

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

PARKTOWN, JOHANNESBURG

10

15 MAY 2019

DAY 93

20

PROCEEDINGS ON 15 MAY 2019

REGISTRAR: All rise.

CHAIRPERSON: Good morning Mr Mokoena, good morning everybody.

ADV PHILLIP MOKOENA SC: Good morning Chair.

CHAIRPERSON: Are you ready?

ADV PHILLIP MOKOENA SC: We are ready Chair.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: Chair the next witness for Transnet it is Mr Mohammed Mahomed and for the purpose of leading his evidence
10 we will be referring to two main files which we have now taken the liberty of marking them as Exhibit BB3A and Exhibit BB3B.

CHAIRPERSON: Exhibit BB3A and Exhibit BB3B

ADV PHILLIP MOKOENA SC: 3 – BB3B yes.

CHAIRPERSON: Okay.

ADV PHILLIP MOKOENA SC: And subsequent Chair to having filed or dispatched the 3.3 Notices Nedbank did file a 3.4 Application even though it might not be complete as they intend to ventilate other issues in due course. And pursuant to that Mr Mahamedy also filed a supplementary witness statement where he effected some minor
20 corrections and also responded to Nedbank's Rule 3.4 affidavit. We propose Mr Chair that we mark the Nedbank Rule 3.4 affidavit as Exhibit BB3.2 and to mark the Exhibit – the supplementary statement of Mr Mahomedy as Exhibit BB3.3 and we beg leave to formally hand same to you Chair?

CHAIRPERSON: I am just thinking whether we should get Nedbank's

affidavit in at this stage before the – their witness comes in.

ADV PHILLIP MOKOENA SC: Yes Chair we are simply indicating as a matter of process that that is why this happened we might not even have to formally hand them over to you at this stage but simply to indicate that subsequent to the initial statement...

CHAIRPERSON: That they are responding to – are they responding to the witness's statement insofar as it affects them?

ADV PHILLIP MOKOENA SC: In as far – in as far it affects them they indicate areas where they are not in agreement with certain assertions
10 arising from there.

CHAIRPERSON: Hm.

ADV PHILLIP MOKOENA SC: But they also say in their affidavit that in due course they will seek leave from the Chair to lead evidence and to cross-examine Mr Mahomedy if those issues are not being resolved by the parties before that – before that time.

CHAIRPERSON: The first lever arch file will be marked Exhibit BB3A and the second one will be marked Exhibit BB3B and you have a small file that you have made available here which consists of an affidavit from – by – is it Mr McCarthy?

20 **ADV PHILLIP MOKOENA SC:** Mr McCarthy that is from Nedbank yes.

CHAIRPERSON: McCarthy from Nedbank. That one will be marked Exhibit 33 you said 2?

ADV PHILLIP MOKOENA SC: Yes, yes Chair.

CHAIRPERSON: 33.2 and Mr Mahomedy is 1 BB3.3.

ADV PHILLIP MOKOENA SC: Yes Chair. That should be in order.

CHAIRPERSON: What happened to 33.1?

ADV PHILLIP MOKOENA SC: Chair?

CHAIRPERSON: Where is 33.1?

CHAIRPERSON: They took that – the statement of Mr Mahomedy maybe in itself will be 33.1 but they did not refer this ones by firstly numbering with a number 1 number.

CHAIRPERSON: You see if we do not change them somebody following the proceedings trying to read this thing will think there is BB3.1 missing and...

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

CHAIRPERSON: They might spend time trying to find that.

ADV PHILLIP MOKOENA SC: In terms of the sequencing yes.

CHAIRPERSON: Ja.

ADV PHILLIP MOKOENA SC: Yes I hear you.

CHAIRPERSON: So maybe we should change to say Exhibit BB3.1.

ADV PHILLIP MOKOENA SC: Ja.

CHAIRPERSON: Will be Mr McCarthy's affidavit and BB3.2 will be Mr Mahomedy's supplementary affidavit.

ADV PHILLIP MOKOENA SC: That makes sense.

20 **CHAIRPERSON**: Ja let us do it that way and then during the break...

ADV PHILLIP MOKOENA SC: We will amend.

CHAIRPERSON: This can be changed.

ADV PHILLIP MOKOENA SC: We will amend them accordingly.

CHAIRPERSON: Ja. Okay. Alright. Thank you.

ADV PHILLIP MOKOENA SC: Mr Chair we are ready to lead the

evidence of Mr Mahomedy and may the witness be witness be sworn in?

CHAIRPERSON: Okay. Please administer the oath or affirmation.

REGISTRAR: Please state your full names for the record?

MR MOHAMMED SULEMAN MAHOMEDY: Mohammed Suleman Mahomedy.

REGISTRAR: Do you have any objections to making the prescribed affirmation?

MR MOHAMMED SULEMAN MAHOMEDY: No.

REGISTRAR: So you solemnly affirm that the evidence that you will
10 give will be the truth; the whole truth and nothing but the truth; if so
please raise right hand and say, I truly affirm.

MR MOHAMMED SULEMAN MAHOMEDY: I truly affirm.

REGISTRAR: Thank you.

CHAIRPERSON: Thank you. You may proceed Mr Mokoena.

ADV PHILLIP MOKOENA SC: Thank you Chair. Mr Mahomedy as
already indicated to the Chair we will be referring to four exhibits which
I see they have already been placed before you. You will see that the
two big files the first one should be marked Exhibit BB3A that will be
the first file. And the second one is Exhibit BB3B. You have already
20 also heard that there was a – an affidavit by Nedbank which we have
now amended it...

CHAIRPERSON: Let – I am sorry Mr Mokoena let me check whether
everybody can hear you at the back? Nobody shakes their hands so it
means they hear you.

ADV PHILLIP MOKOENA SC: Yes Chair.

CHAIRPERSON: Okay thank you.

ADV PHILLIP MOKOENA SC: They are contained in a separate folder and they are marked respectively Exhibit BB3.1 and Exhibit BB3.2 but for the purposes of beginning with your testimony could you please concentrate on Exhibit BB3A and should I move to another file I will alert you and notify you accordingly. Now let me assist you to navigate that first file. You will see on the first it is a cover page. The document immediately there it is an index. It will help you or assist you to locate the different documents which we will be referring to from
10 time to time and immediately after the index there is a document Mr Mahomedy can you please identify that document for us immediately after the index?

MR MOHAMMED SULEMAN MAHOMEDY: Advocate Mokoena this is my statement to the commission.

ADV PHILLIP MOKOENA SC: Yes. May you then refer to page 39 – page 39 Chair? Is your signature appearing there?

MR MOHAMMED SULEMAN MAHOMEDY: Yes that is correct.

ADV PHILLIP MOKOENA SC: Yes. And do you confirm that your statement it is in a form of an affidavit?

20 **MR MOHAMMED SULEMAN MAHOMEDY:** Yes that is true.

ADV PHILLIP MOKOENA SC: And you also confirm the contents of your statement to be both true and correct?

MR MOHAMMED SULEMAN MAHOMEDY: Yes Advocate.

ADV PHILLIP MOKOENA SC: Yes. Now Mr Mahomedy can you please share with us your qualifications?

MR MOHAMMED SULEMAN MAHOMEDY: I am a qualified Chartered Accountant in South Africa.

ADV PHILLIP MOKOENA SC: Yes. And prior to joining Transnet what did you do?

MR MOHAMMED SULEMAN MAHOMEDY: Advocate I think it would be good to just give a brief history. I think...

ADV PHILLIP MOKOENA SC: Yes please.

MR MOHAMMED SULEMAN MAHOMEDY: I think in 2001 I joined Eskom as a Division Finance Manager in the Transnet – sorry in the
10 Transmission Division. Thereafter I joined Transnet Freight Rail which was then called Spoornet in September 2004. It was there until May 2006 at which time I resigned and joined a company called Cutting Edge Commerce where I was employed until April 2008. Between April 2008 and September 2008 I worked at Cutting Edge Finance as a Financial and Management Consultant and I have been at Transnet since October 2008 in a variety of functions.

ADV PHILLIP MOKOENA SC: Now can you share with us you know just briefly your employment history within Transnet itself?

MR MOHAMMED SULEMAN MAHOMEDY: I will start with my current
20 role in which I was appointed by the Honourable Minister Pravin Gordhan on the 1 May 2019 as the Acting Group Chief Executive. That is not included in my statement as it was subsequent to this – the submission of the statement.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: Chairperson. Prior to that I

was the Acting Group Chief Financial Officer once again appointed by the Honourable Minister Pravin Gordhan the Public Enterprises Minister on the 15 May 2018. I was the General Manager of Finance within Transnet Group Capital a business unit within Transnet from August 2016 to the 15 May 2018. And before that I was the General Manager of a department called Group Capital Integration and Assurance from February 2013 to August 2016. The key responsibilities in that function was the capital strategy of Transnet as well as the capital portfolio management of Transnet.

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

MR MOHAMMED SULEMAN MAHOMEDY: From October 2008 to January 2013 I spent that time as an Executive Manager of Finance at Transnet Freight Rail and amongst my key responsibilities in that space were the – some of the finance related matters but also specifically payroll management and the internal financial controls of Transnet Freight Rail. I think it must be – it is necessary to also state that during the period that I was reporting into the Group Finance Space between 2013 and 2015 on occasion I would have acting as the Group Chief Financial Officer in the absence of the then CFO Anoj Singh and

20 it is on this basis that you may find my signature appearing in a variety of documents and memoranda as the Acting Chief Financial Officer.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: During that period.

ADV PHILLIP MOKOENA SC: Now at the time when you deposed to this statement which capacity did you occupy?

MR MOHAMMED SULEMAN MAHOMEDY: I was the Acting Group Chief Financial Officer of Transnet.

ADV PHILLIP MOKOENA SC: Yes and in that capacity could you please share with the Chair your responsibilities?

MR MOHAMMED SULEMAN MAHOMEDY: Right up top the key responsibilities of the Financial Sustainability of Transnet and the Financial Management of Transnet. It would also look at the controls within Transnet, the financial controls and the treasury function of Transnet which is largely where Transnet procures funding and
10 management of the cash flows of Transnet.

ADV PHILLIP MOKOENA SC: Now the – that responsibility of the treasury function what did it entail? Did you – were there people reporting to you? Was it a unit on its own? How did it operate within the bigger structure of Transnet?

MR MOHAMMED SULEMAN MAHOMEDY: It is a department within Transnet but reports to the CFO's office. There is a treasurer that is ordinarily in that position who will report to the CFO and I think the – as I said the large responsibility of that department is looking at the cash flows, looking at the funding requirements of the business and
20 then going out to the market and talking to a variety of lenders to look at whether you know when we borrow money who we borrow it from and at what rates and that is a synopsis of that.

ADV PHILLIP MOKOENA SC: Yes. From page 3 starting from paragraph 3 Mr Chair Mr Mahomedy you prefaced your evidence by highlighting or providing high level observations can you please take us

through those high level observations?

MR MOHAMMED SULEMAN MAHOMEDY: I think also it would be necessary Advocate to give the commission a view as I said it in hindsight that we actually have done all of these reviews. I was appointed on the 15 May 2018 the new board of directors were appointed around the 23 May 2018. At this time Transnet was in the midst of their financial close process with the external auditors. It was subsequently qualified as a set of accounts which created certain challenges for Transnet and the qualification was largely around PFMA, irregular expenditure. I think together with the board at the time the numerous media reports and pervasive reports around corruption or allegations of corruption at Transnet were really something that was put under the microscope by the board. As the Acting Group Chief Financial officer I would state I am – I am a member of the board of directors of Transnet as well. The process of understanding exactly what transpired in the years that were preceding the appointment of the board and myself we commenced a review of a number of transactions. Particularly those that had received a fair amount of media scrutiny. Amongst them were transactions that would look at 1064 which was commonly called 1064 in Transnet the acquisition of 1064 locomotives? There were related transactions to that like the maintenance agreement that was signed with China South Rail. Neotel which was in the press for a number of issues around payments that were made to other entities. Regiments Capital, Trillian Capital and Trillian – there were other entities within the Triallian group of companies that were also you

know discussed in the media. And the Durban relocation programme which was the relocation of two originally equipment manufacturers or what we commonly call OEM's.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: From Johannesburg through to Durban and also the service provider Nkonki. These were the high level transactions or contracts that we deemed were necessary to look at, at the time. It is not an exhaustive list. There have been a number of reviews that are outside of this list and I think I would also stress
10 that the processes in some of these transactions continue. They are not limited to the 16 April submission they will continue.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: For a variety of reasons Advocate.

ADV PHILLIP MOKOENA SC: Yes. And if you go to paragraph 3.1 if you read it into the record and expand flowing obviously from an experience when you now reviewed you know the different contracts.

MR MOHAMMED SULEMAN MAHOMEDY: Chairperson I think it is necessary at this point to state that on the review of governance within
20 Transnet what we found was that certain transactions were approved through normal processes and some of the transactions did not go through the governance processes prescribed within Transnet. I detail under 3.2 some of the examples which I will provide more insight and at a later stage however suffice to say that if we look at the Neotel transaction as an example there was an approved memorandum to

appoint Neotel in October 2013. In about the 20 November 2013 a memorandum was signed by the then Chief Executive of Transnet Mr Brian Molefe nullifying the decision of the people that approved the memorandum of the 31 October and replacing Neotel with T-Systems. Subsequent to that period of the 20 November 2013 there seems to be a lot of inactivity and then on the 5 December or around the 5 December 2014 a further memorandum surfaces that approves the appointment of Neotel. This is something that is not ordinarily in the process of procurement at Transnet. When you give consideration to
 10 the fact that Neotel was initially recommended through an open tender process and they were all of the necessary procurement events that had been adhered to. The memorandum of the 20 November essentially just nullified a proper procurement process. That is one example.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: If we look at the maintenance agreement with China South Rail this agreement was authorised or recommended to the then Minister of Public Enterprises. It was a submission that was made directly to the board of directors,
 20 the full board of directors. As far as we have checked out records Chairperson...

ADV PHILLIP MOKOENA SC: When you say directly it means that it never underwent any procurement structures within Transnet?

MR MOHAMMED SULEMAN MAHOMEDY: As far as we have reviewed Advocate we have not seen any evidence of it surfacing at any

management committee meeting. Neither had it gone through the structures of management and also within the board there was a sub-committee of the board that should have reviewed the submission and we do not find any evidence of that. It was presented directly to the board of directors. The full board meeting and then subsequently delivered to the ministers of office for approval.

ADV PHILLIP MOKOENA SC: Mr Chair this now links with the evidence of Mr Volmink when he raised those concerns of important structures within procurement simply being undermined and transactions being
10 sometimes approved by a single person without giving regard to process at all.

CHAIRPERSON: Yes thank you.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: Chair...

ADV PHILLIP MOKOENA SC: And had – yes you may proceed.

MR MOHAMMED SULEMAN MAHOMEDY: Sorry. Chairperson I think also when we look at the entities Regiments and Trillian they have featured quite significantly. We have done a fair amount of review in the workings of Regiments. What we have found is again transactions
20 where Regiments would be given approval or approval would be granted for Regiments to provide certain services. An example of that is the China Development Bank Loan for which Regiments was paid R166 million as a success fee. That particular transaction was approved by the ADC and it had not served at any management committee internally at Transnet neither had it subscribed to the prescripts of Transnet in

terms of policies that we have within Transnet. There is a number of frameworks and policies and processes that we have which are well established and transactions around Regiments and Trillian seem to have bypassed these prescripts in Transnet completely. In fact a number of executives at Transnet were completely ignorant of the fact that these transactions even occurred. Some of them would have come to know of this through the media reports and not through the relevant committees that they may have sat on.

ADV PHILLIP MOKOENA SC: Yes. And all that – I mean the reviews
10 that you have conducted and clear evidence of structures being undermined makes you to come to an observation at 3.1 where you say:

“With the benefit of hindsight and in my new role I understand – I now understand that there was a system where a set of key role players both internal and external and Transnet executive board members and certain companies acted in concert to the detriment of Transnet’s best interest causing [indistinct] losses to the company.”

And that is what you are maintaining?

20 **MR MOHAMMED SULEMAN MAHOMEDY:** Yes Advocate I maintain that.

ADV PHILLIP MOKOENA SC: Yes. May I then refer you to page 4 and take us what you saying in paragraph 3.2.5?

MR MOHAMMED SULEMAN MAHOMEDY: Yes. Again the Durban relocation which is now what we commonly call the Durban Relocation

but this was the relocation of two OEM's that were originally envisaged to assemble their locomotives in Johannesburg or in the surrounds of Gauteng were moved to Durban. Once again when we reviewed the documentation it again seems as though individuals authorised this particular move and this particular move had not served at any relevant committee within the executive structures. Something as significant as this with the impact that it had on the delivery schedule should have or ought to have at least surfaced at the EXCO at the Executive Committee of Transnet if not even at the board level. The value that

10 we reference on the Durban Relocation is just in excess of R1.2 billion.

ADV PHILLIP MOKOENA SC: Yes. And in order for us to appreciate what you are saying to the Chair you make reference to two annexures there, Annexure MSM2, 3 and 4. May I refer you to page 47 the same bundle Chair.

CHAIRPERSON: Thank you.

ADV PHILLIP MOKOENA SC: You can take us through that – through those documents in a chronology that might best suit your evidence because you can see that they are – from page 47 up until page 49.

MR MOHAMMED SULEMAN MAHOMEDY: Yes Advocate. Chair I think

20 if we look at the documents that are annexed on annexure 3 and 4 it actually provides the corroboration that this Durban Relocation for both the OEM's was approved through a set of individuals rather than surfacing at any committee. In fact it has the signatures of five or six executives but it had not served at any specific committee internally at Transnet at an executive level for approval. We also would note that it

says that:

“There is an outcome to the final negotiation.”

And that again is being approved by a set of individuals.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: I must hasten to say that the delegation of authority may have allowed these transactions to be processed in this particular way. However good governance would actually call for some level of reporting and some process particularly when we did have steering committees etcetera that were in place at
10 the time.

ADV PHILLIP MOKOENA SC: Yes. Now let us place them properly on record so that we can be able to follow and appreciate your evidence. It you turn to page 50 you will see it must be saying MSS50. Can you please identify that document for us?

MR MOHAMMED SULEMAN MAHOMEDY: Sorry my apologies. This would be a memorandum.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: That is addressed to the Group Chief Executive at the time from the Acting Chief Executive of
20 Transnet Freight Rail at that time requesting for the Acting Group Chief Executive to approve the relocation of China North Rail to TE's facilities in Durban Transnet Engineering Facilities in Durban for the manufacture of 233 Class 45 Diesel – Electric locomotives. It should actually read Diesel Locomotives.

ADV PHILLIP MOKOENA SC: Yes. And if you go to the paragraph

under the purpose, what is the purpose as described in that document?

MR MOHAMMED SULEMAN MAHOMEDY: It says:

“Request the Acting Group Chief Executive to note the final outcome of the negotiation for the relocation to Durban with CNR. Approve the variation order for the relocation to Durban to a maximum value of R647 million that is 647 181 494.00 with CNR.”

ADV PHILLIP MOKOENA SC: No tender processes?

MR MOHAMMED SULEMAN MAHOMEDY: There is – as far as I am
10 concerned there was not a process this was something that was put together through a negotiating team who then made this proposal I am – my assumption is then to the Acting Chief Executive of Transnet Freight Rail.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: And then it ask for a sign off of a letter to be issued to CNR to accept their final proposal. And that letter is in the evidence pack as well Advocate.

ADV PHILLIP MOKOENA SC: If you go to page 47. Would that be the letter that you are referring to or what is the purpose of this letter on
20 page 47?

