ADV PHILLIP MOKOENA SC: Definitely Chair ...

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: But that is why we want to take you through the entire picture.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: Ultimately we leave it there up until maybe ...

20 **CHAIRPERSON**: *Ja*.

ADV PHILLIP MOKOENA SC: He chooses to put his version ...

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: Or anything else but ...

CHAIRPERSON: Okay.

ADV PHILLIP MOKOENA SC: It is important for us to interrogate these

facts.

CHAIRPERSON: Yes. No that is fine.

ADV PHILLIP MOKOENA SC: Yes. Now you may proceed. You were dealing with paragraph 90.2 (intervenes).

MR PETER STEPHEN VOLMINK: Yes and I think we have dealt with (intervenes) ...

ADV PHILLIP MOKOENA SC: With everything and I want you to ...

MR PETER STEPHEN VOLMINK: Authority.

ADV PHILLIP MOKOENA SC: I want you to go to paragraph 90.3.

10 **MR PETER STEPHEN VOLMINK:** 90.3 Chair I – I make the point that the decision itself was taken in a procedurally unfair manner. Certain risks were identified relating to Neotel yet Neotel is not afforded a proper opportunity to deal with those risks and to give their side of the story and I attach a – a draft letter that was prepared for Neotel where I had indicated the importance of following a procedurally fair process asking them for their side of the story before a decision is made to disqualify them.

ADV PHILLIP MOKOENA SC: May I refer you to page 990 of BB – EXHIBIT BB 2.1C?

20 **MR PETER STEPHEN VOLMINK:** Yes, I am on page 990.

ADV PHILLIP MOKOENA SC: Is that the letter that you are referring to?

MR PETER STEPHEN VOLMINK: That is correct.

ADV PHILLIP MOKOENA SC: Yes, can you take us through the contents?

MR PETER STEPHEN VOLMINK: The contents is that it is a letter of regret addressed to Neotel and it says that:

“After extensive evaluation of all bids and adjudication we regret to advise that your company’s bid was no successful. The following bidder has been afforded preferred bidder status – T-Systems South Africa (Pty) Ltd – and we regret that your company was unsuccessful on this occasion and would indicate that this decision was based primarily on the under mentioned factors and they mention business risk consideration.”

ADV PHILLIP MOKOENA SC: Yes. We will deal with that as (indistinct) but you also - there is a handwritten inscription inside the (indistinct).

MR PETER STEPHEN VOLMINK: That is correct Chair. I – I received this letter - I think for review. It was brought to me for some – for some purpose and I wrote this handwritten note to Mr Edward Thomas who is the Chief – who was the Chief Procurement – Group Chief Procurement Officer at the time and I said to him:

“Hi Eddie, please note that in terms of Section 3 of PAJA when Transnet makes a decision which materially and adversely affects the rights or legitimate expectations of an entity it must follow a process which is procedurally fair. In this instance it would mean that before a final decision is taken

to overlook Neotel they must a, be informed of the risks which the company poses to Transnet b, be informed that Transnet proposes not to award the contract to them because of those risks and c, be invited to make any representations to Transnet which they wish to make. Transnet must also consider such representations before making a final decision.”

And I refer to certain case law which deals with the – the question of
10 procedural fairness.

ADV PHILLIP MOKOENA SC: But fundamentally at the time when Mr Molefe raises a justification of risk in order to overturn the position this is at the stage where all the risk were dealt with by management. Am I correct?

MR PETER STEPHEN VOLMINK: Correct.

ADV PHILLIP MOKOENA SC: Now can you refer please to page 992 of the same EXHIBIT BB 2.1C and identify that document for the Chair?

MR PETER STEPHEN VOLMINK: Chair this is a document which the technical experts had prepared as a response to the risks which the
20 Group Chief Executive had earlier identified and they deal quite comprehensively with why those risks had been mitigated.

ADV PHILLIP MOKOENA SC: And would Mr Molefe have been aware of this document at the time when he overturned the decision?

MR PETER STEPHEN VOLMINK: Chair I cannot state that categorically but he would have – he would have had seen this

document at some point in the process.

ADV PHILLIP MOKOENA SC: Yes and the risk ...

CHAIRPERSON: *Ja.* I just want to say again that we just need to be careful because if you think you have got the power to rescind a decision that has been made by somebody below you in an institution ...

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Or a body before you – you may well completely – you may well feel that you are entitled to attach your own weight to
10 different factors that need to be taken into account. So if – if the idea is to – to say Mr Molefe in deciding to rescind this was motivated by factors that have got anything to do with corruption and state capture a strong case would have to be made. So – so there needs to be a proper appreciation of that you know – because different people can attach different amount of weight to different factors and arrive at different decisions and it would not necessarily mean that that particular one has been motivated by corrupt intentions or – and so on but if of course you can have a case where there is quite a strong case to be made. So I just want to say we need to be careful about that.
20 Otherwise we must spend a lot of time on what is really just maybe a nice point of law to debate but really not having much in terms of advancing what the Commission is about.

ADV PHILLIP MOKOENA SC: Chair we are looking with the witness and other witnesses at the totality of ...

CHAIRPERSON: Hm.

ADV PHILLIP MOKOENA SC: Transactions that were concluded in a similar manner...

CHAIRPERSON: Hm.

ADV PHILLIP MOKOENA SC: The confinements and other things where – which they involved Mr Molefe. What we did not want to do ...

CHAIRPERSON: Hm.

ADV PHILLIP MOKOENA SC: Is to leave the facts which at the time governance felt so strong about and to say that ...

CHAIRPERSON: Hm.

10 **ADV PHILLIP MOKOENA SC:** They suggested quite a pattern and they also overlap ...

CHAIRPERSON: Hm.

ADV PHILLIP MOKOEA: To other transactions. This is just but one of them ...

CHAIRPERSON: Hm.

ADV PHILLIP MOKOENA SC: And we understand that if we are looking at this one in isolation ...

CHAIRPERSON: Hm.

ADV PHILLIP MOKOENA SC: Maybe one might come to that debate ...

20 **CHAIRPERSON:** Hm.

ADV PHILLIP MOKOENA SC: Of whether or not ...

CHAIRPERSON: Hm.

ADV PHILLIP MOKOENA SC: Is this maybe a genuine error that was made ...

CHAIRPERSON: Hm.

ADV PHILLIP MOKOENA SC: By somebody who did not apply the law correctly ...

CHAIRPERSON: Hm.

ADV PHILLIP MOKOENA SC: But ...

CHAIRPERSON: Hm.

ADV PHILLIP MOKOENA SC: This has an accumulative effect ...

CHAIRPERSON: Hm.

ADV PHILLIP MOKOENA SC: When you deal with it and analyse all the other transactions ...

10 **CHAIRPERSON:** Hm.

ADV PHILLIP MOKOENA SC: And that is why we are dealing with it for now ...

CHAIRPERSON: Hm.

ADV PHILLIP MOKOENA SC: On the base of Neotel and it ...

CHAIRPERSON: Hm.

ADV PHILLIP MOKOENA SC: Takes us to other transactions.

CHAIRPERSON: Okay.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Okay.

20 **ADV PHILLIP MOKOENA SC:** But we endeavour in mind...

CHAIRPERSON: *Ja*.

ADV PHILLIP MOKOENA SC: We understand what you are saying ...

CHAIRPERSON: *Ja*.

ADV PHILLIP MOKOENA SC: And it is a point we will take in but I think that it is quite important that he places ...

CHAIRPERSON: Hm.

ADV PHILLIP MOKOENA SC: These facts on record ...

CHAIRPERSON: Okay.

ADV PHILLIP MOKOENA SC: And Mr Volmink also felt very strong about ...

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: How this matter was dealt with and that is why we are interrogating it.

CHAIRPERSON: Hm.

10 **MR PETER STEPHEN VOLMINK:** And – correct Chair. So ...

CHAIRPERSON: Hm and I just remind both of you that I have not had a chance to go through all ...

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: All this because I did not find it yesterday when I wanted to go through. So both of you having gone through it you – you might have a better appreciation of why this might not be a case of just an innocent error of law that was made by somebody who might not be a lawyer, okay ...

ADV PHILLIP MOKOENA SC: Yes Chair.

20 **CHAIRPERSON:** But as long as you apply your mind - both of you are lawyers – as long as you apply your mind that is fine. I will – when I have gone through – if I think that we are not going anywhere with it ...

ADV PHILLIP MOKOENA SC: Ja.

CHAIRPERSON: I will tell you.

ADV PHILLIP MOKOENA SC: Yes Chair.

MR PETER STEPHEN VOLMINK: Chair I have indicated earlier that I –
I am not in position to ascribe any motive.

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: I do not – I cannot state that ...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: In all honesty ...

CHAIRPERSON: From where you are, yes.

MR PETER STEPHEN VOLMINK: As a witness to the Commission.

CHAIRPERSON: Yes.

10 **MR PETER STEPHEN VOLMINK:** What I am able to do ...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: Is to look at the basis upon which the
decision was made ...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: And to highlight my concerns ...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: That there was no - and in my view –
no rational ...

CHAIRPERSON: *Ja.*

20 **MR PETER STEPHEN VOLMINK:** Basis for invoking these various risks
...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: And awarding to another bidder ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: And that is the furthest that I can

take my – myself.

CHAIRPERSON: Yes. It is important to bear that in mind because you could having regard to all of the factors that were taken into account on the basis of which the decision was rescinded by Mr Brian Molefe. You could say this is irrational but it might not necessarily mean there is corruption.