MR MOHAMMED SULEMAN MAHOMEDY: Chair it would be page 48 which would be the letter to China North Rail.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: So it is exactly that letter that was signed which approves the variation order and under point one

which says the Durban variation order for an amount of 647 181 494 and it asks for the detail invoicing based on the variation order payment terms stipulated.

ADV PHILLIP MOKOENA SC: And when it says variation order what is being referred to?

MR MOHAMMED SULEMAN MAHOMEDY: In this case it is basically an increase in the cost of the project essentially because it is a variation from the original agreement that was entered into in March 2014.

CHAIRPERSON:

10 **ADV PHILLIP MOKOENA SC:** And do you know what was the original amount and to what amount was it now varied to?

MR MOHAMMED SULEMAN MAHOMEDY: Chair I think later on yes the amount for China North was somewhere in the region of approximately 9.9 billion.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: And this 647 million is on top of that.

ADV PHILLIP MOKOENA SC: As an additional?

MR MOHAMMED SULEMAN MAHOMEDY: It is an addition yes.

20 **ADV PHILLIP MOKOENA SC:** Yes and then who signs the letter on page ...

MR MOHAMMED SULEMAN MAHOMEDY: The Acting Group Chief Executive - Mr Gama – at the time.

ADV PHILLIP MOKOENA SC: Yes. Now may I refer you to – back to your statement with particular reference Chair to paragraph 4.1?

CHAIRPERSON: What page? I am sorry.

ADV PHILLIP MOKOENA SC: I am trying to (indistinct). It is page 4
Mr Chair.

CHAIRPERSON: Thank you.

ADV PHILLIP MOKOENA SC: Now we may proceed Mr Mahomedy to deal with the specific transaction. Can you just give us an overview as to what transactions were under review as per your paragraph 4 and take us to the details of each in that summary?

MR MOHAMMED SULEMAN MAHOMEDY: Chairperson as I said earlier
10 on we selected certain transactions for review that were pervasive in media reports as well as some concerns that were raised by the new Board at the time and we specifically focused on certain key transactions.

ADV PHILLIP MOKOENA SC: Yes and when you go and look at the locomotives you then state – you know – the various sub topics that you dedicated your time on in order to expand on how – how it was reviewed. Can you please take the Chair through that?

MR MOHAMMED SULEMAN MAHOMEDY: So the 1 064 locomotives was obviously a very significant transaction in the life of Transnet. At
20 the time the issues that were being addressed was the fact that the locomotive business case which was prepared in around April 2013 was for a value of R38.6 billion and the contracts that were entered into in March 2014 totalled approximately R49.4 billion and the question was always whether this increase was justifiable or not. Amongst other things China South Rail had also received certain other contracts for

the build of locomotives which were prior to the 1 064 program. They had received a contract to build 95 locomotives which was through an open tender process at the time and then they had received a contract which was through confinement to build 100 locomotives for the coal line. The allegations around the 100 locomotives was specifically around the process where originally it was envisaged that Mitsui will build those locomotives because they had built the previous set of 100 locomotives on the coal line and there were the allegations around the fact that China South Rail were replaced as the service provider. This

10 is just some context as to why ...

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: We looked at these transactions.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: Obviously we also then knew of the deposit that was paid on the maintenance agreement with China South Rail. We also learnt that China South Rail was the only entity that had received this maintenance agreement. We had not entered into the maintenance agreement with any of the other OEMs at the time

20 and then we looked at the Locomotive Transaction Advisory Service Contract which originally was with McKinsey and which had morphed into a Regiments led consortium when Regiments were originally not even part of the consortium that had bid for that particular piece of work. Some of the signs that were problematic for us was the fact that we had paid as part of the Locomotive Transaction Advisory a 166

million as I said earlier on for the facilitation and what was called the success fee for the China Development Bank loan. The payments for relocation costs as I alluded to earlier on.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: What we then believe is unwarranted Transaction Advisory fees and costs on the China Development Bank loan and the reason and the club loan this is a transaction that we will expound on later on which is called the ZAR Club Loan. Chairperson very simply all it is – is a syndication of banks
10 to lend us money for which Trillian charged us including VAT approximately R93.5 million.

ADV PHILLIP MOKOENA SC: For what?

MR MOHAMMED SULEMAN MAHOMEDY: That is exactly the question that we asked because the Treasury Team at Transnet had the capability to execute all of these transactions and we could not understand why. In fact at one of the meetings I clearly remember the Chairperson of the Board ask a question around why was our Treasury Team replaced with Regiments and Trillian and that was very early on in the tenure of the new Board and that precipitated all of the reviews
20 that have taken place on the Transnet Treasury function which we will also talk about later on. There are certain discussions around contracts with McKinsey. The ones that I had personal involvement in from a management perspective was what is called the SWAT contracts. It has got nothing to do with any of the American Agencies Chair. It is a contract that was put together. For some reason the name SWAT was

given but it is largely a process that was to put together teams that would assist Transnet in the capital strategy and structure of the business.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: We also looked at Trillian capital partners as I will also denunciate further down in the submission. I was personally involved in some of the transactions that were pushed through the system for Trillian when no work in the departments were done and that was something we had to look at
 10 because there were different entities within Trillian that were getting paid and we will talk about that as well. Nkonki I think the Auditor-General in around March 2018 issues a notice to State Owned Entities and state organs around the involvement of Nkonki in possible state capture at that time and Nkonki were the service provider to Transnet for an internal audit function which went out on open tender in 2013. In around January/February 2017 there was a submission to the ADC which was a Board Sub Committee – the Acquisitions and Disposals Committee which made procurement decisions to award Nkonki an increase in that internal audit service contract for R500
 20 million.

ADV PHILLIP MOKOENA SC: With any tender process?

MR MOHAMMED SULEMAN MAHOMEDY: No tender process. Also violation and contravention of the PFMA. Violation and contravention of National Treasury notes and instruction notes?

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: The 500 million in context Nkonki had a contract for five years initially from 1 August 2013 to 31 July 2018. That total contract was for 500 million over five years for the internal audit service work and this approval in February 2017 was effectively giving them a 500 million increase on a 500 million contract over a 24 month average period.

ADV PHILLIP MOKOENA SC: So meaning that in total it would have actually scored almost ...

MR MOHAMMED SULEMAN MAHOMEDY: A billion Rand.

10 **ADV PHILLIP MOKOENA SC:** A billion – a contract to the value of a billion – one billion?

MR MOHAMMED SULEMAN MAHOMEDY: Yes that is correct and obviously Neotel - as I also explained a little earlier - and T-Systems. T-Systems in – in Transnet Group Capital while I was there I had identified in the execution of my function there certain irregularities.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: Those are the key transactions.

ADV PHILLIP MOKOENA SC: Now let us focus our attention to the
20 1 064 locomotives. What was your involvement in this transaction – if any?

MR MOHAMMED SULEMAN MAHOMEDY: Chair in my role as the General Manager of Group Capital Integration at Transnet one of the key accountabilities that I had was management of the capital portfolio of Transnet and that included all of the key projects and mega projects

that Transnet was contemplating at the time under what was then called the Market Demand Strategy or short the MDS. This was a strategy that was implemented in around 2011 with a seven year view of executing capital that was in excess of R300 billion.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: To create capacity ahead of demand. That was the punchline. We wanted to create capacity ahead of demand so that when the key commodities with – would actually materialise the infrastructure would be in place and we would not be
10 disadvantaged as a company or a country. One mega project within the 300 billion was the acquisition of locomotives.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: There was a detailed process to understand whether there was a business need for Transnet as to whether they required locomotives and specifically this was in the Transnet Freight Rail Division. The process of creating a business case takes into consideration the business need, financial assumptions and a whole host of other activities. The ownership of that business case is always within the operating division that will utilise those
20 assets and in this case it was Transnet Freight Rail.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: However at the time there was a – there was a level of intent which was issued to McKinsey or the McKinsey Consortium to assist with the business case amongst other things related to the advisory on 1 064. My role was to actually assist

McKinsey in coordinating the activities between Freight Rail and the group functions and also managing the process of getting the business case completed at the time.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: That is largely where it was.

ADV PHILLIP MOKOENA SC: Yes and a business case was completed.

May I refer you to page 57?

MR MOHAMMED SULEMAN MAHOMEDY: Yes advocate. That is the business case that was completed and submitted.

10 **ADV PHILLIP MOKOENA SC:** Yes. Now in order for us to appreciate what did it entail and whether it did achieve also its purpose may I refer you to page 90 of the very same document – the business case – and under the heading – under paragraph 4.3 Chair – under the heading “Approach to Cost Calculation” and tell us what was sought to be achieved in that paragraph and what really transpired.

MR MOHAMMED SULEMAN MAHOMEDY: Chair I think when you look at the approach to cost.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: The first thing that we speak
20 about here is to look at the life cycle cost of the – of the locomotives and also to focus on the capital and other costs. So not necessarily just what it would cost to buy the locomotives

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: Bu you would have to assess what it would be over the life cycle of this particular asset.

ADV PHILLIP MOKOENA SC: And all those issues would be factored at that stage?

MR MOHAMMED SULEMAN MAHOMEDY: Yes.

ADV PHILLIP MOKOENA SC: So that in the future there are no any other surprising costs that might befall Transnet. Am I correct?

MR MOHAMMED SULEMAN MAHOMEDY: That is correct.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: I think under 4.3.1 ...

ADV PHILLIP MOKOENA SC: Yes.

10 **MR MOHAMMED SULEMAN MAHOMEDY:** Some of the salient issues of this particular paragraph is also towards the middle of that particular paragraph. It says that:

“The localisation component wraps up over time.
The USD price component was forecasted by
escalating at USD inflation and converting back to
ZAR ...”

Which is the South African Rand.

20 “...using forward ZAR/USD hedge rates. The local
price component was escalated at South African
PPI.”

Why that becomes critical and important is that when the business case was prepared - and as I state further down in my statement as well – we cannot read the business case in isolation of the financial model that was prepared at the time.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: Which was very in depth as well. Which was prepared by Transnet Freight Rail at the time and in the financial models as well as in the business case we factored in the escalation for the locomotives. It would be normal practice at Transnet when you consider that you would look at purchasing something over period of time. If you were purchasing something just for this year you may not have the impact of escalation but this was originally envisaged to be a six year delivery program and taking into consideration the values that were at play one would have had to have brought in
10 escalations on the pricing and it is clear in both the financial model and on page 90 of the submission that the local PPI rates as well as the US inflation rate and if my memory serves me correctly I think it was at about 2.3 percent escalation.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: On US Dollar rates through the business case. That meant that in the 38.6 billion we had already factored in a level of escalation and inflation.

ADV PHILLIP MOKOENA SC: Yes. Now may I refer you to page 97 – in the same document Mr Chair - with particular reference to paragraph
20 5.2 so that you must – we have to understand as to what was considered at the time when the amount was estimated and what factors were taken into consideration. Take us through paragraph 5.2.

MR MOHAMMED SULEMAN MAHOMEDY: I think suffice to say in paragraph 5.2 is EXHIBIT 29 which is very clear.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: At the time that the business case was prepared the foreign exchange – the spot rate – was R9.13 for a – for one South African Rand and thereafter we would have obtained the future possible rates an estimation of the forward curve - what we call the forward curve. We would have obtained that from either financial institutions of the entities that we normally use (intervenes).

ADV PHILLIP MOKOENA SC: Having regard to the duration of the contract itself?

10 **MR MOHAMMED SULEMAN MAHOMEDY:** Yes.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: So what is important here advocate is that we did factor in an escalation - if you want to call it that - in the foreign exchange rate against the US Dollar giving consideration to the fact that a number of the components of any original equipment manufacturer submission would have a dollar component but I also think that one of the very important points is the last paragraph on page 97.

ADV PHILLIP MOKOENA SC: Yes.

20 **MR MOHAMMED SULEMAN MAHOMEDY:** Which talks about the impact of localisation. Essentially 55 percent and 60 percent of the diesels and electric locomotives were to have had a local – that impact or that percentage of localisation or the local content. That would mean that that percentage would not necessarily be subjected to a foreign exchange impact because it would be spent locally in our country and I

think the paragraph explains it very, very simply. It says:

“Localisation of production is a natural hedge.”

ADV PHILLIP MOKOENA SC: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: “Exposure would increase with a lower level of localisation. The exhibit below shows foreign currency exposure for a 10 percent devaluation scenario to be 1.2 billion. Given a 70 percent localisation component without any localisation exposure under this scenario would be 4 billion.”

10

That also explains the impact of the foreign exchange to the entire transaction.

ADV PHILLIP MOKOENA SC: Yes. Now may I refer you back to page 5? That is now your statement before the Commission and proceed to take us through paragraph 5.1 point two onwards on the 1 064 locomotives.

20

MR MOHAMMED SULEMAN MAHOMEDY: In terms of the business case for the 1 064 as I said earlier on there was an advisory contract that was initially also handed to the McKinsey Consortium. I had no role in the procurement of that or the process that was followed in that transaction advisors.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: That process commenced in 2012 at some point. When I got to the general – sorry – the Group Capital Integration and Assurance Department the letter of intent had

already been issued to McKinsey. Through the process we learnt that the McKinsey Consortium had had some changes. Amongst others Letsema who were part of the original submission and there was an indication - and again I have not seen the documentation – but there was indication that Letsema were service providers or planning to be service providers to an entity that may have or could have bid in the 1 064 program already. Once again just to give context.

ADV PHILLIP MOKOENA SC: *Ja.*

MR MOHAMMED SULEMAN MAHOMEDY: Advocate if you would allow
10 me.

ADV PHILLIP MOKOENA SC: Yes please.

MR MOHAMMED SULEMAN MAHOMEDY: The RFP had gone out in July 2012 for the 1 064. Timelines are quite important as we progress through this conversation. So in December 2012 the LOI is issued to McKinsey. Subsequently Letsema is found to have a possible conflict of interest and later on Nedbank were also deemed to have a possible conflict of interest which was documented through letters between Transnet and McKinsey as McKinsey were - the heads of agreement were held with them - where it was expressed that Nedbank had shown
20 an interest in downstream funding activities and accordingly they deemed to be having a conflict of interest. Regiments had been the replacement entity for both – as far as we are aware – for both Letsema and Nedbank. That changed the consortium in all of its faces and we have learnt subsequent to the reviews that have been conducted also by MNS that this particular contract is deemed irregular in terms of

procurement processes and – and the PFMA as well.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: We then – obviously the business case commenced – the process of preparing the business case commenced with TFR and McKinsey. There were a number of issues etcetera but the TFR/McKinsey – when I say TFR. It is the Transnet Freight Rail Teams – McKinsey as well as the Group Capital Integration Teams work together. Mr Singh – Mr Anoj Singh – the then CFO of Transnet provided the key oversight role in this process of the
10 preparation of the business case. It – it required long hours working over weekends and Mr Singh was very, very involved in this process and at points during the process he also liaised with the TFR Chief Executive - who was ultimately the owner of the business case – he liaised with him and at that time it was Mr Siyabonga Gama. As I said advocate and Chair the business case must be read in conjunction with the financial model. In some cases some detail may be in the financial model but may not be explicitly stated in the business case. However I think the business case is quite comprehensive.

ADV PHILLIP MOKOENA SC: Yes.

20 **MR MOHAMMED SULEMAN MAHOMEDY:** And I think we have gone through the relevant pages where in 5.17 as I state:

“The business case included the forward curve on
the foreign exchange rate for the US Dollar.”

ADV PHILLIP MOKOENA SC: And this was as per the financial model which was prepared Mr Kahla?

MR MOHAMMED SULEMAN MAHOMEDY: Yes. This was prepared by Transnet Freight Rail. Obviously Mr Kahla prepared all of it and then it went through some review processes by McKinsey as well as our teams and it is included in that particular model as well as it is stated in the business case document.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: As I said the financial model provided for inflation a different rates at estimates of between 5.9 percent for the SA PPI and approximately 2.3 percent for the US Dollar.

10 There is an assumption in the business case which is 50 percent local content. We are aware that that is not in line with the DTI codes but that was an assumption in the business case. In fact the DTI codes are higher than the 50 percent. The assumption also in the business case is a six year delivery schedule. These things become relevant as we ...

ADV PHILLIP MOKOENA SC: (Intervenes).

MR MOHAMMED SULEMAN MAHOMEDY: Will progress further. Chair in terms of 5.1.75 the total capital acquisition cost which was estimated in the business case in April 2013 of R38.6 billion also included R2.24 billion in what we call contingencies making provision for somethings
20 that we may not have thought of in the business case and that is explicit on page 96 of the submission – EXHIBIT 28 – which talks about the locomotive contingency over the period at R2.24 billion.

ADV PHILLIP MOKOENA SC: So everything equal Mr Mahomedy if one looks at the business case and the financial model one would not have expected any increase into the acquisition of the 1 064 locomotives and

having taken us through all the factors that were actually estimated and forecasted?

MR MOHAMMED SULEMAN MAHOMEDY: Advocate I think when we look at the complete business case that was submitted I think we should have a 90 to 95 percent comfort – confidence level in the numbers that were proposed. If there was something that was extraneous completely out of kilter with what we had projected and an example would be if the exchange rate went far beyond what we had put in – yes there would be an – there would be an expectation of an
 10 increase. However the R2.2 billion contingency would have given you that first room to manoeuvre and only if you went beyond the 2.2 billion would there be an expectation to go beyond R38.6 billion. So I have a confidence in the numbers that were submitted at the time because of the buffer that was created and 2.2 billion is quite a significant number when one considers any business case.

ADV PHILLIP MOKOENA SC: Yes. From page 6 paragraph 5.1.9 you proceed to highlight certain issues for the Chair. Could you please proceed?

MR MOHAMMED SULEMAN MAHOMEDY: One of the key assumptions
 20 in this business case is what we call the demand profile which talks to the expected volume that the general freight business would deliver on. It becomes quite significant as at the time of preparing the business case we have to consider where the macro economic factors were. Where we were as a country. We had significant challenges from the 2008 financial crisis – global crisis. There was a lot of discussion

around – as I remember talking about – people were talking about green shoots in economies across the world. There was an expectation that commodities would pick up. So there was a view that there was a – there was a need for locomotives that were relating to a growth in – what we call – the general freight business. Very, very high level. The general freight business is all of the commodities except for the export coal and export iron ore. So all of the other commodities that Transnet Freight Rail moves would fall under the auspices of general freight. At that time we had a projected volume for general freight. Together with

10 the - together with the quality of locomotives that existed at the time there was a need for new locomotives. The last batch of locomotives that Transnet had procured in any big significant procurement event went back to the 70s – late 70s – I believe it was. So we had an average age in our general freight fleet that was already more than 30 years. Locomotives would normally – they had a useful life of about 30 years depending on utilisation etcetera. The reason this is important is because that projected demand, which was in the business case, did not materialise.

Now once again in the document that we submitted the

20 business case is very clear in the executive summary towards the latter part of the executive summary where it says that – it's on page 66, it says Transnet's procurement strategy relating to this locomotives will be flexible enough to adapt to actual locomotive demand that is realised over time.

This is quite key, up to year one, year two there was no

demand, it did not materialise.

ADV PHILLIP MOKOENA SC: There was no demand at the time.