MR PETER STEPHEN VOLMINK: I – I ...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: Concede.

10 **CHAIRPERSON:** So – so it could be completely irrational but not be corruption but it maybe that when you look at it together with maybe other things that are to follow it might strengthen a view that even this one may have been influenced by something like that. So I was just alerting you to say as we move forward on the issue just bear that in mind.

MR PETER STEPHEN VOLMINK: Thank you Chair.

ADV PHILLIP MOKOENA SC: We do Chair. Yes Mr Volmink you may proceed. You have now said that in terms of the risk being a justification to overturn the decision that could not hold water if one
20 has regard to what management has already done in order to mitigate the risks?

MR PETER STEPHEN VOLMINK: Correct.

ADV PHILLIP MOKOENA SC: Yes. You may proceed then to deal with paragraph 90.5 and the paragraph that follows.

MR PETER STEPHEN VOLMINK: Yes.

ADV PHILLIP MOKOENA SC: It is on page 41.

MR PETER STEPHEN VOLMINK: Page 41. Chair in those paragraphs we make the point that although the PPM allows for material risk to be considered during an adjudication stage what it states is that:

“The concept of material risk must be interpreted restrictively and be limited to those instances where Transnet would be severely prejudiced by the award of a business to a particular bidder.”

What we trying to avoid Chair is where risks are invoked at the 11th
10 hour as a reason to overlook the selected bidder when the underlying justification does not exist and in some cases where those risks had already been taken into account during the earlier evaluation stage. So that is the point I am make on page 96 and in what follows then in - sorry in paragraph 90.5 – in what follows Chair I simply question Mr – Mr Molefe’s interpretation of certain of the rules which he said allowed him to – to rescind and then I think what is most concerning is what is in 90.7 where in Mr Molefe’s statement – at least in his – in his memorandum he says that he will take that 248 – the further R248 million discount into account as a reason to award to – to T-Systems
20 and we have indicated that that should not have been the case. The – that process had already closed and in fact that gave T-Systems an unfair advantage over other bidders who had not been afforded the same opportunity.

CHAIRPERSON: What – what justification did he advance for taking into account something that was done after the process had been

closed – if he did advance any?

MR PETER STEPHEN VOLMINK: Chair perhaps it would be better if I referred you to his statement.

CHAIRPERSON: (Indistinct).

MR PETER STEPHEN VOLMINK: To his memorandum at least – my apologies.

CHAIRPERSON: (Indistinct).

ADV PHILLIP MOKOENA SC: Chair the mic.

CHAIRPERSON: Sorry - in the – in his letter of 20 November 2013 at
10 page 990 – in his letter to Neotel it does not seem if I see correctly –
he does not seem to make any reference to this reduced price that was
offered after the process had closed. Am I right?

MR PETER STEPHEN VOLMINK: There is no reference in that letter
Chair.

CHAIRPERSON: And that is one entity that should have been told if
that had been a factor. Is it not?

MR PETER STEPHEN VOLMINK: Correct.

CHAIRPERSON: Because they were the – the bidder that had been
successful in terms of what – of the previous decision?

20 **MR PETER STEPHEN VOLMINK:** Correct.

CHAIRPERSON: So in the letter to them he only tells them about the
business risks as the reason – am I right?

MR PETER STEPHEN VOLMINK: He only mentions business risk. He
does not mention the issue of pricing but you ask me what the
justification for taking it into account was ...

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: And you will find that justification dealt with in his memorandum on page 980.

ADV PHILLIP MOKOENA SC: From paragraph 21?

MR PETER STEPHEN VOLMINK: At paragraph 21, correct.

ADV PHILLIP MOKOENA SC: Yes. You can summarise ...

MR PETER STEPHEN VOLMINK: In a...

ADV PHILLIP MOKOENA SC: Let us wait for the Chair to find the page.

10 **CHAIRPERSON:** Yes. I am there now.

ADV PHILLIP MOKOENA SC: At the bottom Chair paragraph 21.

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: Chair what he says is:

“Post the close of the final offers being submitted T-Systems indicated that they unfortunately due to strict timelines set by Transnet only managed to get confirmation from their shareholder on certain pricing elements and that they would be in a position to reduce the price submitted the week before by a further R248 million.”

20

ADV PHILLIP MOKOENA SC: But to underline here he says post the close of the final offers.

MR PETER STEPHEN VOLMINK: Yes, post the close of the final offers. Over the page he says:

“I approve that the 248 million be taken into

consideration as part of T-Systems best and final offer as the commitment was made in writing to Transnet and shortly after the best and final offers have closed and I do not believe any other bidders were prejudiced by this.”

ADV PHILLIP MOKOENA SC: Would you agree with that reasoning?

MR PETER STEPHEN VOLMINK: No I do not – I do not agree with that reasoning.

CHAIRPERSON: So what is the point of closing the system if anybody
10 who comes after can be accommodated?

MR PETER STEPHEN VOLMINK: Precisely Chair.

CHAIRPERSON: And then – and then the others are not given a chance to – to come up also with – to compete with or match that latest offer.

MR PETER STEPHEN VOLMINK: Chair it – it violates the principle of equal treatment ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: Which is so fundamental in the bidding process.

20 **CHAIRPERSON:** Hm.

MR PETER STEPHEN VOLMINK: Everyone needs to be treated equally.

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: You are afforded an opportunity to give your best and final offer by a certain date ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: And that is – that is when the process ends – well that is when that step in the process closes. You cannot then invite one particular bidder a further bite ...

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: Or give a particular bidder a further bite at the cherry. It is just not right.

CHAIRPERSON: I – I guess that the least you can do if your internal processes permit is to reopen that for everybody but even with that you
10 must check whether your internal policies and processes allow you to do that. If they do not allow you – you should not reopen.

MR PETER STEPHEN VOLMINK: Precisely Chair and there is – there is no provision in our policies that says after best and final offers and the award is to be made now you can reopen and start the process afresh.

CHAIRPERSON: Yes because they – they had – T-Systems had the same amount of time as everybody before the closing of the process?

MR PETER STEPHEN VOLMINK: Precisely.

CHAIRPERSON: So when they – when they are late to put in a reduced
20 offer if you take that into account it means that you have a different closing date for them effectively.

MR PETER STEPHEN VOLMINK: That is exactly you shift it.

CHAIRPERSON: You are extending the closing date for them.

MR PETER STEPHEN VOLMINK: Ja.

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: And you have moved out that closing date.

CHAIRPERSON: *Ja*.

MR PETER STEPHEN VOLMINK: Precisely.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: And Chair what I can also add to what you have cautioned us that bear with us to lead the evidence of further witnesses like Mr Mohamedy ...

CHAIRPERSON: Yes.

10 **ADV PHILLIP MOKOENA SC:** And others that are going to follow and dealing almost with the same issues ...

CHAIRPERSON: Same issues.

ADV PHILLIP MOKOENA SC: And also clarifying certain events.

CHAIRPERSON: Yes. No, no, no that is ...

ADV PHILLIP MOKOENA SC: Bear with us.

CHAIRPERSON: That is fine - that is fine *ja*.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Thank you.

MR PETER STEPHEN VOLMINK: Now...

20 **ADV PHILLIP MOKOENA SC:** Yes.

MR PETER STEPHEN VOLMINK: I was going to move one.

ADV PHILLIP MOKOENA SC: You can – you may then proceed what then transpired.

MR PETER STEPHEN VOLMINK: Chair needless to say that there was just widespread concern amongst the legal people, governance people,

procurement people, the IT Department about the GCE's decision and we then thought it best to seek the opinion of counsel on the matter and during December 2013 we arranged a consultation with Advocate Gilbert Marcus to obtain his view on the legality of the decision.

CHAIRPERSON: Before you tell me about his view how long had you been with Transnet by the time this decision was made by Mr Brian Molefe – yourself and maybe in terms of this particular unit in which you – had you been there for quite some time?

10 **MR PETER STEPHEN VOLMINK:** I think probably about three to four ...

CHAIRPERSON: Three years.

MR PETER STEPHEN VOLMINK: Years.

CHAIRPERSON: So – and he – how long had he been there? Do you know?

MR PETER STEPHEN VOLMINK: Chair I will have to hazard a guess.

CHAIRPERSON: You do not know.

MR PETER STEPHEN VOLMINK: It is also a couple of years.

CHAIRPERSON: I - I wanted to ask whether something like this had
20 ever been done before to your knowledge.

MR PETER STEPHEN VOLMINK: Chair to the best of my knowledge before – before this I have not come across an instance ...

CHAIRPERSON: You had never come across it.

MR PETER STEPHEN VOLMINK: Such as this.

CHAIRPERSON: But obviously you would not know if it happened at

Transnet anything like that this had happened before your time?

MR PETER STEPHEN VOLMINK: I cannot.

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: I cannot say.

CHAIRPERSON: *Ja.*

MR PETER STEPHEN VOLMINK: (Intervenes).

CHAIRPERSON: Okay, alright. So you sought senior counsel's opinion?

MR PETER STEPHEN VOLMINK: Correct.

10 **CHAIRPERSON:** Yes.

MR PETER STEPHEN VOLMINK: Chair what senior counsel then advised is that – he advised that extraneous factors were taken into account in making the decision – the award to T-Systems. He advised that the process was procedurally unfair and not in accordance with Section 217 and he advised that Transnet should review its decision to award to T-Systems and proceed with the award to Neotel. I am giving you a summary of it but that is in essence.