MR MOHAMED SULEMAN MAHOMEDY: The demand did not materialise to the expectation in the business case. If we look at the values that were anticipated we should have been doing upwards of 110/120 million tons a year in general freight. We currently have reached, last – well the previous year we did 90million tons so clearly the demand was not materialising as expected. We then had to have looked at what the revised profile should have been and action should

10 have been taken and that was not done.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMED SULEMAN MAHOMEDY: So I think that when we talk about 518 we are actually talking about the demand and as it would have – as it was envisaged in the business case.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMED SULEMAN MAHOMEDY: I think the other key matter is that when we look at the – and all of this becomes quite relevant when we start looking at the increase in ETC or the increase in the expected total cost of the project a little later on. When we modelled

20 all of the numbers relating to the expected volumes, the expected revenue, the costs, the total cost of ownership this project yielded Chairperson what is called a net present value positive, meaning that this business case would at the end of the day yield a positive benefit to Transnet. It's quite important, it's in the documents.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMED SULEMAN MAHOMEDY: Obviously as I said in July 2012 when the RFP went out tenders would have been received, but they would have been, they would remained closed because we had not at that point received the approval from the Minister in terms of Section 54 of the PFMA, which was necessary, so the documents would have all stayed sealed, the process of approval within Transnet, internally commenced in about April 2013 where it went through to relevant management committees and then through to the sub-committees of the Board and then ultimately to the Board, who then made a submission to
10 the shareholder Minister for the Section 54 approval, which was received in August 2013 from the then Minister of Public Enterprises which I think was Mr Malusi Gigaba.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMED SULEMAN MAHOMEDY: Once that approval was received then the evaluation processes would commence and the evaluation processes would look at a number of factors, it would look at supply development, BBBEE, the financial aspects, the technical aspects and the – you know whether there's compliance and responsiveness from all of the tenderers at the time. This was
20 conducted by teams within the Transnet Freight Rail space and there was no involvement from either myself or my team in that particular process of evaluation across any of that.

ADV PHILLIP MOKOENA SC: Why was your team or that Department excluded?

MR MOHAMED SULEMAN MAHOMEDY: That would be normal

process that the owners of the business case and the owner of the procurement transaction would conduct those evaluations. It wouldn't have been, it's not uncommon that the group teams get involved at some point, but in this case were not involved at all.

ADV PHILLIP MOKOENA SC: Yes, now from paragraph 5.1.11 you're talking about the very same issue that you are no longer involved post that stage.

MR MOHAMED SULEMAN MAHOMEDY: So I think Advocate to give some colour to this subsequent to the completion of the business case
10 the approvals and the evaluations there was a discussion around who would form part of that negotiating team to now get into contracting stage, because you now had the evaluations, you had everything that was now completed, and one would expect that that would have been all done in terms of all of the legislated processes and internal procedures. You would now engage in what we now call the post-tender negotiations.

This was to have been – to have commenced in about the first week of February and as I mentioned around the 3rd or 4th of February 2014, my memory is not exact, but I remember it was either a Monday
20 or Tuesday in the first week of February I was informed by Mr Arnot Singh that I would not have any further role in the negotiations and that I would be spending time at the office and making sure that that would continue in terms of the sustainability of finance and he was appointed then, and this is what he informed me that he was appointed by Mr Molefe, Brian Molefe at the time, to head up the negotiations.

On the same day I was also informed by one of the members of the McKinsey team of their withdrawal from the negotiation team. Initially it was envisaged that they would be significantly involved in the negotiation team, assisting Transnet, not necessarily directly involved but assisting Transnet in negotiation through whether it was the strategy of negotiation through whether it was the strategy of negotiation defining the parameters and also assisting in terms of providing Transnet with insights from their global experience in not necessarily just locomotives but other significant transactions.

10 **ADV PHILLIP MOKOENA SC:** Yes, but why – what was the reason for them withdrawing?

MR MOHAMED SULEMAN MAHOMEDY: I'm not entirely clear but I was given some indication that there was a – there was discomfort from McKinsey around the timing, or the proposed timing that Transnet was putting on the table to negotiate such a significant transaction. There was talks of a six week negotiation period which obviously didn't make too much sense when you give consideration to the fact that were talking about what of the time, if my memory serves me correctly was one of the single biggest locomotive transaction in the world, and we
20 were talking about negotiating this over six weeks. We had negotiated and I was involved in the 95 loco negotiation which took probably the same period of time and that was for 95 locomotives, so I think what indication I had got at the time, and it may be true or not, but I had got that indication from an individual at McKinsey that there was discomfort in terms of Transnet "rushing" the negotiation process.

ADV PHILLIP MOKOENA SC: What then happened after it withdrew, after McKinsey withdrew?

MR MOHAMED SULEMAN MAHOMEDY: As far as I'm aware McKinsey then withdrew and there was a cession or a – for purposes I know the lawyers that are sitting here will say to me it was not a session, there was a purported session of the McKinsey locomotive advisory contract and the reason I say that Chair is because we have not been able to find a cession agreement between McKinsey and Regiments on this session. What we do have is a letter, I think that's marked I think it's
10 Annexure 6 if I can reference it where McKinsey actually writes to Transnet ...(intervention)

ADV PHILLIP MOKOENA SC: I think it's page 175.

MR MOHAMED SULEMAN MAHOMEDY: Yes it's page 175.

CHAIRPERSON: Thank you.

MR MOHAMED SULEMAN MAHOMEDY: Page 175 is a letter from McKinsey stating that the – all rights and obligations created through the 1064 locomotive advisory was ceded and/or delegated to Regiments capital in accordance with such agreement to discussion. There isn't a cession agreement as far as we are aware, however it is also worthy to
20 note Chair this letter is written the 16th of April 2014. As we go further down in the document you will also find that the exact MSA, which is the Master Service Level Agreement, was actually only signed by McKinsey on the 21st of February 2014, which is subsequent to the cession date, and it may be interesting but that's the facts that we have at this point in time.

ADV PHILLIP MOKOENA SC: Now other than the letter that you see on page 175 you are saying that from the records of Transnet there was never a cession agreement?

MR MOHAMED SULEMAN MAHOMEDY: Not in my understanding there was not a cession.

ADV PHILLIP MOKOENA SC: What I want to also understand what was the status of the letter of intent if it is recorded, between McKinsey and Transnet at this stage of this purported cession?

MR MOHAMED SULEMAN MAHOMEDY: As far as I'm aware in –
10 there were certain extensions to the letter of intent and at some point again in my document I think it's later on, we talk about the letter of intent; the validity period had been extended to the 30th of November 2013. I don't believe from the documents that we've reviewed that there was a further extension to this LOI, and therefore this letter of intent had essentially expired.

ADV PHILLIP MOKOENA SC: Now assuming that there could have been that cession, I know you said purported cession, what rights, if any, would McKinsey have to cede you know the contract, having regard to the fact that the letter of intent has lapsed?

20 **MR MOHAMED SULEMAN MAHOMEDY:** I guess that you know something that the lawyers would have to debate but if the letter of intent expired without a Master Service Level Agreement being drawn up there essentially isn't a contract that can be entered into as far as I understand.

ADV PHILLIP MOKOENA SC: Yes. But we know that when this

cession occurred there was never any tender process in relation to the services to be rendered by Regiments?

MR MOHAMED SULEMAN MAHOMEDY: No there wasn't a tender process that went through and in fact I think when we look at the Regiments' involvement in this as we progressed, if I can call it that, into 2015 this contract moved from a value of approximately R35million to over or close to 270/280million and Regiments were the primary beneficiaries in that extension of value in time.

ADV PHILLIP MOKOENA SC: Yes. May I then refer you back to your
10 statement, page 7 Mr Chair.

CHAIRPERSON: I think Mr Mokoena ...(intervention)

MR MOHAMED SULEMAN MAHOMEDY: 177.

CHAIRPERSON: ... looks like this is the time for the short adjournment.

ADV PHILLIP MOKOENA SC: I was assured that I would never miss that time.

CHAIRPERSON: We are going to take the short adjournment and we will resume at half past eleven. We adjourn.

INQUIRY ADJOURNS

20 **INQUIRY RESUMES**

CHAIRPERSON: You may proceed Mr Mokoena.

ADV PHILLIP MOKOENA SC: Yes. Mr Chair before I proceed I am informed that we have now effected the necessary changes to Exhibit BB3.1 and Exhibit BB3.2 so that they must not be any sense that there is any number or...

CHAIRPERSON: Ja not that is fine.

ADV PHILLIP MOKOENA SC: Exhibit that it is missing from the proceedings.

CHAIRPERSON: Thank you.

ADV PHILLIP MOKOENA SC: Yes. Mr Mahomedy just before the tea adjournment I was about to refer you to page 7 of your witness statement with particular reference to paragraph 5.1.13 for you to please take us through that.

MR MOHAMMED SULEMAN MAHOMEDY: Chair as I alluded to earlier
10 on there was a purported session of the McKinsey contract for the 1064 advisory which the earliest was effective on the 4 February 2014 in terms of the document numbered 175 or on the 5 February – my apologies. However Chair in – I have reviewed some documentation that suggest there was a contract that was entered into between Transnet represented by Mr Anoj Singh and Regiments represented by Mr Niven Pillay at the time that dates to the 20 January 2014 which is for the very same services and it is headed 'Transaction Advisory Services related to the acquisition of 1064 locomotives over a period of twelve months.' Annexures – page 177.

20 **ADV PHILLIP MOKOENA SC:** Yes before we go there. But if you look at the timeline you know in relation to the purported session and this agreement that you say that you have now reviewed how was this possible, how – what happened?

MR MOHAMMED SULEMAN MAHOMEDY: This is exactly part of the confusion and where one gets to the conclusion that there seems to be

or seemed to have been parallel processes in play at the time. The purported session rightfully or wrongfully the – happened on the 5 February 2014. However before that date on the 20 January 2014 there seems already to be an agreement between Regiments and Transnet to execute on the very same contract that McKinsey is the heads of agreement with.

ADV PHILLIP MOKOENA SC: And no procurement processes obviously?

MR MOHAMMED SULEMAN MAHOMEDY: There is no procurement
10 processes as far as we are aware that were on this matter but in addition if we actually look at page 180 or the same document ...

ADV PHILLIP MOKOENA SC: Mr Chair may I refer you first – Mr Mahomedy let us go to page 177.

MR MOHAMMED SULEMAN MAHOMEDY: Yes.

ADV PHILLIP MOKOENA SC: And then please identify that document?

MR MOHAMMED SULEMAN MAHOMEDY: Chair this is the document that I am referencing which says that there is an agreement between Transnet and Regiments. In fact it is on a letterhead that incorporates both entities.

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

MR MOHAMMED SULEMAN MAHOMEDY: Transnet and Regiments.

ADV PHILLIP MOKOENA SC: And what is the date of that letter?

MR MOHAMMED SULEMAN MAHOMEDY: The 20 January 2014.

ADV PHILLIP MOKOENA SC: Yes. Now let us go to the page that you wanted to take the Chair to that will be page 180. Yes.

MR MOHAMMED SULEMAN MAHOMEDY: Yes. Chair if we look at the signatures on the document Mr Anoj Singh is a signatory and next to that – next to his signature is marked subject to items listed below. And amongst the things that are listed below it says:

“Costs and payment against this scope may not be made.”

ADV PHILLIP MOKOENA SC: Tell – tell us – tell the Chair where you are reading?

MR MOHAMMED SULEMAN MAHOMEDY: I am reading the last line on
10 page 180 Chair – my apologies.

ADV PHILLIP MOKOENA SC: The handwritten.

MR MOHAMMED SULEMAN MAHOMEDY: Thank you.

MR MOHAMMED SULEMAN MAHOMEDY: The handwritten. It is handwritten.

CHAIRPERSON: The handwritten note?

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: Yes Chair.

CHAIRPERSON: Okay.

MR MOHAMMED SULEMAN MAHOMEDY: It says:

20 “Costs and payment against this scope may not be made above R9 million without specific approval.”

This is 2014.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: We later learn that this

amount exceeded R284 million.

CHAIRPERSON: Hm.

ADV PHILLIP MOKOENA SC: It was not to exceed R9 million...

MR MOHAMMED SULEMAN MAHOMEDY: This is...

ADV PHILLIP MOKOENA SC: But upon review it is – it exceeded how much?

MR MOHAMMED SULEMAN MAHOMEDY: It exceeds R280 million.

This was – and it says without the specific approval by Transnet. However the document is out of sync in terms of timelines, clearly out
10 of sync. It does not make sense that Transnet would be negotiating with a service provider who is going to become the – what would you call it? The cessionary or the cadent of the transaction.

CHAIRPERSON: Ja the cessionary.

MR MOHAMMED SULEMAN MAHOMEDY: While – the cessionary while there is a – seems as though there is a conversation taking place whilst this is still being discussed.

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: So effectively the cession as I understand it between Transnet and McKinsey was a – was an
20 irrelevant discussion because this agreement was already drawn before that date.

CHAIRPERSON: Hm.

ADV PHILLIP MOKOENA SC: Already before that date there was an existing agreement?

MR MOHAMMED SULEMAN MAHOMEDY: Agreement.

ADV PHILLIP MOKOENA SC: Between the two parties?

MR MOHAMMED SULEMAN MAHOMEDY: Yes.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: What is also I think to add to this Advocate is the fact that this agreement or this supposed agreement is drafted with Transnet and Regiments on a Transnet and Regiments letterhead. That is not normal practise in Transnet. That is not where we present legal documents with sharing letterheads or bringing in logos of different entities onto legal contracts.

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

CHAIRPERSON: Well Mr Mokoena the fissure that Mr Mahomedy is mentioning sounds like something I have heard before in this commission and it may have been in relation to Eskom where the letterhead of a SOE or a letter reflected the letterhead or emblem or logo of the SOE's as well as of the ...

ADV PHILLIP MOKOENA SC: Service provider.

CHAIRPERSON: Proposed service supplier and in regard to that there was also queries about how that came about and I think whoever was giving evidence may also have said that was unusual. I think I
20 remember I asked the question how it was possible that it should be like that. So somebody will just need to go and check and see whether maybe this is how some of these things were being done.

ADV PHILLIP MOKOENA SC: Indeed Chair. Now you conclude neatly on that aspect with reference to your paragraph 5.1.14. Please take the Chair through it even though I am sure that you might have ventilated

same through your evidence.

MR MOHAMMED SULEMAN MAHOMEDY: Chair I think the above illustrates further there was a parallel system at play because McKinsey having been appointed through a procurement process for the transaction advisory service there was a parallel appointment of Regiments in January 2014 for the same service. And I think that is explained through the timeline that I pointed out earlier on.

ADV PHILLIP MOKOENA SC: Yes. Now earlier on when you gave the Chair the summary of the topics that you will be canvassing you did
10 also talk to the unjustified increment of the ETC. Now could you please proceed to provide much more details and clarity around this issue?

MR MOHAMMED SULEMAN MAHOMEDY: Chair when the negotiations with the OEM's were complete we were then informed that the ETC what we call the ETC the estimated total cost of completion of the 1064 locomotive transaction was now going to be in the region of R54 billion which includes a contingency. I raised the matter with Mr Anoj Singh to enquire in terms of what had transpired and he gave me some very high level reasons stating escalations, if we needed to go out on this long term or longer term foreign exchange the rate had deteriorated at the
20 time given that but he said that there was a detailed report that was being prepared for the approval of the board who was the accounting authority at the time. And that was where that matter was left for that point. However one of the things that we are not aware of, we have not seen the documentation in terms of...

CHAIRPERSON: I am sorry as a matter of interest what was your

reaction to what you say high level reasons that he gave you?

MR MOHAMMED SULEMAN MAHOMEDY: We did...

CHAIRPERSON: Were they convincing to you?

MR MOHAMMED SULEMAN MAHOMEDY: Not necessarily Chair.

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: There were as I said the two clean matter – the clear matters that he put on the table at the time was escalations which if we left it out for six or seven years it would cost the company too much and the foreign exchange. I remember him
10 saying that it would have cost us more than – more than another R10 billion if we left it. So when I say another R10 billion it would have gone to beyond R60 billion. That was his assessment at the time. Having no context to any of the discussions because I had no role at all in the negotiations we did not accept it but I think we looked at it circumspectly. There were – it was not clear to me that we would have a justifiable increase for this value on the table particularly in light of the R38.6 billion business case.

CHAIRPERSON: Okay. Thank you.

ADV PHILLIP MOKOENA SC: But also to piggyback from the Chair's
20 question at this stage Mr Mahomedy there was a detailed business case that you have taken the Chair through. There was a costing model that factored a number of issues and I am sure that Mr Singh must have been aware of those documents?

MR MOHAMMED SULEMAN MAHOMEDY: Mr Singh was definitely aware of all of those documents Chair. As I said he was the effective

sponsor of the entire business case process at the time in April 2013. He had full oversight of all of the processes in the preparation of business case. As I also stated that we had long hours – long discussions and debates and meetings some of which were at Transnet others were at the McKinsey offices even on weekends and Mr Singh used to be present for a lot of those meetings at McKinsey. So he had an intimate understanding of the business case.

ADV PHILLIP MOKOENA SC: Yes. And on paragraph 5.2.3 you seem to be highlighting in far much more clarity the issues that the Chair was posing to you.

MR MOHAMMED SULEMAN MAHOMEDY: Chair I also think that in – at some point in April 2013 the business case which is presented in front of the commission today in the Executive Summary part references that the business case or this business case excludes the impact of price escalations and foreign exchange.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: That I do not believe is true. There have been a number of reviews that we have conducted in that regard and I think that that was an oversight on the part of Transnet in terms of aligning this document with some other documents that were presented and not necessarily by somebody who was involved in this process who understood that it included all of these costs. So the submission before you in the Executive Summary says it excludes but it does include. It may exclude as I said any extraneous event or extraneous cost not necessarily escalations and inflation that was

specifically included.

ADV PHILLIP MOKOENA SC: Yes. And when this increment was sought was there a memorandum that was prepared to the board?

MR MOHAMMED SULEMAN MAHOMEDY: Yes Chair. I think in recent months I have been provided with a memorandum that was submitted to the board of directors – once again Chair it was submitted directly to the board of directors in May 2014 which endeavours to explain the increase in the ETC from R38.6 to R54 billion.

ADV PHILLIP MOKOENA SC: Yes. And for completeness Chair I am
10 referring the witness to page 182. 182.

MR MOHAMMED SULEMAN MAHOMEDY: Yes here.

ADV PHILLIP MOKOENA SC: Are you there?

MR MOHAMMED SULEMAN MAHOMEDY: Yes Chair.

ADV PHILLIP MOKOENA SC: I am just waiting for the Chair to locate the relevant document.

CHAIRPERSON: Is it on divider MSM8?

ADV PHILLIP MOKOENA SC: It is 8 Chair it is MSM8.

CHAIRPERSON: Ja.

ADV PHILLIP MOKOENA SC: That we are referring to.

20 **CHAIRPERSON:** Okay. That – mentioning the MSM or the divider might.

ADV PHILLIP MOKOENA SC: Might help.

CHAIRPERSON: Help with locating it ja.

ADV PHILLIP MOKOENA SC: We will do that Chair. Yes.

CHAIRPERSON: Ja thank you.

ADV PHILLIP MOKOENA SC: Now could you please identify that document for us?

MR MOHAMMED SULEMAN MAHOMEDY: Chair this is a document from the then Group Chief Executive Mr Brian Molefe to the Transnet board of directors under the subject 'Increase in Estimated Total Cost of the acquisition of 1064 locomotives for Transnet Freight Rails general freight business.'

ADV PHILLIP MOKOENA SC: And can you take us through the contents of that paragraph under the heading 'Purpose?'

10 **MR MOHAMMED SULEMAN MAHOMEDY:** The purpose of this memo is for the board to note the reasons for the increase in ETC.

To request that the board approve an increase in the ETC or estimated total cost for the acquisition of the 1064 locomotives for the general freight business of Transnet Freight Rail from R38.6 billion to R54.5 billion.

ADV PHILLIP MOKOENA SC: Yes. And I know that later on you will be commenting on this memo but for us to appreciate your comments take us through what is stated in the Executive Summary?

20 **MR MOHAMMED SULEMAN MAHOMEDY:** Yes. Chair I think largely in the Executive Summary it endeavours to provide an explanation of the movement from R38 billion or R38.6 to R54 billion in different categories. It puts it down to update on business case for updated economic assumptions, forex and escalation risk mitigation, Transnet Engineering scope, contingencies and then it goes on to say that was actually some of the costs were lower than the capital acquisition cost

of minus 6.5 billion.