ADV PHILLIP MOKOENA SC: But there was also an external audit on this issue.

20 **MR PETER STEPHEN VOLMINK:** Sorry.

ADV PHILLIP MOKOENA SC: There was also an external audit.

MR PETER STEPHEN VOLMINK: Correct Chair. Sometime late external audits also sought a legal opinion which I am – which I have also attached and the external audit legal opinion also confirmed the view that extraneous factors were considered. It raised the issue about

Mr Molefe's authority. It raised the question of the conflict of interest and the rounding off and in essence it also concluded that the award was not correctly made.

ADV PHILLIP MOKOENA SC: Now from page - 44 Mr Volmink – from paragraph 98 you deal with the - not the CJ's – the GCE's decision ...

CHAIRPERSON: Are you ...

ADV PHILLIP MOKOENA SC: To revoke T-System's position.

CHAIRPERSON: Are you retaliating?

(Laughing)

10 **ADV PHILLIP MOKOENA SC:** No.

CHAIRPERSON: Well before ...

ADV PHILLIP MOKOENA SC: It is that time of the (intervenes).

CHAIRPERSON: Before we – before we get – we get there Mr Volmink my – my mind is still on the issue that in his memorandum ...

MR PETER STEPHEN VOLMINK: Yes.

CHAIRPERSON: On this issue of the reduced price from T-Systems that came after the process had been closed. Mr Brian Molefe says he was approving that it be taken into account the reduced price – reduced offer on the basis that he did not think there would – there was any
20 prejudice to the other ...

ADV PHILLIP MOKOENA SC: Bidders.

CHAIRPERSON: Bidders but I am not sure that I understand that. Who said they would not have reduced further if they were given a chance and if they knew that T-Systems were reducing further?

MR PETER STEPHEN VOLMINK: That is precisely the difficulty Chair

because he even went on to say it is not necessary to request any other best and final offer from vendors as all three bidders were given the opportunity to confirm their prices.

CHAIRPERSON: But they are not given the same opportunity.

MR PETER STEPHEN VOLMINK: Not the same opportunity.

CHAIRPERSON: And I am just trying to think whether you need a lawyer to look at that in that way or whether putting aside law just simple - from a simple understanding that procurement must be fair and transparent to all parties.

10 **MR PETER STEPHEN VOLMINK:** Precisely. Chair...

CHAIRPERSON: You ought to see that you are being unfair ...

MR PETER STEPHEN VOLMINK: Precisely.

CHAIRPERSON: By allowing a party after the process has been closed to bring in their reduced offer and the other parties do not get given the same opportunity.

MR PETER STEPHEN VOLMINK: I do not think one needs to be a lawyer to see that there is a problem with this.

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: I think just ...

20 **CHAIRPERSON:** Your sense of ...

MR PETER STEPHEN VOLMINK: One's basic sense of fairness

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: Would suggest that there is one particular bidder who has been given preferential treatment to the prejudice of the other bidders.

CHAIRPERSON: Hm.

MR PETER STEPHEN VOLMINK: And – and I cannot see anyway how that could have been justified.

CHAIRPERSON: Because when you say the closing date that is the closing date. You must bring in your final and best offers not later than that date. By implication you are saying if you bring it later it will not be taken into account.

MR PETER STEPHEN VOLMINK: That is exactly right.

CHAIRPERSON: Yes. Otherwise the idea of a closing date loses its
10 meaning.

MR PETER STEPHEN VOLMINK: Precisely – precisely.

ADV PHILLIP MOKOENA SC: But as a follow up to the Chair's questions at that stage when Mr Molefe overturned this decision there were already structures and individuals with authority that have applied their mind to the documentations and issues of pricing pertaining to this tender. Am I correct?

MR PETER STEPHEN VOLMINK: Correct. So everything was taken into account. Even that 248 million ...

ADV PHILLIP MOKOENA SC: Yes.

20 **MR PETER STEPHEN VOLMINK:** Was brought to the attention of the evaluation team and they said we will not consider this because it is now after the closing date and as I testified earlier in my view that was absolutely the correct decision. So it had been – that issue had been considered. All pricing issues were on the table and a decision was made based on the pricing as at the closing date of the best and final

offers.

ADV PHILLIP MOKOENA SC: And when he overturns this decision does he consult with governance or any other structures or seek clarity from any other body that dealt with the matter?

MR PETER STEPHEN VOLMINK: Chair I certainly – I was not consulted at all and I seriously doubt that any other assurance function within Transnet would have been consulted before this decision was made.

ADV PHILLIP MOKOENA SC: Now from page 44 paragraph 98 you deal
10 with the GCE's decision to revoke the T-System position as a bidder – preferred bidder. How does this now happen?