ADV PHILLIP MOKOENA SC: Yes. Refer please to page 185 and under discussion the items that are listed in paragraph 3 would that be a justification for the increment? Page 185.

MR MOHAMMED SULEMAN MAHOMEDY: Chair I do not believe that these are proper justifications...

ADV PHILLIP MOKOENA SC: No I understand that ...

MR MOHAMMED SULEMAN MAHOMEDY: For in terms of the submission.

10 **ADV PHILLIP MOKOENA SC:** I understand that you might not believe it.

MR MOHAMMED SULEMAN MAHOMEDY: Yes.

ADV PHILLIP MOKOENA SC: But for now I am saying that as they are recorded there...

MR MOHAMMED SULEMAN MAHOMEDY: That is the recorded ...

ADV PHILLIP MOKOENA SC: These would appear to have been a justification for the increment?

MR MOHAMMED SULEMAN MAHOMEDY: Correct.

20 **ADV PHILLIP MOKOENA SC:** Can you just take us through? What was the justification?

MR MOHAMMED SULEMAN MAHOMEDY:

“The increase in ETC of R15.9 billion is due to the following:

Escalations from the approved business case to award date.

Forex from the approved business case to award date.

Additional scope of work allocated to Transnet Engineering for the strategy to enable TE to eventually transform to An OEM of locomotives strategic.

The cost of reducing the batch size strategic and risk mitigation.

10 The cost of future escalations over the life of the contract forward looking and risk mitigation.

The cost of fixing forex exposure over the life of the contract forward looking and risk mitigation.

And contingencies related to variation orders, options such as electronically controlled pneumatic braking and wire distributive power and capital spares.

Item G of Table 2.”

ADV PHILLIP MOKOENA SC: Yes. And you had an opportunity to review these grounds of justifications in light of the documents that you
20 have reviewed and having regard to the previous business case can you take us through your overall assessment of this memorandum?

MR MOHAMMED SULEMAN MAHOMEDY: Chair I think before we go to the if it will please the Chair – before we actually go to the actual numbers and the justification.

CHAIRPERSON: Yes yes.

MR MOHAMMED SULEMAN MAHOMEDY: It is also quite important to understand the process that was followed once again with the submission.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: Chair once again this significant increase is provided on a memorandum directly to the board of directors. There is no management process that has looked at the veracity of this submission. Ordinarily within Transnet a submission of
10 this nature would have to serve at an investment forum, the capital investment committee and the executive committee from a management perspective. Within the board's structures at that time right or wrongly it would have served at the ADC, the acquisitions and disposals committee before submitting to the board itself. That process was not followed at all. It served directly at the board. The second key matter is the date. I am sorry Chair.

CHAIRPERSON: Before you go there. So are you saying ordinarily when there is a transaction that has been subjected to a tender process and if there are – there is an increase in costs there is a procedure
20 through which...

MR MOHAMMED SULEMAN MAHOMEDY: Yes.

CHAIRPERSON: There is a procedure for the approval of those costs of the increase in costs and in this case at that time it should have gone through the bodies that you have mentioned but you say it did not do that. That was not done. It went straight to the board and you say

that was unusual?

MR MOHAMMED SULEMAN MAHOMEDY: Yes Chair.

CHAIRPERSON: Okay. Thank you.

MR MOHAMMED SULEMAN MAHOMEDY: That was entirely unusual.

CHAIRPERSON: Yes, okay. Thank you.

MR MOHAMMED SULEMAN MAHOMEDY: Chair the other significant point in the timing of this transaction. The contracts were signed around of the 17 March 2014. This approval is dated May 2014 which is essentially a post factor approval. The process once again dictates
10 that you cannot enter into a procurement transaction if the capital investment value has not been increased to the value of the contract. Which would mean that this approval would have been required prior to us entering into those contracts which did not happen so this is what we call a post factor approval which again contravenes the Transnet processes.

CHAIRPERSON: If – if this kind of submission had been subjected to the normal processes which would have included the involvement of management is it likely that management would have said but how can this happen you know while you already had an agreement and now you
20 bring this? They would – in all probability they would have queried that, management?

MR MOHAMMED SULEMAN MAHOMEDY: Most definitely Chair.

CHAIRPERSON: Yes, yes.

MR MOHAMMED SULEMAN MAHOMEDY: Because he contracts – this was essentially a non-event.

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: From an approval process.

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: I say that with caution but it was a non-event because it was – the contracts had already been entered into. Transnet was already committed.

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: To the R49.4 plus the R4.9 billion.

10 **CHAIRPERSON**: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: But we were already committed into the transaction.

CHAIRPERSON: Yes, yes.

MR MOHAMMED SULEMAN MAHOMEDY: And there was no explicit approval

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: Prior to the execution of those contracts.

20 **CHAIRPERSON**: And I guess that you probably can think of no basis on which those who wanted this approval could have advised if this had gone through management and management said what are you doing? Thing do not happen this way you have got to have this first. Or are you able to think that maybe they might have had some basis or to justify doing these things this way?

MR MOHAMMED SULEMAN MAHOMEDY: Chair in terms of any

process on the increase of an estimated total cost of a project in Transnet.

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: We have a delegation of authority document which is very clear.

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: Which explains the processes and the approval limits that exist.

CHAIRPERSON: Hm.

10 **MR MOHAMMED SULEMAN MAHOMEDY:** And it should have in all probability had to have gone through the management structures.

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: So clearly in my opinion there was a concern somewhere along the line that had it gone through management it may have raised red flags.

CHAIRPERSON: Yes exactly that is what I was wondering whether management was being bypassed because it was foreseen that management would disagree and – and it would be difficult to justify to engage management with – in any rational manner to get them to agree
20 and that therefore it was thought well let it – let us send it to the board of directors maybe the board of directors are unaware – were seen as unlikely to raise objections.

MR MOHAMMED SULEMAN MAHOMEDY: Chair to illustrate the point that management would definitely have disagreed is the fact that in the original business case we said that the business case was nett present

value positive which made sense to make this investment. In terms of the nett present value at the time it was reflected as is reflected in the business case at a positive R2.7 billion. The – in my opinion moving from R38 to R54.5 billion the business case is definitely negative. It is a NPV negative number. That was – would have been an immediate red flag for management. Making in this case a R54 billion investment with a negative NPV is the first and most important sign that there is something wrong. And that would have been based on the; for want of a better word the optimistic projections on the revenue numbers. And

10 with that it would give you a negative NPV. The reason I put this on the table is because in point 7 on page 183 it says that:

“The NPV of the business case remains positive at
R11.68 billion.”

And that is because they change their assumptions in how they calculated the NPV. That is the first red flag Chair. The second red flag this was not an increase of 3% or 5% and even if it was 5% or 3% it was significant. But Chair this was an increase that was from R38 to R54 billion. It was approximately 50% just about 40 odd percent increase in ETC. The first thing that management would have asked for

20 was if the financial models were updated? And a new business case be presented. This memorandum is not a business case it is a memorandum. It does not go through the same risk mitigation processes as the original business case had undergone. Now clearly if we model the R54 billion into the business case or into the financial model you would not come up with a positive NPV. Based on the

assumptions of the business case. What they then did was they used different assumptions. So we normally use what is called the weighted average cost of capital to do the – to do the nett present value calculation which is at the time was about 12.5%. If you use a higher rate you will get a bigger number and they used a higher rate to get R11.68 billion but it is not comparable to what we used in the business case. This was done to suit the outcome. That is essentially my view on the matter Chair.

CHAIRPERSON: Thank you.

- 10 **ADV PHILLIP MOKOENA SC:** Perhaps Chair this fell under those categories of confidential confinement or variation.

CHAIRPERSON: Oh.

ADV PHILLIP MOKOENA SC: Might be.

CHAIRPERSON: Yes. Yes.

ADV PHILLIP MOKOENA SC: And that Mr Volmink was complaining about.

CHAIRPERSON: Hm.

- ADV PHILLIP MOKOENA SC:** Then you proceed Mr Mahomed to give us your overall assessment on the memorandum in much more details
20 because we want to understand why you took issue with it?

MR MOHAMMED SULEMAN MAHOMEDY: Chair the foreign exchange aspect of the increase in ETC which is included in this memorandum the large part of the increase in ETC is reference to foreign exchange fluctuations as well as escalations. The first and very important consideration from our point of view is the point of localisation which I

touched on earlier on. That 55% and 60% of this contract was subject to localisation which would mean that there was no foreign exchange impact on that number. Chair if we take the contract value in terms of what was signed. I am not referencing the business case of R49.5 billion and we remove an average of 55% which was for local content of approximately R27.2 billion we are left with R22 billion that is subjected to foreign exchange.

ADV PHILLIP MOKOENA SC: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: What is also crucial is that
 10 at the outset and within a few months of signing the contract Transnet paid significant deposits to the original equipment manufacturers on the assumption that those monies were sent off shore to their holding companies or their entities that were registered out of the country. That was made on the first day or within a few months of that. It would also not be subject to foreign exchange because if we paid you the money today you would remit those funds off shore and there is no foreign exchange implication. Chair the deposits that we paid within a six month period of the signing of these agreements totalled 9 point – approximately – R9.6 billion.

20 **ADV PHILLIP MOKOENA SC:** In deposits – deposits only?

MR MOHAMMED SULEMAN MAHOMEDY: In deposits or what we call advance payments.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: So we had the 22.3 billion. We reduce it by a further 9.6 billion which leaves only R12 billion

subject to foreign exchange movement. We cannot then be saying that the bulk of the 14 billion movement is then foreign exchange and effectively Chair in the documents that have been provided approximately – I think it is – sorry my apologies Chair – R5.7 billion is attributed now to foreign exchange movement but the entire contract was not subject to foreign exchange movement and as I have pointed out in my calculation in my opinion we believe that between 25 percent and 32 percent of the contract value had a foreign exchange implication. So to say that if it is between 12 and R15 billion that the
 10 foreign exchange movement was in the region of R5.7 billion does not make sense in the context of what I have just pretended.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: I think that is the first issue and that is quite significant because 5.7 of the 16 billion was attributed to foreign exchange.

CHAIRPERSON: As you continue to give me your assessment of – of this submission made to the Board at some stage I would like you to deal with the question whether the kinds of errors or what may appear to be errors could possibly have been genuine errors. Somebody
 20 making – overlooking something and making a mistake or whether you – there are some where you say that somebody with this kind of qualifications and this kind of experience could not have made this kind of mistake. So maybe there is something much more than just a genuine error in saying this or that in the – in the memorandum about what increased the – these costs. Okay, you may proceed.

MR MOHAMMED SULEMAN MAHOMEDY: Thank you Chair. Chair the other significant part of the increase in the ETCs as the documents that are in front of you suggests is R9 billion that talks to what is called the escalations. Now the one thing that does not make sense is that we are not seeing any negative cost issues in the sense that costs have come down and the reason I say this Chair the initial business case was submitted for a six year delivery schedule and escalation would have been put in for each year. If you now compress the timeline and you come down to three years you should have for the three years on
10 the outside you should have a saving. So to blanketly say that the escalations had to happen does not make sense firstly. Secondly included in the business case were escalations and somehow those are being ignored ...

CHAIRPERSON: So ...

MR MOHAMMED SULEMAN MAHOMEDY: In calculations.

CHAIRPERSON: So the memorandum ought to have dealt with the question of what about the escalation cost that were contemplated in the business case. How do you factor that - them in, in order to arrive at the new escalation cost? It should have dealt with among other
20 things that one – that issue. That is part of what you are saying?

MR MOHAMMED SULEMAN MAHOMEDY: Yes most clearly.

CHAIRPERSON: *Ja*, okay.

MR MOHAMMED SULEMAN MAHOMEDY: And that is why Chair I alluded to earlier on to say that the business case should have been redone in its entirety. Not supported by a simple memorandum but

rather putting in all of the new assumptions into a business case and the financial model to determine how the 54 billion would come – how - how it was arrived at.

CHAIRPERSON: Thank you.

MR MOHAMMED SULEMAN MAHOMEDY: At this point all we seeing is unsubstantiated – if I can call it that – numbers that are put onto a memorandum. We have not seen this translate or we have not seen the financial model that translates into these numbers. How it was derived at. What number – what assumptions were made? What were the
 10 changes? What were the differences between the business case? That is not necessarily explained in – in the level of detail that it should be explained in. Chair I think as I said – you know – there are three key categories. The first is the foreign exchange which I have tried to explain. The second is escalations. The memorandum again ignores the fact that escalations were already included in the business case. It just says that this is – I think – R9 billion from the date of the tender to the date of the award and going forward. Yet we had escalations included in the business case – as I said earlier on – of five – approximately – 5.9 percent for South African PPI as well as 2.3
 20 percent for US inflation. The third aspect is what is put here under the term contingencies. In the original business case Chair we had R2.2 billion for contingencies. There is a further 4.9 billion been put in for contingencies in this memorandum. The key issue from our perspective is that at that time in May 2014 these were fixed price contracts. We had already established the fixed price perspective with all of the

hedging that was included. All of the escalations were included. Then one cannot understand why we would have such a high contingency in addition to all of the costs that have been put in. The design was largely done. They were still going through some of the final touches but a 10 percent contingency is deemed high when you have a fixed price contract. So that is the third part of it in terms of not necessarily agreeing with the level of diligence and expertise that you referenced from the individuals who were signing this document to actually agree with the content of this document and I think these would have been the

10 red flags that as management we would have identified. We sometimes do not even allow 10 percent contingencies on projects that are in execution that have not even been finalised and in this case we were saying - we are saying here that the contracts have been established. All of the risks have been mitigated. That is what the document says – the risks have been mitigated and yet on top of all of the mitigated risks there is an additional R4.9 billion that is put in for contingencies and one needs to question what the purpose of the 4.9 billion would have been at a later stage. Chair I think the ...

ADV PHILLIP MOKOENA SC: Yes.

20 **MR MOHAMMED SULEMAN MAHOMEDY:** There are various documents that have been prepared that question the – the veracity of the increase in ETC and one of them is the MNS Volume 1 Report that I believe we will serve at this Commission as well (intervenes)..

ADV PHILLIP MOKOENA SC: Also investigating the same issue?

MR MOHAMMED SULEMAN MAHOMEDY: That investigated - amongst

others ...

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: One of the issues is the increase in ETC that has gone through quite a significant review from MNS.

ADV PHILLIP MOKOENA SC: Now let us deal with the question of – Chair I think it is quite important – that having regard to the fact that there was a cost (indistinct), the business case and there was this significant increment directly from either the end user to the Board
10 itself without having to go – to go through other procurement structures and the things that you are highlighting in paragraph 3.1 of your statement – could this have been just a genuine mistake that happened?

MR MOHAMMED SULEMAN MAHOMEDY: Chair I think I am going to try to address that together with the question that the Chair posed.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: In any business of Transnet's size you have management structures. You also have non-executive structures. The reason you have that is so that the
20 combined intellect of the grouping of people who sit together is far better than the intellect of an individual sitting on a document. Now within the document that is in front of us had this document served at a Committee firstly I would like to stress that no individual in my humble opinion has got the expertise across every facet of a business. I think it is something that we can ...

ADV PHILLIP MOKOENA SC: *Ja.*

MR MOHAMMED SULEMAN MAHOMEDY: We can agree on. Therefore when you have a Committee that looks at some of the transactions they interrogate the document or the submission based on their areas of expertise and you have the cross functional skill set that will sit in those Committees. Those Committees have been designed to ensure that you bring the cross functional skill set to the organisation so that we all act in the best interest of the company. This document by bypassing the management of the business and bypassing the
10 structures that were put in place with the cross functional skill set that existed at the time is clear that there was either an intent to bypass the process or genuinely there were – there was an error of judgment but I do not believe that you can say that there were genuine acceptable mistakes. Again from the people with the experience and expertise but for me it is not about the area of expertise who drafted this memorandum. It is about the process because there is a process that works that will allow for any errors of judgment Chair that will be picked up. In this case by bypassing all of those management structures you removed the opportunity for a cross functional team to identify if there
20 were genuine errors for those to be identified and corrected but once again I think it is also critical to reemphasise the point Chair that this was all done after the contracts were signed which is largely irrelevant in any conversation because I mean if there were errors what would the outcome have been or what would the recourse have been. The contracts were already signed. Transnet were already committed to

R49 billion for the execution of these contracts.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: I hope I have answered the question.

ADV PHILLIP MOKOENA SC: Yes, you definitely did. Now may I refer you to page 10?

CHAIRPERSON: I am sorry. You reviewed a lot of transactions. You found a lot of documents - went through them. Would this have been or was this one of those put through that is the transaction under
10 confidential ...?

ADV PHILLIP MOKOENA SC: Confinement.

CHAIRPERSON: Confinement?

MR MOHAMMED SULEMAN MAHOMEDY: No Chair.

CHAIRPERSON: It was not?

MR MOHAMMED SULEMAN MAHOMEDY: No, no it was not.

CHAIRPERSON: Okay.

MR MOHAMMED SULEMAN MAHOMEDY: This was an open tender and all of the evaluation etcetera.

CHAIRPERSON: Yes.

20 **MR MOHAMMED SULEMAN MAHOMEDY:** But there are question marks over the evaluation process.

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: But this was not a confidential confinement.

CHAIRPERSON: Did you come across any document that contained

any explanation or justification why this memorandum was not subjected to management scrutiny in terms of the bodies that you have told me about?

MR MOHAMMED SULEMAN MAHOMEDY: No Chair. We have no seen (intervenes).

CHAIRPERSON: You did not find anything?

MR MOHAMMED SULEMAN MAHOMEDY: Any document.

CHAIRPERSON: *Ja.*

MR MOHAMMED SULEMAN MAHOMEDY: That suggest this was
10 discussed anywhere as to why it was going to not be presented to any management structure, no.

CHAIRPERSON: Yes, okay.

ADV PHILLIP MOKOENA SC: May I – may I then refer you to page 10 of your witness statement and at paragraph 5.3 you deal with a new topic referring to the Transnet bias in favour of the CSR and before you deal with the contents of that topic briefly explain to the Chair as to who is CSR.

MR MOHAMMED SULEMAN MAHOMEDY: Chair CSR is China South Rail an entity that produced the 95 locomotives for Transnet.
20 Subsequently they produced 100 locomotives and then were given 359 electric locomotives of the – of the 1 064.

CHAIRPERSON: I am sorry. I am interrupting you but there is a question that is – that I want to ask and I am taking you back to what we were talking about in regard to that memorandum. You have made it quite clear that if that memorandum had been presented to the

management bodies to which it should have been presented management would definitely have picked up certain problems in regard to the request for the approval. Are you able to tell me what the difference was between management and the Board that may have resulted in a situation where the Board did not or could not pick up what management could or would have picked up?

MR MOHAMMED SULEMAN MAHOMEDY: Chair ...

CHAIRPERSON: Is that something that you able to – to in term – normally of course management maybe dealing with a lot of things quite
10 often. Maybe much more often than the Board. The Board sits only seven times but also you may have a Board that does not have certain expertise that is required for certain things that the management – which the management has. Maybe they just have lawyers only - for argument sake – on the Board and there is no accountant and you – it is something where you need an accountant or somebody with some expertise. Are you able – is that something you are able to talk about or is it something you would rather reflect on and deal with at some other stage?

MR MOHAMMED SULEMAN MAHOMEDY: Chair I think I will have to
20 reflect on that as a result of the fact that we have had a number of Boards ...

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: At Transnet and I just ...

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: Need to go back and confirm

...

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: The composition of that Board.

CHAIRPERSON: Yes, okay.

MR MOHAMMED SULEMAN MAHOMEDY: And will come back on that Chair.