MR PETER STEPHEN VOLMINK: Chair so after the external audit finding was made, and as I said it was accompanied by a legal opinion as well the GCE then relented and he decided he was going to revoke T-Systems status now as the preferred bidder, and a letter was written to T-Systems to inform of the GCE's decision to revoke its appointment as the preferred bidder.

ADV PHILLIP MOKOENA SC: So firstly he overturns the decision to award the tender to Neotel.

20 **MR PETER STEPHEN VOLMINK:** Correct.

ADV PHILLIP MOKOENA SC: And he does that alone?

MR PETER STEPHEN VOLMINK: He does that alone.

ADV PHILLIP MOKOENA SC: And now he revokes the decision to that he has made to award to T-Systems, he revokes his own decision?

MR PETER STEPHEN VOLMINK: Yes correct that is what he did.

CHAIRPERSON: And that is after he had been furnished with senior counsel's opinion and other reports?

MR PETER STEPHEN VOLMINK: Chair he would have been furnished with the audit, the external audit finding, on Senior Counsel's opinion, I deal with that as well in my statement, there was apparently a request made not to obtain the final written opinion from Senior Counsel.

CHAIRPERSON: Oh, so is the position that as far as you know he was the Senior Counsel's opinion was not brought to his attention for whatever reason?

10 **MR PETER STEPHEN VOLMINK:** For whatever reason Chair Senior Counsel's written opinion ...

CHAIRPERSON: Yes, yes.

MR PETER STEPHEN VOLMINK: Was not ...(intervention)

CHAIRPERSON: Made available to him.

MR PETER STEPHEN VOLMINK: Was not being made available.

CHAIRPERSON: Ja, and you will deal with the reasons there?

MR PETER STEPHEN VOLMINK: I deal with that also in my statement.

ADV PHILLIP MOKOENA SC: Now can you proceed to deal with the confinement of the CCTV Security (indistinct) contract to Neotel, you
20 are dealing ...(intervention)

CHAIRPERSON: I'm sorry Mr Mokoena, so the revocation of his decision to award the tender to T-Systems was as far as you know based largely if not solely on the audit report?

MR PETER STEPHEN VOLMINK: On the audit finding.

CHAIRPERSON: Ja, okay, alright, thank you.

ADV PHILLIP MOKOENA SC: Chair maybe for completeness in relation to that question may I refer you to page 1051, so as at least we can deal with this matter on its factual basis and to see what Mr Molefe communicates to T-Systems. Is that, could you identify that letter Mr Volmink?

MR PETER STEPHEN VOLMINK: On page 1051 it's the letter written by Mr Molefe to T-Systems.

ADV PHILLIP MOKOENA SC: And what does he convey to them?

MR PETER STEPHEN VOLMINK: It says that:

10 "We refer to your letter dated 20 May in response to Transnet's stated intention to revoke your status as preferred bidder in respect of Network Services Tender. Transnet considered your representations as set out in your letter and hereby wish to inform you of our final decision, which is that your preferred bidder status has been revoked."

ADV PHILLIP MOKOENA SC: And nothing was being said.

MR PETER STEPHEN VOLMINK: Ja, nothing.

ADV PHILLIP MOKOENA SC: Now I was referring you to page 45, now you're dealing with the confinement of the CCTV.

20 **MR PETER STEPHEN VOLMINK:** Yes.

ADV PHILLIP MOKOENA SC: Can you please take us through?

MR PETER STEPHEN VOLMINK: This is the next transaction that I was asked to consider and to comment on Chair, and it relates to a confinement to Neotel regarding a CCTV upgrade or the upgrade of CCTV cameras and equipment within the ports, and what I say in

paragraph 103 following is that a confinement for the contract for CCTV upgrade to Neotel was submitted by Mr Tau Morwe who was the Chief Executive of TNPA and it was approved by the Group Chief Executive at the time and a copy of that confinement is then addressed.

I make the point that I also don't recall any stage where the governance function was asked to review the confinement and I am not able to find any record of the prior review.

ADV PHILLIP MOKOENA SC: May I refer you to page 1066 Chair, it's EXHIBIT BB2.1C.

10 **CHAIRPERSON:** Did you say 1066?

ADV PHILLIP MOKOENA SC: 1066 Chair. Can you please ID that document for us.

MR PETER STEPHEN VOLMINK: This is the memorandum requesting confinement which was submitted to the Group Chief Executive.

ADV PHILLIP MOKOENA SC: Yes and what is the date of the memo?

MR PETER STEPHEN VOLMINK: The date of the memo is the 24th of April 2014.

ADV PHILLIP MOKOENA SC: And the subject?

20 **MR PETER STEPHEN VOLMINK:** The subject relates to a request for approval to procure a CCTV Security Solution for TNPA across all ports.

ADV PHILLIP MOKOENA SC: Can you please take us through the contents under the purpose.