CHAIRPERSON: Yes, thank you.

ADV PHILLIP MOKOENA SC: Yes.

10 **CHAIRPERSON:** I am sorry. I interrupted you. You were dealing with ...

ADV PHILLIP MOKOENA SC: CSR.

CHAIRPERSON: Yes,

ADV PHILLIP MOKOENA SC: Still explaining to us what is CSR, yes.

MR MOHAMMED SULEMAN MAHOMEDY: Chair as I said the China South Rail had got – the first one was the 95 locomotives to deliver - to manufacture and deliver 95 locomotives that were going to be used essentially on the manganese channel for Transnet. This process commenced in 2011 and it was an open tender. We will touch on some
20 of the challenges of that tender later on but I am giving a view on China South Rail. Subsequently in around 2014 there was this confinement to China South Rail to produce 100 locomotives and then through the 1 064 program they got – of the 1 064 they received the lion share of the electric locomotives and they had to manufacture or their contract for manufacture was 359 locomotives. So I think that is

essentially China South Rail but after the conclusion of the 1 064 program with the 359 in around 2016 there was also a maintenance agreement that was – I would not say concluded – but I think there was – there was a letter of intent that was issued to China South Rail to maintain all of those locomotives that they will ultimately have produced for Transnet. It was a 12 year agreement that was in the region of - a total of – R6.18 billion. So these were quite significant transactions for an entity and I think that is largely the overview ...

ADV PHILLIP MOKOENA SC: Yes.

10 **MR MOHAMMED SULEMAN MAHOMEDY:** Of China South Rail at Transnet.

ADV PHILLIP MOKOENA SC: Yes and then at paragraph 5.3.1 you now commence telling us about why after having reviewed everything you come to the conclusion that there was biasness in favour of CSR.

MR MOHAMMED SULEMAN MAHOMEDY: Chair under the heading of MSM12 we have included the RFP – the request for pricing - that went out for the 95 locomotives and the 95 locomotives the issue date was 6 December 2011 and the closing date was 28 February 2012. This is quite an important date in the process that ensues. What we have
20 identified - in our submission as well under MSM11 – are communications between an executive at CSR – Mr Wang An – writing to ...

ADV PHILLIP MOKOENA SC: It is page 202 Chair.

MR MOHAMMED SULEMAN MAHOMEDY: Page 203.

CHAIRPERSON: Thank you.

MR MOHAMMED SULEMAN MAHOMEDY: Mr Wang An writes through to Mr Garry Pita who is the then Chief – sorry – he is then Chief Supply Chain Officer of Transnet. Mr Pita was the Supply Chain Officer at that time. It is also going to come up later where he was the CFO later on but at that time he was the Group Supply Chain Officer and it follows an email trail that says that – and I will read out ...

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: If it pleases the Commission.

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

MR MOHAMMED SULEMAN MAHOMEDY: It says:

“Dear Mr Pita, thank you for your email. We were very pleased to have a chance to meet with your Group CEO – Mr Brian Molefe – at the beginning of December. We expressed our interest in your tender for the 95 electric locomotives and the South African market as well. Regarding the tender document we are contacting Mr ...”

That is an error because it is Ms.

20 “...Ms Lindiwe Mdletshe and transferring the money to your account for getting the document. Due to only South African Rand being acceptable the money transferring process is a little bit complicated but we believe we could get the tender document within this week. You are very kind to

facilitate us your support on the tender document if
we need an inform you.”

ADV PHILLIP MOKOENA SC: So ...

MR MOHAMMED SULEMAN MAHOMEDY: The challenge ...

ADV PHILLIP MOKOENA SC: Yes. This – this communication references a meeting that took place between Mr Molefe and the people from the CSR and at this time it was even before the procurement of the locomotives was done. Am I correct?

MR MOHAMMED SULEMAN MAHOMEDY: Yes. So there if you look at
10 the bottom part of the email Mr Pita writes to Mr Wang An and he says:
“My CEO – Mr Molefe – advised me that you met
earlier.”

He confirms the meeting. He also stated that:

“CSR Electric Locomotive showed interest in
participating in our next tender.”

What is interesting is that tender was already in play. On 6 December that tender was already opened. The issued date is 6 December. These notes are being exchanged between 16 December and 19 December. In terms of governance and in terms of process within
20 Transnet no executive is allowed to engage with a bidder in a – what is called a closed tender period and the Group Supply Chain Officer here is now engaging with a bidder informing him that there is a bid out there or there is a – there is an RFP out in the market whereas this RFP was an international RFP. So bidders from across the world if they had an interest would have at that time commenced their preparation

for the bid documents.

ADV PHILLIP MOKOENA SC: Yes. You conclude saying with paragraph 5.3.2. Please take us through the contents of that paragraph.

MR MOHAMMED SULEMAN MAHOMEDY: What we are saying is that if – which is a big if because it is not allowed in terms of tender processes – but if Mr Molefe and Mr Pita were wanting to engage with bidders then all bidders should have been afforded that equal opportunity. We are not sure what the conversations were in those
10 meetings and we are not sure what the discussions were. However it is certain that there seems to be preferential treatment given to one bidder over the other where a particular bidder – bidder is told I am not sure whether CSR is aware of this RFP. We do not ordinarily pick up the phone in an RFP process and say to people there is an RFP. You need to please respond. That is their responsibility as a business in – in the global space. So there – there seems to be a special relationship that CSR enjoyed in the context of the procurement process because there definitely was untoward discussions - and when I say untoward meaning unprocedural discussions in a closed tender
20 period - but in addition Chair I think within good governance principles it is also not expected that an entity particularly their Group Supply Chain Officer and Chief Executive engage with one party in an RFP process. So it is not just the procedures within Transnet but I think as executives in a business we would not expect that conversations are happening behind the scenes when a tender is live.

ADV PHILLIP MOKOENA SC: Yes. Now could you address the new topic on page 10 from paragraph 5.3.3? You are dealing with the changing of the evaluation criteria in relation to the 95 locomotives transaction.

MR MOHAMMED SULEMAN MAHOMEDY: Chair if I may refer the Commission to page 218 under the Annex MSM12 – page 218 paragraph 6.2. This is the RFP Chair that was issued to the market and this would have been a standard RFP that would have gone to all market participants at the time. What it details is the BBBE rating
10 requirements. I do not intend reading all of it but I think what it does say midway through that page:

“The respondents will be required to furnish proof of the above to Transnet SOC Limited. That is a detailed scorecard as stipulated above in respect of large enterprise and QSEs or proof of turnover in respect of EMEs. NB – note well – failure to do so will result in a score of zero being allocated for BEE.”

This becomes quite relevant as I proceed Chair. That is the – the
20 requirement in the RFP. What we then have under Annexure 13 – MSM13 page 268 - is a memorandum which is – which is addressed from the Chief Executive of Transnet Freight Rail at the time - Mr Siyabonga Gama – to the Group Chief Executive – Mr Brian Molefe. The purpose of this memorandum it says:

“Is to provide an update to the Transnet Group

Chief Executive on the progress on the tender evaluation as indicated in the memorandum to the GCE dated 20 April 2012. It is also to request for the Group Chief Executive to approve the shortlisting of the tenderers that have met the SD threshold of 60 percent and to approve the issuing of letters to unsuccessful tenders that did not meet the SD threshold for stage 1 of the evaluation process.”

- 10 The reason this becomes quite critical is because we – in the document – in the RFP we said that if a bidder does not submit the BBEE certificates they are scored zero. Chair later in the document you will find under paragraph 7 of that document Chair on page 269 ...

ADV PHILLIP MOKOENA SC: Before you go to that paragraph can you take us through paragraph 4 on page 269?

MR MOHAMED SULEMAN MAHOMEDY: Chair paragraph four says:

- 20 “BBEE rating certificates in respect of JV partners and sub-contractors as well as the distribution of the BBEE status were to be furnished with the tenderer submissions to enable a fair evaluation of all submissions received. Incorporated JV’s also had to provide a consolidated BBEE certificate for legal entity, un-incorporated JV’s were required to submit BBEE certificates of all of the consortium partners. As such any foreign – the foreign companies would not have provided a BBEE certificate and therefore would not score any BBEE

points.”

ADV PHILLIP MOKOENA SC: So this was part of the requirement?

MR MOHAMED SULEMAN MAHOMEDY: Yes.

ADV PHILLIP MOKOENA SC: Yes you wanted to take the Chair to a different...

MR MOHAMED SULEMAN MAHOMEDY: To paragraph seven.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMED SULEMAN MAHOMEDY: Paragraph seven says that in light of the above and it explains a few things about the BBBEE as

10 SD, the cross-function evaluation team what is called the CFET proposed two options for stage one. Option one, as part of stage one of the SD evaluation and as per the RFP – it’s important Chair because it says as per the RFP, and the BADC submission which was the Board Acquisitions and Disposals Counsel Committee submission, the SD evaluation includes BBBEE and FRC. The effect of this is that foreign tenderers that do not have local representation are prejudiced and will receive zero on BBBEE. This option does not support the BBBEE code of good practice which allows for such foreign companies, if registered locally to start up enterprises etcetera and then what it says is, based

20 on option one, the following three tenderers met the minimum threshold of 60%. Chair this is relating to the 95 locomotives so this assessment is based on what the RFP said. Based on the RFP assessment three bidders qualified, Siemens, Bombardier, SSMM Consortium. Then there’s an option two which is presented below which essentially says, we will do everything except for this in the RFP we’ll ignore this and

then now there are five bidders that qualify and the bidders are, Siemens, Bombardier, Malcom CSR, there's a company called Malasko Trading 85 and SSMM and on the following page, Chair, what is now submitted for approval to the GCE at the time it says on the last bullet under paragraph nine it says, "It is recommended that the GCE approves the issuing of letters to answer successful tenderers due to their bids not meeting the minimum SD evaluation threshold for stage one which is based on option two", which was not in agreement with the RFP by the way.

- 10 So that process was not within the realms of the GCE's mandate and the reason I say that is because they are explicit in the document that says that the BADC approved the terms of the RFP. The BADC would be the only committee that can change that. This kind of change could be prejudicial to another bidder because had the bidders known that you were not going to look at this, you were going to ignore it, even though you said in your RFP that you will be scored zero, had other bidders they may not have – I mean you may have had a number of other bidders on the table because they would have known that this particular piece was not relevant. So we issue it out as being
- 20 mandatory and then we ignore it and then a point – or bring CSR into the mix of bidders and that's why we're saying that it's under a bias where CSR truthfully, if you look at this, and if it was evaluated in terms of the RFP, they would not have qualified in the first phase – the first stage and they would have been excluded but yet they were able to go through stage two Chair.

CHAIRPERSON: Ordinarily if you had issued a request for proposals and you had said these will be the criteria against which bids will be evaluated and subsequent to the issuing of that request you change your mind about some of the criteria, one or more, does the Transnet Procurement regime say what should happen, namely whether you should re-issue or you should issue an amended request for proposals or whether it does allow that, without amending the requests for proposals and letting everybody know of the amendment whether it does allow that you can change things provided, maybe, certain

10 requirements are met?

MR MOHAMED SULEMAN MAHOMEDY: Chair I think the first thing that happens is an assessment of that change of criteria to determine whether it is a fundamental change, we have to look at the – obviously also the impact on other codes within the PPPFA the Transnet procurement processes as well as the PFMA. If the change is not deemed significant change then we would ordinarily inform or we have the right to inform all of the bidders to say this is a change that has been effected and will it change anything in your submission but a change of this nature where you had it as a mandatory and you said

20 that it's a – in terms of first we said, what we submitted, we said, failure to do so will result in zero and now we're ignoring that we would have had to have gone back to the Board Acquisition Disposals Committee to ask for guidance. There's a number of ways you can deal with this, the first is you can actually call this a non-award and say that we are now changing – fundamentally changing some of the criteria and

re-issue to the market. Ordinarily if it was not deemed to be a significant deviation it would have at least have required us to inform all of the participants that initially had indicated an interest because this particular one went through compulsory briefing and there was a whole host of processes that we followed at the time and we should have at least disclosed it at some of those briefings but clearly, again it's three signatures on a document.

CHAIRPERSON: Okay thank you.

ADV PHILLIP MOKOENA SC: Now if I may refer you to page 270 and
10 identify for the Chair as to who signs the document?

MR MOHAMED SULEMAN MAHOMEDY: Chair this document is signed by the Chief Procurement Officer of Transnet Freight Rail at that time Mr Thamsanqa Jiyane, the Chief Executive of Transnet Freight Rail at that time Mr Siyabonga Gama and the Group Chief Executive of Transnet SOC Limited, Mr Brian Molefe at that time.

ADV PHILLIP MOKOENA SC: Yes in the light of what you've told the Chair about the changing of the criteria or the mandatory requirements of the tender itself, would this have been a genuine mistake of people not understanding the RFP or not really understanding what were the
20 requirements of the tender?

MR MOHAMED SULEMAN MAHOMEDY: Chair in signing this as the Chief Procurement Officer one would expect that the Procurement Officer is au fait with these rules as they are the rules of the game of procurement. So I wouldn't – you know I would expect that the Chief Procurement Officer of an entity like Transnet Freight Rail know that

this was a deviation and that the deviation had to have been approved by the committee that originally approved the transaction and also one more thing, I think it's also important to note that this is a contravention of the PFMA as well in terms of the processes of the PFMA that's applicable to Transnet.

ADV PHILLIP MOKOENA SC: Yes, may I now refer you to page 11 of your statement and let's now interrogate the issues under the heading, "payment of an unusual high advance payment", can you please proceed highlighting those issues from paragraph 5.3.5?

10 **MR MOHAMED SULEMAN MAHOMEDY:** Chair Transnet had executed a few transactions with locomotive OEM's before the 1064. Some of them date back in the last ten or twelve years but nonetheless relevant with Mitsui and there were other contracts with General Electric, when I reference other, meaning outside of the 1064. In the contracts with General Electric the negotiations yielded that we pay a deposit or an upfront fee of 10% of the contract. These are largely related to costs that the OEM will incur before the first locomotive is delivered or before the delivery of any locomotives take place, the OEM has to spend money in setting up costs, in, you know, the plants that

20 they have to build etcetera, so there's quite a significant amount but the practice was 10%. In some cases it would have gone up to, maybe even 15% but that was about the ceiling that we were paying. On the 95 locomotives which we entered into in 2012 with China South Rail that we just discussed earlier on, we paid a 10% deposit to China South Rail or an upfront fee of 10% Chair.

During the post-tender negotiations of 1064 there was a lot of rumblings in the corridors of Transnet that the negotiation team was contemplating a much more significant advance payment to some of the OEM's. Chair I – during that time personally called Mr Anoj Singh, asked him for an appointment because the team that was negotiating the 1064 was based at the Webber Wentzel offices and not at Transnet and scheduled a meeting with him to enquire of him if it was true that the team is contemplating a higher deposit payment. He did not deny that, he did, to some extent say that they were thinking about it and

10 what was my concern and I said well there were two things, the first is that this is out of kilter with all of the negotiations that we've undertaken to date and the second thing is that this - if it was higher than 10% it was not necessarily budgeted for in our cash flows and thereby it would impact significantly some of the key ratios of Transnet, the financial ratios. Particularly the cash that was going to leave the business and it would impact our – what is called a cash interest cover. A cover that is, or a ratio that is a focus of a number of institutions globally and locally including financial institutions but also credit rating agencies.

20 In having that discussion with him, he acknowledged my discomfort and he advised that he would consider my discomfort and he would consider what they would look at and that is when that conversation ended. Despite the concerns we raised we then heard that they negotiated with China South Rail to pay a deposit on the signing – on the date of signing of 10% and within six months to pay a

further 20% to China South Rail. Chair the quantum of these percentages equates to the following. The China South Rail contract is 18billion rand, a 30% effective deposit within six months equates to just over 5.4billion rand. Now to pay 5.4billion rand upfront when no single locomotive has been delivered and your first locomotive is months or maybe even a year away does not – is not warranted in my humble opinion. We will see that with other locomotive suppliers that it was not anywhere near that, so we cannot understand the disparity in the payment in advanced payments, if it was consistent, like 10% because

10 General Electric were paid 10%, Bombardier were paid a 9% deposit and then a further 9% within six months so that's 18%, China South Rail were paid about 15%, so there's clearly a disparity when China South Rail receives a 30% deposit in a six month period.

ADV PHILLIP MOKOENA SC: Was there any explanation preferred as to why were they paid such a huge advance payment?

MR MOHAMED SULEMAN MAHOMEDY: I'm not aware of that, we did request that, we were never provided that because we requested to understand the technicality behind that, I do believe there's a technical paper that may have been written but then again one is the technicality

20 but more importantly from our perspective is to look at the disparity in treatment – treating one OEM so significantly differently to the other OEM.

ADV PHILLIP MOKOENA SC: And in terms of the 359 locomotives?

MR MOHAMED SULEMAN MAHOMEDY: That was for the 359 where we paid a 10% and 20% and on the hundred...(intervention).

ADV PHILLIP MOKOENA SC: Yes on the hundred.

MR MOHAMED SULEMAN MAHOMEDY: I also believe that we paid a 30% deposit on the hundred locomotives as well.

ADV PHILLIP MOKOENA SC: Equating to how much in rands?

MR MOHAMED SULEMAN MAHOMEDY: That was equating to approximately just over 1.2billion rand.

ADV PHILLIP MOKOENA SC: Even before delivery of any locomotives?

MR MOHAMED SULEMAN MAHOMEDY: That's right.

10 **ADV PHILLIP MOKOENA SC:** Yes, may we then deal with your next topic from paragraph 5.3.9 Chair, it's on page 11, the payment of the interest penalties to CSR and you refer to the period of June 2015.

MR MOHAMED SULEMAN MAHOMEDY: Chair the penalties and interest that we reference here actually relate to the late payment of the deposit. So as I mentioned 10% was paid on the signing and a further 20% was due within six months or on the sixth month, I think it was September 2014. The 20% Chair amounts to just over 3.6billion rand, then in September 2014 when the payment was due there was some arrangements between Transnet and CSR for the slight delay in
20 the payment, subsequently there seems to have been correspondence between Transnet and China South Rail to say, well, we don't have the cash Transnet and we will now request from you for a deferment in the payment or a deferral in the payment to 2015. Obviously the locomotive supply agreement then would kick in because these penalties now would attract interest. What is not necessarily making

sense from our perspective Chair, is that Transnet at the time, had significant credit facilities available that we could have utilised and the interest rate on those facilities was averaging between 6.4% and 7%. Whereas the Locomotive Supply Agreement called for interest to be paid at prime rates, the prime at the time was in the region of 9.25%. Now we then continued in June 2015 to pay China South Rail an amount of 229million for interest and an amount including VAT of 68million rand for what came across as further hedging costs. I will deal with each one of these Chair if it is okay as it – each one of them

10 has a different nuisance. The interest amounting to 229million as I said, we could have utilised our facilities internally at Transnet with banks that we already had relationships and we could have paid an interest rate of between 6.4 and 7% which was significantly lower – would have been significantly lower than the 229million, it could have been lower by approximately 80million which would have saved Transnet money but be that as it may. Chair what is also quite interesting is that on the 1st of June 2015 there's an email from the Group Treasurer at Transnet, Mr Phetolo Ramosebudi who writes to Mr Wang Pan of China South Rail on the 1st of June and he says, please

20 receive the attached and he copies Mr Anoj Singh and Mr Danie Smit in this mail and...(intervention).

ADV PHILLIP MOKOENA SC: Mr Chair, may I refer you to page 272 and that is MSM14.

MR MOHAMED SULEMAN MAHOMEDY: That is correct advocate.

ADV PHILLIP MOKOENA SC: Yes, while the Chair is finding his way

to that document, if you go to page 272 and identify that document for us.

MR MOHAMED SULEMAN MAHOMEDY: Chair this is an email from Mr Ramosebudi of Transnet on Monday the 1st of June 2015 at 11h21 to China South Rail, Mr Wang Pan.

ADV PHILLIP MOKOENA SC: Yes and what does he attach to his email if you go to page 273?

MR MOHAMED SULEMAN MAHOMEDY: Chair on page 273 is a spreadsheet and excel spreadsheet that was attached to this mail which
10 goes on to do the calculations of the interest that should be billed to Transnet. Essentially this is odd because, why would I as Transnet write to a supplier and say this is the interest you need to bill me, that is the role and responsibility of the supplier to bill me interest if he deems it necessary. So we precipitate an action, we do the calculation, we actually go ahead and send the calculation to the supplier and say this is what you need to bill me and obviously a day later...(intervention).

ADV PHILLIP MOKOENA SC: Go to page 274 and identify that document for us in your sequence of evidence.

20 **MR MOHAMED SULEMAN MAHOMEDY:** This is Mr Wang Pan otherwise known as Elton at CSR, essentially writes back to us on the 3rd of June at nine minutes past midnight, he writes to Mr Anoj Singh and copies Mr Phetolo Ramosebudi and a few other people and he says, please find attached the invoices and the latest statement as you requested and attaches an invoice for 229million Chair and a second

invoice that is attached Chair under the number of 278...(intervention).

ADV PHILLIP MOKOENA SC: Let's start with the one on 275 and onwards are those the invoices?

MR MOHAMED SULEMAN MAHOMEDY: Yes Chair these are invoices 275 is the invoice for the deposit amount.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: Now I need to understand your evidence, you say that, I mean, Mr Ramosebudi was an employee of Transnet at the time.

10 **MR MOHAMED SULEMAN MAHOMEDY:** He was Transnet's Group Treasurer.

ADV PHILLIP MOKOENA SC: He computes an interest on behalf of the service provider.

MR MOHAMED SULEMAN MAHOMEDY: Yes that is essentially what was done.

ADV PHILLIP MOKOENA SC: He then request for an invoice that would be paid by Transnet pursuant to his computation?

MR MOHAMED SULEMAN MAHOMEDY: Yes Chair.

20 **ADV PHILLIP MOKOENA SC:** And this is done, according to your evidence, at the instance where there was a facility available for Transnet?

MR MOHAMED SULEMAN MAHOMEDY: As far as we have reviewed there was a facility available that Transnet could have paid this money on the due date and circumvented a significant interest bill to a third party, it would have been our interest.

ADV PHILLIP MOKOENA SC: And what is your comment around this – these facts that you’ve alluded to the Chair?

MR MOHAMED SULEMAN MAHOMEDY: Chair if we look at the position of the individual being the Group Treasurer the one challenge that we have is I’m not sure why this payment was not made on time. Mr Ramosebudi only joined Transnet in March 2015 by the way, on the 1st of March 2015, there was a previous treasurer who resigned her position but one of the first things we would do is look at the payment, regardless of what the amount is and look at whether we have funds
10 available. The first place we would look at is into our bank account whether we had that kind of money available, it’s unlikely that we would sit with cash balances of that amount but Transnet is a entity that is quite significant in terms of our capability and our requirements for funding. So we have different credit lines that are available with institutions locally and globally and at the time when we’re talking about the due date in 2014 we still hadn’t seen the increases in interest rates coming through for the cost of money to entities like Transnet it would have been much cheaper to borrow the money, as I said we had facilities that would have cost us 6.4 or up to 7% yet we at that time
20 made a decision that we’re not paying it, it doesn’t make sense from a finance perspective. Why would you want to pay somebody 9.25% interest, you’d do that calculation right up front and make a decision whether I’ll pay them using the agreement and defer the payment and pay this 9.25 or look at whether I have cash or facilities available at the time.

CHAIRPERSON: I'm sorry I want to take you back – I'm just not sure whether I heard the figure that you mentioned correctly when you were looking at invoices starting from page 272 and then you went to the invoices, did you mention the figure of 275 because I've been trying to look for 275 but I may have...(intervention).

ADV PHILLIP MOKOENA SC: That is a page number, I think Chair, it may be reference to the page number.

CHAIRPERSON: Oh okay.

ADV PHILLIP MOKOENA SC: Page number where the invoice
10 appears.

CHAIRPERSON: Oh okay but the interest itself was how much?

MR MOHAMED SULEMAN MAHOMEDY: 229million Chair.

CHAIRPERSON: And where do I find that?

MR MOHAMED SULEMAN MAHOMEDY: That would be on page 276
Chair.

CHAIRPERSON: Well on page 276 I've got – the figures I've got there is 229, 229, 229 oh but there are two numbers at the top there is MSM276 and then there's 261, which number is the correct number?

ADV PHILLIP MOKOENA SC: The 276 Chair – 261 should – would be
20 obviously the number from the original affidavit itself.

CHAIRPERSON: Oh okay.

ADV PHILLIP MOKOENA SC: But the paginated we are concentrating on the MSM276.

CHAIRPERSON: Yes so where is the figure you're talking about on that page?

MR MOHAMED SULEMAN MAHOMEDY: Chair it shows there invoice total 229 367 461.00.

CHAIRPERSON: Oh okay 229 at the beginning.

MR MOHAMED SULEMAN MAHOMEDY: Yes so it's actually 229million...(intervention).

CHAIRPERSON: Okay I must have been hearing something you didn't say.

MR MOHAMED SULEMAN MAHOMEDY: My apologies.

CHAIRPERSON: Oh okay thank you, okay alright, thank you.

10 **ADV PHILLIP MOKOENA SC:** Chair, I'm now, reliably told that it's one o'clock the time for the lunch adjournment.

CHAIRPERSON: Okay we will take the lunch adjournment it's one o'clock we will resume at two o'clock, we adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes you must – you may proceed Mr Mokoena.

ADV PHILLIP MOKOENA SC: Thank you. Mr Mahomed just before the lunch adjournment you were still taking us through the payment of interest and penalties. Just give us a high level summary on that topic
20 and please also you know reference it with page 275 so that at least we are able to appreciate the essence of your testimony around the interest issue.

MR MOHAMMED SULEMAN MAHOMEDY: Thank you Advocate. Chair I think the first point that needs to be made is that there was a total of R29 million that was paid to China South Rail as a result of a delayed

payment. This is made of two components. The first part is a R229 million interest and the second part is what is called a foreign exchange adjustment. Relating to the first part as I said it is of interest that the Group Treasurer at the time sent an email to China South Rail giving them the computation of the interest. And secondly he also provide them – provided them with the computation of the foreign exchange adjustment. It is not common practice for us to provide a service provider or a supplier with the calculation of these amounts. Chair what is also quite interesting is the fact that the contract with

10 China South Rail was a rand based contract. And all of the forex was mitigated and hedged in the rand based contract. So one if from a finance point of view we are confused if I can use that term as to why we would pay a foreign exchange adjustment to a rand based contract which had no reference to forex in that contract.

CHAIRPERSON: Is the significance of the term rand based contract that the creditor takes the risks of the rand fluctuation without being able to say but look we should take into account for example the US dollar rate, is that what the significance is of that term?

MR MOHAMMED SULEMAN MAHOMEDY: Chair you are correct.

20 **CHAIRPERSON:** Hm.

MR MOHAMMED SULEMAN MAHOMEDY: The creditor assumed all of the risk.

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: And that was factored into the pricing.

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: As it was entered into between Transnet and the OEM's at the time.

CHAIRPERSON: And if – if the parties are negotiating a contract and the party that will be paid and – some amounts does not want the agreement to be rand based then they put forward the proposal that for example the amounts must be US dollar based. Is that right? And if they do not put that; that means they accept that the transaction will be rand based?

10 **MR MOHAMMED SULEMAN MAHOMEDY:** That is correct Chair.

CHAIRPERSON: And...

MR MOHAMMED SULEMAN MAHOMEDY: If the risk is – my apologies. If the risk is assumed by Transnet then it would be Transnet's responsibility to take all of the forex hedging.

CHAIRPERSON: Yes, yes.

MR MOHAMMED SULEMAN MAHOMEDY: In this case it was agreed between the two parties.

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: That all of the risk

20 **CHAIRPERSON:** Yes.

MR MOHAMMED SULEMAN MAHOMEDY: And the hedging would be for the suppliers account.

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: And it was factored into the pricing.

CHAIRPERSON: Yes. And of course I assume that if it is rand based depending on what happens you know in the markets you could be lucky in that it could go up or go down, the rand could go up or go down and so that is – if it goes your way then you might benefit if it does not then it is just a risk that you accept it.?

MR MOHAMMED SULEMAN MAHOMEDY: That is correct Chair.

CHAIRPERSON: Okay.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: And that is why it is odd on
10 this particular penalty that we actually paid an amount of R59.8 million as referenced in MSM27.8 to China South Rail for what was marked as the cost of rolling forward an FEC because of the delay in the payment. But what is also significant Chair is that this is a financial services transaction. In addition to the fact that we believe there is a – it was rand based and we should not have been levied this penalty in addition to that we were also levied VAT on this transaction which is not in terms of the VAT Act. So we paid a total of R68 million that relates to what is called the foreign exchange forward rolling of the FEC.

CHAIRPERSON: And anyone within Transnet dealing with this contract
20 would have known or at least checked the terms of the contract first before putting Transnet at such financial risk as agreeing to these types of costs. One would have thought that they would go through first and see whether it is a rand based contract or not?

MR MOHAMMED SULEMAN MAHOMEDY: Yes Chair I think in addition it would have also required that it be more than just a finance

transaction that you would have had the legal teams look at it, the operation teams look at it before we agree to a significant payment of this nature of R297 million.

CHAIRPERSON: Especially when you are talking about very big amounts.

MR MOHAMMED SULEMAN MAHOMEDY: Yes.

CHAIRPERSON: Ja. Okay.

ADV PHILLIP MOKOENA SC: Now against that background and clarity Mr Mahomedy turn to page 276 so that we can move on and explain to
10 the Chair what was the – what is this document and its purpose and what is the amount in the light of what you have now clarified to the Chair?

MR MOHAMMED SULEMAN MAHOMEDY: Chair document number 276 is essentially the invoice that we received as you would note it is dated the 2 June 2015. As I presented Mr Ramosebudi submitted this calculation to China South Rail on the 1 June so literally one day later they take the amount that was on the spreadsheet of R229 367 461,00 and included onto an invoice and submitted to Transnet for payment and this was effectively paid.

20 **ADV PHILLIP MOKOENA SC**: And if you turn to page 278.

CHAIRPERSON: I am sorry before you do that. The general treasurer I think you said his position was – was it – she – a she who gave China South Rail these calculations? Would he or she have been involved in the authorisation of the payment later on when the invoice came or would he or she not have been involved in that?

MR MOHAMMED SULEMAN MAHOMEDY: Chair the group...

ADV MAHLAPE SELLO: Mr Ramosebudi.

CHAIRPERSON: Or is that something coming up?

MR MOHAMMED SULEMAN MAHOMEDY: No Mr Ramosebudi was the Group Treasurer at the time and he provided the information but he did not make the physical payment. No he did not authorise the physical payment Chair.

CHAIRPERSON: Okay alright. Thank you.

ADV PHILLIP MOKOENA SC: Now I was referring you to the second
10 document in order to tie up your evidence. At the document is at page 278 and identify that for the Chair and also comment on its contents?

MR MOHAMMED SULEMAN MAHOMEDY: Chair page 278 references an invoice again from China South Rail to Transnet for the amount of R59.8 million with the description being the cost of rolling the forward exchange contract. And then VAT being levied on that for an amount of R8.3 million showing an invoice total of R68.2 million which was subsequently paid to China South Rail. Once again Chair the amount of R59 855 million is the exact amount that is reflected in the spreadsheet that was sent to China South Rail by Mr Ramosebudi at
20 the time.

ADV PHILLIP MOKOENA SC: Yes. Now we can then move on Mr Mahomedy and deal with the advance payment from page 5 – paragraph 5.3.10 of your statement on page 12 Mr Chair.

MR MOHAMMED SULEMAN MAHOMEDY: Chair subsequent to the conclusion of what we call the locomotive supply agreement which was

for the 1064 locomotives to the various OEM's. Transnet then using the 1064 contract and alluded to the procurement process being followed through that contract commenced with a process with China South Rail for a maintenance agreement. And this maintenance agreement was not limited to the 359 locos that were to be built in the 1064 but rather it was to include other locomotives that China South Rail were building or had built that was including the 95 and the 100. Once again Chair a recommendation by the board of directors a submission was made directly to the board of directors at which point the board of directors

10 recommended that Transnet engage the Minister of Public Enterprises for approval of this particular transaction. At that time the transaction was valued approximately R6.1 billion. The submission was made to the board of directors in July 2016 and subsequently recommended the application was made to the Minister and approved by the then Minister of Public Enterprises Ms Lynne Brown. What is also interesting in this submission is that China South Rail requested what they called or termed start-up costs totalling 10% of the value of the contract which means it equates to R618 million plus VAT. In October 2016 this particular payment was effected and China South Rail was paid a total

20 that was in the region of approximately R700 million which included VAT. Chair in October 2017 again I think the timelines are quite important the approval or the recommendation from the board in around July 2016. There is approval from the Minister and there is a payment that is effected in October 2016. A year later in October 2017 there is a document where the Group Chief Executive informs China South Rail

that as a result of the number of allegations of corruption this award will essentially be suspended. This is in October 2017. That document I believe is in the pack under MSM16 I think it is.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: But we will look at that.

ADV PHILLIP MOKOENA SC: MSM16 Chair.

CHAIRPERSON: Okay thank you.

ADV PHILLIP MOKOENA SC: Which will be now on the second bundle I think.

10 **CHAIRPERSON:** Oh. Now that is on BB3

ADV PHILLIP MOKOENA SC: 2B. 2B.

MR MOHAMMED SULEMAN MAHOMEDY: Chair my apologies I think the letter I refer to ...

CHAIRPERSON: Ja.

MR MOHAMMED SULEMAN MAHOMEDY: My apologies Advocate is MSM15.

CHAIRPERSON: 15?

MR MOHAMMED SULEMAN MAHOMEDY: 15 page 340 or it is MSM340.

20 **CHAIRPERSON:** Okay that is the last

ADV PHILLIP MOKOENA SC: Document.

CHAIRPERSON: Document on that lever arch file.

MR MOHAMMED SULEMAN MAHOMEDY: Yes Chair.

CHAIRPERSON: Okay thank you.

MR MOHAMMED SULEMAN MAHOMEDY: Chair in this letter to the

Chairman of CRRC which was the holding entity for China South Rail it says:

“Materials and reliability support contract.”

Page 340.

10 “Transnet amongst other things we refer to previous
correspondence and the signing of their [indistinct]
contract Transnet is a state owned entity and has to
conduct its business, incur expenses and procure
materials and services in compliance with but not
limited to the constitution of the Republic of South
Africa and the Public Finance Management Act. We
had reached finality on the negotiation of the MRS
contract and we are ready to sign. However due to
the corruption allegations that surfaced through the
media on the 1064 procurement we had to negotiate
the newly proposed representations and warranties
clauses. Further to the above Transnet SOC has
commissioned a forensic investigation on the
allegation of corruption relating to the procurement
20 of the 1064 locomotives to ascertain the parties’
involvement or non-involvement on the alleged
corruption process. The forensic investigation
commissioned has not yet been finalised.”

The last line there says:

“Ultimately Transnet SOC would prefer to resign the

complete MRS contract with the proposed representations, warranties, clauses as opposed to signing the addendum. Transnet will only be in a position to issue a letter of effectiveness to CRRC subsequent to the complete MRS contract being signed by both parties. As far as we are aware that process was never concluded.”

The issue is that Chair that letter was issued in October 2017 actually the 26 October 2017.

10 **CHAIRPERSON**: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: But no effort was made in recovering our R700 million that was lodged with China South Rail from October 2016. That process only commenced in July 2018 Chair.

CHAIRPERSON: So the – the process was suspended and nothing happened for a number of months for about eight months/nine months?

MR MOHAMMED SULEMAN MAHOMEDY: Yes Chair.

CHAIRPERSON: Ja okay.

MR MOHAMMED SULEMAN MAHOMEDY: And our funds remained with China South Rail in that period. Chair...

20 **ADV PHILLIP MOKOENA SC**: And what was the purpose of the money – before you proceed why was it – why were they paid such an advanced I mean such a huge sum of advanced payment?

MR MOHAMMED SULEMAN MAHOMEDY: What is essentially stated in the contract I think we have all – or in the submission from China South Rail.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: Is what is the – what they have termed start-up costs. To actually commence with producing some of these strategic spares locally in South Africa creating the capacity here. As far as we are aware July 2018 when we commenced the process to recall these funds they had not yet commenced with that – with any of those processes of start-up. They contend differently but that is our contention as Transnet.

ADV PHILLIP MOKOENA SC: Yes then proceed.

- 10 **CHAIRPERSON:** But in terms of the letter that we just dealt with now they would not have been expected to do anything until the issue of allegations of corruption had been – had reached finality?

MR MOHAMMED SULEMAN MAHOMEDY: Chair yes Chair there were two provisos. One was exactly as you point out and the second was the signing of the MRS agreement.

CHAIRPERSON: Yes yes.

MR MOHAMMED SULEMAN MAHOMEDY: Which as far as we are aware had not taken place.

CHAIRPERSON: Yes. Okay.

- 20 **ADV PHILLIP MOKOENA SC:** And what happened to the funds ultimately?

MR MOHAMMED SULEMAN MAHOMEDY: In July 2018 there was a process that commenced through Transnet Engineering to recover these monies from China South Rail. We did have what is called an advance payment guarantee in place. A guarantee that was provided to us by

China South Rail at the time. And unconditional guarantee that was provided by the Bank of China to Transnet for the amount of R618million. It was the amount excluding the VAT for some reason and we then proceeded to inform the Bank of China as well as China South Rail that we were going to recall the guarantees essentially. All of the processes related to that commenced in about September the latter part of September 2018 and we reached finality in the first week of December 2018 when China South Rail repaid us the R618 million. To date China South Rail have not yet paid us the VAT portion which is the

10 R86 million equivalent for that transaction. That remains outstanding we have had numerous interventions with China South Rail requesting these funds to be paid to us. Unfortunately to date we – it still remains outstanding.

CHAIRPERSON: What reason do they advance for not paying it?

MR MOHAMMED SULEMAN MAHOMEDY: Chair at this point we do not get a response or we do not get a reason for non-payment. We had a commitment – the Chairman of the board of directors as well as myself met with an executive from China South Rail at the beginning of this year. We had received some indication that they would be remitting

20 these funds but unfortunately to date we have yet to receive the funds.

CHAIRPERSON: Is that one of the matters in respect of which there is either pending litigation or there is litigation contemplated or you are not sure about that?

MR MOHAMMED SULEMAN MAHOMEDY: No we are not sure about – I do not think on the 86 we have issued any litigation but what we have

done is we have written to them and provided and requested payment so that will follow due process within our business Chair.

CHAIRPERSON: Well it may be one of the matters in respect of which the Chairperson of the Transnet board indicated that there was a preference to try and reach an amicable settlement.

MR MOHAMMED SULEMAN MAHOMEDY: Yes.

CHAIRPERSON: Because litigation can sometimes take too long and in the meantime you might not end up getting what you want so yes okay.

ADV PHILLIP MOKOENA SC: Mr Mahomedy maybe to complete on this
10 issue and for completeness may I refer you to Exhibit BB3B that is now the second file and go to MSM18, 18. May you please identify that document and take us through that document?

MR MOHAMMED SULEMAN MAHOMEDY: Chair this is a letter that is written by Transnet to...

CHAIRPERSON: I am sorry that is what divider?