MR PETER STEPHEN VOLMINK: So under the purpose of the submission it says that the purpose is to request the Group Chief

Executive to approve the award, to approve and award business for the procurement of CCTV cameras and related maintenance through a confined procurement process to the value of R142million and some change, from Neotel, secondly the award of business via the current Neotel Master Services Agreement for the installation of the CCTV and security solution to the value of R186million allowing sole accountability to Neotel for effective working of the solution and then to approve unforeseen CAPEX in the value of R252million.

ADV PHILLIP MOKOENA SC: Now let me refer you back to your
 10 witness statement on page 45 and you may proceed dealing with the contents of paragraph 104 onwards.

MR PETER STEPHEN VOLMINK: So in paragraph 104 Chair I make the point that the memo provides a motivation for confining the procurement of the CCTV cameras to Neotel and for awarding business via the existing Neotel MSA for the installation of the cameras and I make the point that the grounds for the confinement was stated, there were two grounds basically, firstly there was urgency and secondly compatibility with existing products and services and I say that I was asked by the Commission's investigators to provide my comments on
 20 the grounds of confinement, in particular whether they were sound or not sound.

ADV PHILLIP MOKOENA SC: Yes, can you proceed dealing with that.

MR PETER STEPHEN VOLMINK: Then as far as urgency is concerned Chair this is where I had a difficulty because the – and the main difficulty that I had with this is that the urgency was not unforeseen,

the PPM specifically says that it must be an unforeseen urgency. You can't see the urgency coming way down the road and then at the last minute you invoke urgency and I make the point in my statement in paragraph 1041 I say that the ground for confinement as stated in the PPM is that confinements will only be considered where a genuine urgency has arisen which should not be attributable to a lack of proper planning, in such cases appropriate action must be taken against the individual responsible for the bad planning but you can't use that bad planning as a basis for urgency, it's the conversation that we had
10 earlier, and I make the point also in paragraph 104.3 that the factors mentioned for urgency were entirely foreseeable and a few, I think there's probably about three factors that were mentioned, the first is that TMLA could become non-compliant with certain international shipping and port facilities security codes.

Now if I can pause there for a moment, it is said that we could be blacklisted by the US Administration and it mentions various consequences which could arise, if the CCTV cameras were not put in place, and it occurred to me Chair that one doesn't realise now all of a sudden that we are non-compliant with these codes. If we read this
20 statement as a whole some of these CCTV cameras had been defective for a very long period of time, and the urgency which now exists was not an unforeseeable urgency, so based purely on a cold reading of this document I came to the conclusion that it could not be said that this was an unforeseeable urgency.

The second factor pertains to insurance claims, there was a

concern that our insurers may not cover us if there's any incident which happens in the ports, because of our defective equipment, but once again that is not unforeseeable, it's not as if we realise today that the insurers will not cover us for defective equipment when in fact this is a situation that has been coming on for a very long time, and the third reason which in my view was the weakest of all the reasons pertains to the fact that certain PFMA reportable items had to be remediated, I mention that in paragraph 104.3 and apparently this relates to the fact that a company called ESS had installed this equipment at some point
10 in the past, and that this had created fruitless and wasteful expenditure or irregular expenditure and the memorandum suggests that it is urgent that we take remedial action to address the PFMA issues.

Now I say it's the weakest of the reasons Chair, because the way one has to remediate a finding of irregular expenditure or fruitless and wasteful expenditure is by taking disciplinary steps against the person or persons who are responsible for that having occurred and possibly instituting civil or criminal action, but I could not understand why those factors were put forward as a grounds for urgency.

Having said that I thought that the second ground, which is
20 compatibility with existing products or services I thought that that ground was – it was plausible, it was a credible ground, we are going to Neotel who has the network services contract, and the CCTV cameras have to interface with the network which they have put in place, there needs to inter-operability between the CCTV cameras and the network system, so I felt in fairness that I couldn't take issue with the second

ground but I was quite concerned about the first ground.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: And if there was one ground with which you took no issue would that be good enough for purposes of justifying confinement?

MR PETER STEPHEN VOLMINK: That's an interesting question, the PPM certainly doesn't say that ...(intervention)

CHAIRPERSON: It doesn't prescribe.

MR PETER STEPHEN VOLMINK: It doesn't prescribe, it says all your
10 grounds must be correct, having said that I am aware of some authority for the view that if reasons are given for a decision and one of which is defective it infects the validity of the decision as a whole, so that is a concern as well.

CHAIRPERSON: Ja, well I think I know what you're talking about, I know that as well but I – I'm not sure that it's logical and I say that not knowing whether I've ever been party to a decision such as that. If there are – if you have got three or four reasons why you say that something is good these reasons may have different weight, you might have one that may be good enough that would have been good enough
20 even if you didn't have the other three on which to base that to say this thing is good, you might have three or four reasons which each of which on its own is not good enough to sustain that view and therefore can only stand if you have the other reasons as well, just like you could have a reason that makes a particular decision fatally defective on its own it could have a reason that sustains it despite how weak the other

reasons are one would think but maybe that's – that may be a debate for another day so anyway but for this particular job that you were performing what was your view, was whether, was it whether the fact that on compatibility since you could not take issue with that, that should sustain, that should be okay, or is it something that you took no view on?