MR MOHAMMED SULEMAN MAHOMEDY: 351.

ADV PHILLIP MOKOENA SC: 18

MR MOHAMMED SULEMAN MAHOMEDY: 18

CHAIRPERSON: 18 okay thank you.

20 **ADV PHILLIP MOKOENA SC**: 18.

MR MOHAMMED SULEMAN MAHOMEDY: Chair

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: On page 351 is a letter from Transnet to the General Manager at CRRC demand for payment of an amount of VAT and interest relating to the maintenance and reliability

support agreement between Transnet and CRRC E-Loco PTY Limited.

Essentially we raised the issue in paragraph 2 where we say:

“In terms of the provision of the letter of award in advance payment in the amount of R704.7 million was made in favour of CRRC and such amount was made up of R618 million and VAT at 14% in the amount of R86 million. CRRC was required to utilise the money as start-up costs and also to procure [indistinct]. As a result of non-performance on the part of CRRC Transnet Engineering TE proceeded to claim a refund of the total amount paid to CRRC. However CRRC refunded only the amount of R618,160 million and held back the VAT amount of R86.502 million. TE Transnet Engineering is entitled to be refunded the VAT amount and interests amounting to R136.4 million. TE therefore demands a payment in total of R223 million to be paid into the following bank account. We will appreciate if the above payment the banking details are provided and we will appreciate if the above payment is made into the above account by no later than 7 days upon receipt of this letter failing which TE will be left with no option.”

ADV PHILLIP MOKOENA SC: Yes. Is the letter that now ties in with your evidence that you adduce before the Chair pertaining to the VAT

component that was still outstanding and not yet been paid?

MR MOHAMMED SULEMAN MAHOMEDY: Yes Chair.

ADV PHILLIP MOKOENA SC: Yes. Now can you turn to your statement with particular reference to page 13, 13 Exhibit BB3A? The first file Chair.

CHAIRPERSON: Yes and what page on that one – are we back to the statement?

ADV PHILLIP MOKOENA SC: 13.

CHAIRPERSON: 13.

10 **ADV PHILLIP MOKOENA SC:** 13.

CHAIRPERSON: Ja.

ADV PHILLIP MOKOENA SC: From – are you there Mr Mahomedy?

MR MOHAMMED SULEMAN MAHOMEDY: Yes.

ADV PHILLIP MOKOENA SC: Yes and please take us through your new topic highlighted at the unlawful appointment of Regiments and subsequent increase in its scope and budget. Take us through the relevant facts under the topic?

MR MOHAMMED SULEMAN MAHOMEDY: Okay. Chair in May 2012 Transnet issued a RFP to the market for service providers to provide
20 transaction advisory services as it related to the procurement of the 1064 locomotives. At the tender closing date there were a few consortiums that actually bid or provided bids and proposals in response to that RFP. We list them. There is one that we call the KPMG Consortium which comprised KPMG Nkonki, Norton Rose, [indistinct] the PWC consortium which comprised PWC, CIIDB

Engineers, Cliff Decker, Hofmeyr Incorporated and the McKinsey consortium which comprised at the time McKinsey, Letsema, [indistinct] Capital, [indistinct] Nedbank, Edward Nathan Sonnenberg and Art. Art represented by Mr David Porter and Webber Wenzel attorneys submitted a proposal only for procurement and legal services. Chair there is a point that on the 6 December 2012 McKinsey was awarded with a letter of intent for this particular service. However it is important to note that that was through a confinement process. This process of the RFP was essentially non-awarded at the conclusion of
10 this process.

CHAIRPERSON: So the open tender process was commenced but was abandoned and then a confinement process was then pursued.

MR MOHAMMED SULEMAN MAHOMEDY: Chair that is to the best of my knowledge at the moment.

CHAIRPERSON: Yes. Okay.

MR MOHAMMED SULEMAN MAHOMEDY: There was a letter issued on the 6 December 2012 or signed on the 6 December the letter is dated the 30 November 2012 and signed on the 6 December 2012 where Mr Anoj Singh representing Transnet informed the McKinsey consortium
20 the letter of intent for the provision I am referencing item MSM19 page

ADV PHILLIP MOKOENA SC: 354.

MR MOHAMMED SULEMAN MAHOMEDY: 354 in Exhibit BB3B

ADV PHILLIP MOKOENA SC: B ja.

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: Chair this letter goes on to

explain the letter of intent and some of the key deliverables in that contract. It also lists in this contract it lists Regiments, McKinsey and some of the other service providers that will be providing service in terms of the requirement for the 1064 locomotive advisory. At the time this particular letter of intent under Annexure A on page 360 refers to an amount in terms of the deliverables must be executed for a fee of R35.2 million as the fee note below any over run in terms of the time will not be for the account of Transnet as the engagement is output based and not time based. McKinsey will take overall responsibility for

10 the deliverables and the quality of the end products. Expenses will be kept at 10% of the value of the engagement for the supplier and its sub-contractors. It is important to note that at that time it was output based. It had some very specific outputs that were included. Financial project management procurement legal we can go back to this but it had all of the key deliverables that were required from this particular transaction. Chair the constitution of the McKinsey consortium at the time had now changed as we pointed out earlier on and...

CHAIRPERSON: Well before you talk about that. Mr Mokoena will you investigate whether we cannot get a better copy?

20 **ADV PHILLIP MOKOENA SC:** A better copy Chair, yes (intervenes).

CHAIRPERSON: Not only of this one. There are a number of copies which are quite poor and ...

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Difficult to read.

ADV PHILLIP MOKOENA SC: Will do that Chair.

CHAIRPERSON: *Ja* and maybe that could be passed onto all members of the legal team for – for the future that where there is a copy that ...

ADV PHILLIP MOKOENA SC: It is not legible.

CHAIRPERSON: Is not legible or it is quite poor if they can make attempts to try and get a cleaner copy. Okay, alright.

ADV PHILLIP MOKOENA SC: We will do that Chair.

CHAIRPERSON: Okay. Yes Mr Mahomedy.

MR MOHAMMED SULEMAN MAHOMEDY: Chair this letter of intent also excluded - just by the way Chair – excluded the legal services on
10 page 335. It specifically stated that:

“The supplier agrees to relinquish all legal services
to Webber Wentzel.”

And goes on to – to state that:

“Further more clearly the key objectives that
outlined in this particular document ...”

CHAIRPERSON: I am sorry. Just about that that sounds quite strange. Does it not? For Transnet to say when they have got a transaction they obviously need a lot of legal advice and guidance to say they relinquish all legal services from within Transnet. Now normally Transnet will
20 instruct outside attorneys – will instruct lawyers from outside if they want to instruct lawyers. I am sure they do so every day without having a clause such as this or is it – is it a usual kind of thing to include something along those lines?

MR MOHAMMED SULEMAN MAHOMEDY: Chair in this case I think the original consortium - if I remember – included a firm of attorneys from

McKinsey as well.

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: Essentially I think it included Edward Nathan Sonnenbergs.

CHAIRPERSON: Oh, it was not – it was not Transnet saying they would relinquish Transnet legal services or legal services from within Transnet?

MR MOHAMMED SULEMAN MAHOMEDY: No Chair. What it – what it said was the supplier being McKinsey ...

10 **CHAIRPERSON:** Oh, okay.

MR MOHAMMED SULEMAN MAHOMEDY: The consortium ...

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: Will not conduct any legal services. They relinquish all of the legal services ...

CHAIRPERSON: They would ...

MR MOHAMMED SULEMAN MAHOMEDY: To Webber Wentzel.

CHAIRPERSON: Oh in other words they would not instruct other attorneys?

20 **MR MOHAMMED SULEMAN MAHOMEDY:** Yes. Yes Chair that is largely what it means.

CHAIRPERSON: Ja.

MR MOHAMMED SULEMAN MAHOMEDY: Also what it says is that:

“Notwithstanding the appointment of Webber Wentzel by Transnet the supplier will oversee all work and deliver the work supplied by Webber

Wentzel and manage the deliverables of the entire advisory service.”

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: So I assume there was some integration ...

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: But it was an – it was an exclusion ...

CHAIRPERSON: Ja.

10 **MR MOHAMMED SULEMAN MAHOMEDY:** Because initially it was included and then it became an exclusion.

CHAIRPERSON: Okay, alright.

MR MOHAMMED SULEMAN MAHOMEDY: Chair I think I just want to touch on the key deliverables included in the original letter of intent.

“A robust and de-risk business case that is fully supported and approved by the Board and the shareholder.”

That was one of – it is on page 336 towards the bottom.

20 “Developing and augmenting the business case for the approval of the locomotives by the Transnet Board of Directors and Department of Enterprises. Procurement ...”

I am not going through all of them but procurement and legal talks to all of the different aspects of the advisory technical and operations. Financial – it was talking to developing financing and funding options

and then to develop deal structures, financing, hedging and de-risking options. Project Management Office provide the stakeholder engagement etcetera. The reason that we are doing that is because it will become relevant when we talk about the role that then was perceived by Regiments - for example.

ADV PHILLIP MOKOENA SC: Were you reading from page 356 356?

MR MOHAMMED SULEMAN MAHOMEDY: Yes.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: 356 of the pack.

10 **ADV PHILLIP MOKOENA SC:** Any other issue that you want to highlight there for the Chair?

MR MOHAMMED SULEMAN MAHOMEDY: As I said Chair on page 360 - again I think it may not be entirely legible as you pointed out Chair - but what it does talk to on page 360 – I have a slightly clearer copy with me. As I said Chair it says:

20 “Deliverables must be executed for a fee of R35.2 million as per the fee note below. Any overrun in terms of time will not be for the account of Transnet as the engagement is output based and not time based. McKinsey will take over all responsibility for the deliverables and quality of the products – expenses at 10 percent.”

It then goes in and explains that the consortium for the various aspects total was R35.2 million.

ADV PHILLIP MOKOENA SC: And then if you go to page 358 whose

signs?

MR MOHAMMED SULEMAN MAHOMEDY: The signature from Transnet's side is Mr Anoj Singh.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: On 4 December.

ADV PHILLIP MOKOENA SC: Now – now take us through the contents of paragraph 5.4.4 – Chair on page 14 of the statement.

CHAIRPERSON: I see that in the page in which McKinsey – McKinsey's people signed or person signs the Director there – there
10 are witnesses who witness his signature but ...

ADV PHILLIP MOKOENA SC: No witnesses.

CHAIRPERSON: On page 358 where Mr Anoj Singh's signs on behalf of ...

ADV PHILLIP MOKOENA SC: There are no witnesses.

CHAIRPERSON: Nobody signs as a witness.

MR MOHAMMED SULEMAN MAHOMEDY: That is true Chair. The documents that we have got ...

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: And we have seen do not
20 include a witness to the signature.

CHAIRPERSON: Hm. Okay, thank you.

ADV PHILLIP MOKOENA SC: Mr Mahomedy paragraph 5.4.4 and onwards.

MR MOHAMMED SULEMAN MAHOMEDY: Chair the constitution of the McKinsey Consortium now effectively from what was originally

submitted is now including Regiments and it comes in under the perspective of a supplier development partner and I think they were not part of the initial procurement process anyway. This is possibly a breach of the Transnet Procurement Manual and Transnet Supply Chain Policy as it is a change – fundamental change in the consortium that was originally bidding for the work. I think further down Chair on page 14 of my testimony we provide - under 5.4.6 – we provide a perspective on all of the different dates in which Transnet either concluded extensions or contracts with McKinsey.

10 **ADV PHILLIP MOKOENA SC:** That is – that is quite crucial Mr Mahomedy. Could you please take us through that foreshadowing the evidence of other witnesses to come?

MR MOHAMMED SULEMAN MAHOMEDY: Chair the first document that commences this process is a document that is issued what we call a letter of intent as we have just gone through dated 6 December and that is the date that it is signed by the McKinsey principal. There is a first addendum to this document which is essentially to ask for an extension in the validity period of the LOI. The LOI had a specific validity period. I think it was three months – if I remember correctly –

20 but there is a specific validity period and it needed to be amended as it says in the LOI – maybe amended or modified in writing by the authorised signatories. There was an amendment that took the document out. There was a second amendment to the LOI in October 2013 which extends the validity period further to 30 November 2013. There is an agreement for the provision of the

transaction advisory services to Transnet in January 2014. That is the document Chair I referenced earlier on saying that there was this side deal – if you would like to call it. That was long before any session because McKinsey was still the heads of agreement with the transaction. So on 20 January there is this transaction or an agreement between Transnet and Regiments. There is the purported session that also took place on the 5th – sorry my apologies. There is a third addendum to the LOI and this is to transfer the scope to Regiments. On 5 February we provided that letter for the agreement or
 10 the session in which McKinsey informs Transnet of their intention to move all rights and obligations through to Regiments.

ADV PHILLIP MOKOENA SC: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: The master services agreement for this particular transaction is signed on 21 February 2014. Chair there are subsequently two further amendments. So up to 21 February or 5 February that is the extent to which McKinsey were involved. Now on 28 February 2014 we notice that the fees of 35.2 million are now increased to 78.4 million and this is largely with Regiments as the service provider or the lead consortium
 20 partner.

ADV PHILLIP MOKOENA SC: And this is done by way of ...?

MR MOHAMMED SULEMAN MAHOMEDY: A memorandum.

ADV PHILLIP MOKOENA SC: A memorandum. Nothing else?

MR MOHAMMED SULEMAN MAHOMEDY: No it is a memorandum. Chair then on 16 July 2015 there is a further memorandum. Again

Chair it is a memorandum that is submitted to the – I think I recall it was submitted to the Acquisitions and Disposals Committee – to move the total fees on the loco 1 064 advisory to close to 289 million in total. Chair that is – there – there are other amendments as well but I think largely what we saying is that it moved from 35.2 million to a total somewhere in the region of R289.5 million in total.

CHAIRPERSON: I am trying to – so where do you find 289?

MR MOHAMMED SULEMAN MAHOMEDY: Chair on – actually I am going ahead of myself but on 5.4.82 we explain that it moved to 81 –
10 sorry. On page 16 of my statement.

CHAIRPERSON: Oh, okay.

MR MOHAMMED SULEMAN MAHOMEDY: It says that it moved - this amount increased to 289.5 million in total.

ADV PHILLIP MOKOENA SC: So what you did Mr Mahomedy you took into account this entire contract. You looked at the different variations through the addendums and you made certain observations and those observations are from paragraph 5.4.8 and if you can take the Chair through the observations of the review that you have now done in the light of all these contracts.

20 **CHAIRPERSON:** *Ja*, because I asked you about that figure because I was looking at the figure.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Of 16 (intervenes).

MR MOHAMMED SULEMAN MAHOMEDY: 166.

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: Chair we will explain that hopefully.

CHAIRPERSON: *Ja, go ahead ja.*

ADV PHILLIP MOKOENA SC: Now explain to the Chair and give a contexts to the amount.

MR MOHAMMED SULEMAN MAHOMEDY: Chair the amounts that finally were paid to the different consortium partners including a number of things that went into what was then called loco advisory services. There was an amount of 166 million that was paid to
10 Regiments under the auspices of loco advisory. However it was actually for executing a funding transaction. Chair I think at this point it is also important to note that Regiments – as I read out part of the scope – it was to determine and formulate funding plans and funding strategy. It would not be to execute those strategies because there would be a conflict and in the loco advisory included in this 289 million is an amount of 166 million which was paid to Regiments which was then called a success fee for the China Development Bank Loan. This also becomes relevant as we go further into the document Chair when we talk about the transactions – funding transactions that Transnet was
20 involved in for 1 064. So included in the 289 is 166 million that was paid to Regiments for this particular execution of this funding. Of the total 289 million Chair Regiments was paid R267.7 million which equates to 92 percent of that fee which largely means that they had become the lead in the consortium. Also quite relevant when we look at the conflict of interest that arose later on in – in our review. The

variation again we talk about the process Chair and I think Advocate Mokoena asks about the initial process – the procurement - but the variation in this process would have required in my view a new procurement event particularly when we look at the 166 million that was now included because that was for a fundamentally different event and we should have executed an event for that. However I say that with caution because I give due credit to our Transnet Treasury Team who had the capability to execute this transaction with China Development Bank without the assistance of Regiments. So if I may phrase correctly
 10 if there was a need for it then it would have been a separate procurement event. It should not have been included as one bundled event that then cost us a total of 289 million. I hope I am making myself clear.

CHAIRPERSON: Yes. So – but your – your evidence is that Transnet had enough people who could do this and there was no reason why outside – an outside firm was required to – to be involved?

MR MOHAMMED SULEMAN MAHOMEDY: Yes Chair.

CHAIRPERSON: Yes, okay thank you and once again in regard to this as was the case with another issue that you dealt with you have not
 20 been able to find any document in which contains an explanation or justification for not using Transnet's own expertise and capacity?

MR MOHAMMED SULEMAN MAHOMEDY: Chair we are not able to find a document that suggests ...

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: That we did not have the

capacity.

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: We ...

CHAIRPERSON: That gives whatever explanation. You have not been able to find any such document?

MR MOHAMMED SULEMAN MAHOMEDY: No Chair. In fact we will present evidence to the contrary.

CHAIRPERSON: Yes, okay.

ADV PHILLIP MOKOENA SC: What did – what did you understand by
10 this success fee of 166 million? What did Regiments do to be entitled to such an amount?

MR MOHAMMED SULEMAN MAHOMEDY: Well the explanation is complex in terms of the memorandum that has been included. However simply put what it says is that Regiments were the arranger of this particular transaction with the – with the party being China Development Bank. This is paid out in 2015 - I think it is July 2015. What is also quite interesting is that Transnet had already approached China Development Bank way back in 2014. So when Regiments was paid this in fact the then Treasurer of Transnet/Group Treasurer raised
20 an alarm bell then to say that there is not a need for Regiments to be involved in this at all because the Transnet Team had the capability and they had executed transactions that were of similar size if not bigger with funding institutions locally.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: So I think the key problem

there was that that – you know – Regiments is purported to have done the transaction but it had commenced a while ago and some of these transactions to give you a perspective in – in the Treasury space. A transaction of this size would take a while. It is not something that you conclude on very quickly because there are significant numbers even in global terms. This particular transaction with China Development Bank was originally being considered at \$2.5 billion.

CHAIRPERSON: You know it is difficult to listen to your evidence as well as the evidence of the other Transnet witnesses who have come
10 before me and hear all these large amounts that were being paid out in – to say the least - very questionable circumstances and not ask ourselves the question but how does it come about that such large amounts get paid out and somebody does not pick up the problem before they are actually paid out except that the answer must be that if the authorisation was made by people not as senior as the people who authorised then one would look at the senior people and say where were you when such large amounts were – when lower level people in the company were authorising these types of payments but when it is people right at the top there is a problem about who is the one who
20 would pick and stop and stop these things because some of them were approved by the Board itself and then you were either talking of the GCEO or a CE of like an operational division or a Group Chief Financial Officer. So it was top people. So - so maybe that is basically the explanation.

MR MOHAMMED SULEMAN MAHOMEDY: Chair I think you – you

capture it very succinctly and correctly.

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: In this particular case if we look at the payment of 166 million the authorisation was from the Group Treasurer of Transnet ...

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: Which is a very senior position/

CHAIRPERSON: Hm.

10 **MR MOHAMMED SULEMAN MAHOMEDY:** Mr Ramosebudi.

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: The Group Supply Chain Officer meaning the Head of Procurement ...

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: Mr Garry Pita.

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: The Group Chief Financial Officer ...

CHAIRPERSON: Hm.

20 **MR MOHAMMED SULEMAN MAHOMEDY:** Mr Anoj Singh ...

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: And the Acting Group Chief Executive at the time – Mr Gama.

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: So when we are talking

about the four – it is about the most four – about the most senior four people ...