MR PETER STEPHEN VOLMINK: Chair I was asked to express a view on whether the grounds for confinement were valid or invalid, I haven't expressed a further view whether if one ground is found to be invalid
10 whether it taints the decision as a whole, so I confined myself to the task that was set for me and I commented that I thought one ground was invalid but the second ground was valid.

CHAIRPERSON: Ja, okay.

ADV PHILLIP MOKOENA SC: But Mr Volmink maybe ...(intervention)

CHAIRPERSON: Well we've got senior counsel here so they will ...(intervention)

ADV PHILLIP MOKOENA SC: ...maybe I have read your statement five times more than him, even that ground that you said you may find as a justification when you go to paragraph 1045.5 you seem not to be
20 convinced about the very sound ground of compatibility, can you please take the Chair ...(intervention)

MR PETER STEPHEN VOLMINK: Yes perhaps I should take the Chair through that.

ADV PHILLIP MOKOENA SC: Yes.

MR PETER STEPHEN VOLMINK: So I'm saying I don't agree with the

ground of urgency, I think that there was sufficient ground to confine on – to Neotel on the grounds of compatibility.

CHAIRPERSON: Yes.

MR PETER STEPHEN VOLMINK: But where I take issue with the – with what then follows in this – in the memorandum is that mention is then made of the fact that this CCTV equipment had to specifically be sourced from a company called Nice, N-i-c-e, and that Neotel had recommended that Nice Equipment be obtained because Nice was prepared to give certain guarantees and warranties and so on, but as I
10 said the memo then also goes on to say that this very Nice Equipment had reached the end of their useful life, that there was a 64% failure rate of the equipment, I understand the motivation to confine to Neotel, but it certainly wasn't necessary to then say oh and Neotel will also obtain or procure this from this other entity which was not the subject matter of this confinement, I think that is the point that I'm trying to make.

CHAIRPERSON: So what you are saying is whatever it is that you are saying in 104.5 doesn't relate to whether confinement is justified or not, it relates to whether Nice or whatever they are called, their
20 equipment could be used, that's where – what it relates to?

MR PETER STEPHEN VOLMINK: I raise that question, I say I don't understand why we have to be talking about this Nice or Nice Equipment.

CHAIRPERSON: Because that has got nothing to do with confinement?

MR PETER STEPHEN VOLMINK: It's got nothing and in any event

you've already said that their confinement is non-functional and so on.

CHAIRPERSON: Okay.

ADV PHILLIP MOKOENA SC: Now on paragraph 1046 you also deal with the discoveries that you made pertaining to Neotel, could you please share that with the Chair?

MR PETER STEPHEN VOLMINK: Yes Chair I think sometime after the award we discovered or it was discovered that Neotel was actually not registered as a security service provider with the private security industry regulator and the Act, the Private Security Industry Regulation
10 Act requires registration before any security services can be performed and security services includes things like the installation of CCTV cameras.

We did write a memorandum setting out our concerns around the award to Neotel based on their non-registration with SIRA, apparently the Minister of Police exempted Neotel then from the requirements of SIRA and a contract was then concluded with Neotel.

ADV PHILLIP MOKOENA SC: But could that exemption also be applicable to Transnet?

MR PETER STEPHEN VOLMINK: No the exemption would have been
20 applicable to the entity who was supposed to be registered, so the Minister exempts Neotel from that particular requirement, not Transnet.

ADV PHILLIP MOKOENA SC: Mr Chair we are about to deal with another long topic of the T-Systems award and I see it's 15:51 if not 15:53, may we deal with this tomorrow and I can assure you that we will be able to finalise the evidence of Mr Volmink tomorrow before one

o'clock, even if we start at ten o'clock we will still be able to finalise it.

CHAIRPERSON: Oh you don't think we need to take – go up to half past four, you think there will be enough time to finish tomorrow?

ADV PHILLIP MOKOENA SC: There will be enough time Chair, definitely.

CHAIRPERSON: Tomorrow, okay, and if we start what time tomorrow?

ADV PHILLIP MOKOENA SC: Even if we start at ten o'clock.

CHAIRPERSON: Even if we start at ten.

ADV PHILLIP MOKOENA SC: We will be able to finalise the evidence
10 before one o'clock.

CHAIRPERSON: Okay, that's fine then, okay then that's fine, let's adjourn then and we will start at ten tomorrow morning. So adjourn then.

INQUIRY ADJOURNS TO 10 MAY 2019