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: In an organisation...

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: With the structures of Transnet.

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: Even if a lower level
10 employee were to question ...

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: The authority for payment ...

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: They would be given this document ...

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: And say well in fact this particular document ...

CHAIRPERSON: Hm.

20 **MR MOHAMMED SULEMAN MAHOMEDY:** Was then presented to the Board Acquisitions and Disposals Committee and authorised by that Board ...

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: Sub Committee.

CHAIRPERSON: Hm.

ADV PHILLIP MOKOENA SC:

MR MOHAMMED SULEMAN MAHOMEDY: And I think you correctly put it Chair ...

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: That it is the most senior ...

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: Executives in the business ...

CHAIRPERSON: Hm.

10 **MR MOHAMMED SULEMAN MAHOMEDY:** That are instructing.

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: That signature appears on the memorandum. It is approved. There will be an extract of the minute ...

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: Because the person who is making payment will ask what authority this payment is made ...

CHAIRPERSON: Hm.

20 **MR MOHAMMED SULEMAN MAHOMEDY:** And he or she will receive all of these supporting documents ...

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: That give rise to this payment ...

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: And accordingly the

individual whoever at whatever level will make the payment based on the signatures ...

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: That are on the document ...

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: As well as the approval of the minutes.

CHAIRPERSON: And – and some of these transactions is – it may be argued that it is not as if – it is not as if Transnet did not have
10 procedures which would have allowed these transactions to reflect – had to be picked up by somebody as not appropriate if they had gone through those procedures. The procedures were there in regard to – but they were simply bypassed or it was confinement or confidential confinement but even if it was not that. they were dealt with at a very high level and – and anybody below that had no chance to make any contribution and – you know – had no chance to pick up the problem and try and stop it.

MR MOHAMMED SULEMAN MAHOMEDY: Chair just to illustrate the point you are making Chair. This particular document once again
20 signed by the four individuals ...

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: Was submitted directly to the Acquisitions and Disposals Committee.

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: A Sub Committee of the

Board.

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: As far as – again as far as our reviews have brought out that this once again is not a document that served ...

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: At any Management Committee...

CHAIRPERSON: Hm.

10 **MR MOHAMMED SULEMAN MAHOMEDY:** Because in the Management Committee you would have too many people to then convince ...

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: Differently.

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: That is my view.

CHAIRPERSON: But what this does demonstrate is probably Transnet now has additional mechanisms but what it does demonstrate is that the Commission may have to look at what mechanisms should be put in place for a situation where it is the very senior high people who seek to
20 authorise illegitimate payments. What should be done to make sure that they can be picked up? Maybe – maybe it is difficult to provide because normally for people at that level you expect that they would look after the interest of the organisation but it may be that one should look at what really should be done because you cannot afford a repeat. Obviously one of the – one of the important things is to only appoint

people of a certain legal of integrity at - at those high positions but it may be that something must be looked at to say if something like this were to happen again would Transnet be subjected to the same kinds of losses.

MR MOHAMMED SULEMAN MAHOMEDY: Chair I do not know if I want to respond to that but I think it is safe to say that the current Board has reviewed the delegation of authority.

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: In terms of that just last
10 week I bumped into the Chairman in the corridors of Transnet and he said to me that we should never allow you – referencing me – to become a one man party in this organisation and we should not give you any authority that can create this problem again and I think it is a - it is a fair comment in the sense that a delegation of authority allowed for people individually to sign certain transactions. That largely has been withdrawn in the current delegation of authority that exists in Transnet on the Board's instruction and we have now what we call individuals are authorised to sign only if cross functional committees review the document and approve certain things. So – yes I agree with
20 your sentiments entirely.

CHAIRPERSON: Well it is said that when any country draws a Constitution they should have in mind the worst possible scenario in terms of President or Government and make provision for that and not have in mind a very good Government and good President. So maybe what this means is that with SOEs to simply saying we will try and

appoint people of integrity at these high positions might not be enough. It might be necessary to say let us assume we have done everything we can to make sure the person is one of the right level of integrity. What happens if despite that something happens? Okay, thank you.

ADV PHILLIP MOKOENA SC: Mr Chair you will recall that Mr Volmink did attend to give some of the recommendations. He took us through different structures ...

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: Of the current Board ...

10 **CHAIRPERSON:** Yes.

ADV PHILLIP MOKOENA SC: Also identified ...

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: Those concerns and anomalies in order to address ...

CHAIRPERSON: Hm.

ADV PHILLIP MOKOENA SC: You know – what actually occurring ...

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: During the time in Transnet.

CHAIRPERSON: Yes.

20 **ADV PHILLIP MOKOENA SC:** Maybe that will go a long way ...

CHAIRPERSON: Ja.

ADV PHILLIP MOKOENA SC: Coupled obviously with other things that might be said to strengthen ...

CHAIRPERSON: Hm.

ADV PHILLIP MOKOENA SC: This SOE (indistinct) structures.

CHAIRPERSON: Hm.

ADV PHILLIP MOKOENA SC: But there is also a far – much more fundamental concern Mr Mahomedy haven taken the Chair through the amounts that were used or the amount that was paid – you know – to Regiments. If I may take you back to page 13 – 1-3 - with reference to paragraph 5.4 and I think that is where you commenced with your evidence but it only makes sense now when we now see these huge amounts being paid to Regiments. Only now that we see the importance of your evidence. In this paragraph you identify the parties
10 and you take us through the different consortiums. Am I correct?

MR MOHAMED SULEMAN MAHOMEDY: Yes.

ADV PHILLIP MOKOENA SC: And if you go through those consortiums you say that on the tender closing date that you gave us the names of the different consortiums, I mean, does – can you come across the name of Regiments in any of those consortiums?

MR MOHAMED SULEMAN MAHOMEDY: No they were not included in any consortium.

ADV PHILLIP MOKOENA SC: But yet when you take the Chair to page 16, paragraph 5.4.81 they appear to have been paid an amount in
20 excess of – an amount of 1.66million.

MR MOHAMED SULEMAN MAHOMEDY: 166million Chair.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMED SULEMAN MAHOMEDY: Yes and Regiments were replaced through a variety of other conflicts that were noted at the time as I mentioned earlier there was a supposed conflict with Letsema in

the advisory team as well as Nedbank.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: There was a point which I thought you were about to make at some stage and I don't know if you made it with regard to what Regiments was paid when you look at the amount that they were paid, you made – you referred to the fact that in fact, I think, what they did or what they were supposed to do related to funding and I think funding only and not other things. So I wonder whether part of the point you wanted to make was that in effect, the amount that they were
10 paid was for much more than that and whatever much more wasn't what they had done, is that part of the point you were making or sought to make? In other words even if you were to say as far as the funding aspect is concerned they were entitled to charge and be paid, certainly that is a lot of money that they were paid for which would fall outside the funding work that they may have done and for that part of the money they did not do anything.

MR MOHAMED SULEMAN MAHOMEDY: Chair that is correct the question that goes back to the local advisory letter of intent it says, "developing finance and funding options, developing deal structures", it
20 doesn't talk about execution it talks about developing them.

CHAIRPERSON: Yes, yes.

MR MOHAMED SULEMAN MAHOMEDY: Yet in the same contract which Regiments took over from McKinsey, if I can use those words, Regiments is then paid 166million rand for facilitating a loan transaction with China Development Bank by Transnet, the 166million is

what Transnet pays Regiments. The question is, what work did they for 166million in value for that payment to be made, when particularly a year before that – almost a year before that Transnet had already commenced conversations with China Development Bank and we will provide that evidence a little later on.

CHAIRPERSON: Thank you.

ADV PHILLIP MOKOENA SC: Yes we can now move on Mr Mahomedy to deal with your topic on paragraph 5.5 page 16, exorbitant transaction advisory fees on the CDB and the club loan, but before you do that, can
10 you please educate us as to what are these club loans.

MR MOHAMED SULEMAN MAHOMEDY: Chair I think before we talk about the club loan it would be necessary to give some context as to the, you know, the source and the creation and the reason why some of these loans actually came into being. Obviously we had the 1064 programme no, if you want to call it, in play, the contracts were signed we needed to fund these transactions. So Transnet and the treasury team at the time would have to sit down and think about how we would fund this 49billion rand – these contracts...(intervention).

CHAIRPERSON: And the treasury team, you're talking about, is it the
20 treasury team from National Treasury or from within Transnet?

MR MOHAMED SULEMAN MAHOMEDY: Ordinarily it would be the Transnet treasury team within our office – within our structures, however, in a number of instances they have not been party to being involved at all, it remains key throughout the document throughout my testimony from here on. So in – around August 2014 as I said the

previous Group Treasurer Ms Mathane Makgatho, actually visited and had conversations with China Development Bank to provide us with funding to the value of approximately, at the time the discussions were at two and a half billion dollars. At that time the Forex rate was about R12.00 that would then give you funding of 30billion rand. The discussions between China Development Bank and Transnet progressed to the point where they would give you what is called indicative pricing etcetera. At some point in 2015, steps in Regiments, Ms Makgatho writes an email before that, also in the documents, where we'll get to

10 that, where she registers her discomfort with the involvement of Regiments. Chair as we'll progress through each event but what then happens is, China Development Bank and Regiments agree that the amount will be one and a half billion dollars, that's what they are prepared now to put on the table as a guaranteed funding option and that's what Regiments present so the other billion dollars with the rate still at around R12.00 there's a strategy to now get what is called the domestic market involved and see what we can come up with and that is then termed the ZAR Club Loan. The ZAR Club Loan is simply a South African Rand loan that is put together with more than one

20 financial institution. In this particular case the 12billion rand was taken up by the Bank of China locally 3billion rand and again this is in rand, this is in South African rand so that's why it's called a ZAR Club Loan. ABSA takes 3billion, Nedbank...(intervention).

ADV PHILLIP MOKOENA SC: Can I take us slightly back so that the Chair can follow, are you now taking us through the contents of

paragraph 5.5.2?

MR MOHAMED SULEMAN MAHOMEDY: Yes Chair.

ADV PHILLIP MOKOENA SC: Yes and then please take us – it's on page 16 Chair.

CHAIRPERSON: I've got it thank you.

MR MOHAMED SULEMAN MAHOMEDY: So I'm at the second part of it we'll talk about the first part, China Development Bank, we spoken of one and a half billion, the ZAR Club Loan again Chair is 3billion rand for Absa, 3billion rand from the Bank of China, 3billion rand from
10 Nedbank, one and a half billion rand from Future Growth and one and a half billion from OMSFIN which is an Old Mutual entity, that's the creation of the ZAR Club Loan. What is also important is that, that was not the sum total of all of the funding for 1064 so we touched on the China Development Bank of one and a half billion dollars, that was based on a draw-down facility which means they gave you the facility and as you need it you will draw that down and then pay the interest. Then in addition to that – sorry Chair, my apologies for going a bit – the China Development Bank loan was specifically when the one and a half billion was agreed, it was specifically for the CSR and CNR
20 locomotives. The ZAR Club Loan, the 3billion that the Bank of China gave from the 12 was also specifically for the Chinese locomotives. The balance of 9billion was secured under what we call, general funding principles. In addition to that we also were able to get into a transaction with the United States EXIM facility of 5.7billion rand and that was done for the General Electric locomotives because GE is

largely an American company so the American EXIM was prepared to fund this transaction and then there were two more funding transactions on page 17, Chair where it is called an Export Development of Canada, the EDC together with Investec locally and KFW Development Bank which is out of Germany for amounts of 6.992billion and 2.76billion respectively that related to the Bombardier locomotives.

This is, essentially the – all of the different loans that we undertook during the time of the 1064 locomotives...(intervention).

ADV PHILLIP MOKOENA SC: Now these transaction, I mean you
10 have referred to the treasury department within Transnet were they not capable of sourcing or securing this loans from these various institutions without having to involve any other external entity?

MR MOHAMED SULEMAN MAHOMEDY: The Transnet Treasury team had the capacity and capability to execute these transactions as far as we are concerned.

ADV PHILLIP MOKOENA SC: Yes now you also draw the attention of the Chair to some of the prejudicial conduct from paragraph 5.5.3 to the detriment of Transnet, can you please take us through them?

MR MOHAMED SULEMAN MAHOMEDY: Chair as I touched on
20 earlier on, in terms of paragraph 5.5.4 the China Development loan had already commenced discussions or our team had already commenced discussions for the China Development Bank loan with China Development Bank and then we had the advent of Regiments into the transaction and as I explained earlier on Chair 166million was paid to Regiments for this particular piece of work which could very easily have

been executed by the Transnet Treasury team. Under 5.5.6, when it came to the ZAR Club Loan we have subsequently or since the transaction, we have identified an invoice that was paid to Trillian Asset Managers for an amount of 82million rand excluding VAT Chair and there are subsequent memoranda that talk to the provision of a Lead Ranger Service from Trillian Asset Management. Once again this document is signed by a few key individuals and approved by the very same ADC, at the time, this was in – around November 2015.

So once again Chair, the syndication of a loan is not a
 10 complex structure for our Transnet Treasury team, these are things that we would do on a regular basis and we would call relevant banks together, we would sit with them, explain to them what the requirement is, present to them and say what funding we require and then institutions would normally come back to us and say, we are prepared to invest in Transnet at these values, these are our terms and conditions, that will be assessed and then a final decision would be made yet again...(intervention).

ADV PHILLIP MOKOENA SC: Do you know why Trillian was paid that amount, what was – what did they do to be paid that amount?

20 **MR MOHAMED SULEMAN MAHOMEDY:** Well it's alleged that they were a supply development partner to Regiments, that's the information that has been presented but in the discussions that we've had we are unable to find any documentation or any evidence that Trillian did in fact do any work on the ZAR Club Load, we don't believe and we are not able to – we had discussed this with the previous treasurer we

asked for simple documentation around meetings that were held, that were scheduled that would have shown Trillian, members of management or Executives or members of their staff that attended these conversations or meetings, because Chair this is in – around November/December 2015 early – well between November and early December 2015 and the payment is made at that time but we are not able to actually find any evidence that any work was actually performed by Trillian.

ADV PHILLIP MOKOENA SC: Yes you may proceed with your – the
10 contents on page – on paragraph 5.5.8 unless there are any other specific amounts which you wish to highlight for the Chair in relation to those amounts stated above.

MR MOHAMED SULEMAN MAHOMEDY: I think Chair if – we need to go to 5.5.11 and the email or the – my suggestion earlier on that...(intervention).

CHAIRPERSON: I'm sorry that is 5?

MR MOHAMED SULEMAN MAHOMEDY: 5.5.11 on page 19 Chair.

CHAIRPERSON: Oh okay, thank you.

MR MOHAMED SULEMAN MAHOMEDY: Chair under a document that
20 is – sorry the document is under MSM22 page number 450 – MSM450 I would like to, if it is allowed that we read some of the contents of this particular email.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: Firstly identify the email and tell us.

MR MOHAMED SULEMAN MAHOMEDY: The email is from Mathane

Makgatho sent on the 21st of August 2014 at 12h54pm...(intervention).

ADV PHILLIP MOKOENA SC: Who is she, before your proceed?

MR MOHAMED SULEMAN MAHOMEDY: She was, at the time, the Group Treasurer of Transnet.

ADV PHILLIP MOKOENA SC: And she's addressing this letter to who?

MR MOHAMED SULEMAN MAHOMEDY: She's addressing this to the Chief Executive, Mr Brian Molefe as well as the Group Chief Financial Officer Mr Anoj Singh...(intervention).

10 **ADV PHILLIP MOKOENA SC:** And do you know what was the purpose of this letter?

MR MOHAMED SULEMAN MAHOMEDY: The purpose was talking around the matter of Regiments and China Development Bank.

ADV PHILLIP MOKOENA SC: Yes, you can take the Chair through the relevant portions of the letter which you wish to highlight.

MR MOHAMED SULEMAN MAHOMEDY: Chair in the first paragraph she states,

20 "This email is a follow-up of various discussions I had with yourselves and in some instances with Regiments included where I had indicated my disagreement – sorry my discomfort and disagreement on how the China Development Bank facility negotiations are being handled. Regiments pricing methodology as well as my disagreement of the appointment of Regiments as the transaction advisor for the facility".
Under the overall governance midway through that particular

section Chair she says,

“I do not support that a 26billion rand facility be negotiated and led by a transaction advisor as we cannot and should not negotiate a loan facility in isolation of Transnet’s current 90billion rand debt portfolio”, she goes on to say, “when we negotiate a facility of this magnitude we assemble a multi-disciplinary team that includes legal, tax, accounting, structured finance and risk management team members. This is to ensure that all possible risks relating to the facility are

10 identified and mitigated to the extent possible”.

CHAIRPERSON: Just before you proceed I think it’s important to highlight that last sentence of her first paragraph where she says, “for the avoidance of doubt, I’d like to bring the following to your attention”. So it looks like this is somebody who wants to make sure that her position is clear and that nobody among those or between those to whom she’s addressing the email can later on say, I did not know, okay...(intervention).

MR MOHAMED SULEMAN MAHOMEDY: Chair you correctly point that out, in addition Chair I omitted to mention a statement that she

20 made she says under 1), overall governance in the second sentence she says,

“As I indicated I was not consulted nor was I aware that Regiments was appointed as the transaction advisor and lead negotiator for the facility as I believe there was no need for them to be appointed given progress that we had made”.

Clearly indicating that Transnet Treasury had already engaged with China Development Bank and they had made progress.

CHAIRPERSON: Also making the point that you yourself have made that on some of the instances we are dealing with situations where, at least as far as Transnet is concerned, there was no need for certain external services to be brought in.

MR MOHAMED SULEMAN MAHOMEDY: Yes Chair.

CHAIRPERSON: Okay you can proceed.

MR MOHAMED SULEMAN MAHOMEDY: Chair under point 2), fees

10 and interest expense, she states,

“The current pricing indication is not in line with other DFI’s, a DFI is a Developmental Funding Institution, asset backed or even tied facilities” I’m skipping a sentence and reading, “as China Development Bank Facility is tied to procurement from China, as it is supposed to support CNR and CSR locomotive contracts the terms and conditions should mirror that of that of tied facilities as well as asset backed facilities. These two elements, tied and security should translate into cost effective funds which should be close to local funds as well as simpler

20 terms and conditions”.

Chair the reason that is quite critical is because the funding with China Development Bank is what is called a securitised loan and meaning that the locomotives that are procured from CNR and CSR are taken as a bond...(intervention)

CHAIRPERSON: As a surety or authority.

MR MOHAMED SULEMAN MAHOMEDY: As a surety.

CHAIRPERSON: Surety ja.

MR MOHAMED SULEMAN MAHOMEDY: As a surety over that loan and that's the point...(intervention).

CHAIRPERSON: Ja so that if the loan is not repaid they can actually take those locomotives and attach them or something to that effect.

MR MOHAMED SULEMAN MAHOMEDY: That is correct Chair, it is a, you know, a simple – like a lease HP, higher purchase agreement where the vehicle is always owned by the lender until it's fully paid off and
10 that's the current situation with the CDB loan.

CHAIRPERSON: Which was an adverse condition as far as Transnet was concerned is that right?

MR MOHAMED SULEMAN MAHOMEDY: That's correct Chair and what the point that is being made here is with that you should have lower overall – the risk is lower because they've now got a collateral.

CHAIRPERSON: Yes.

MR MOHAMED SULEMAN MAHOMEDY: Chair further on the next page she goes on, on page 451 to provide a very detailed look at the China Development Bank proposal and the amounts and the rates that
20 are quoted here relate to the two and a half billion dollars. So I'm just providing clarity that it was changed subsequently – at that time it was relating to the two and a half billion dollar proposal that was on the table. In her view she says that a fair price would be JIBR plus 210 basis points and that's the Johannesburg Inter Bank Rate and I've taken into consideration the size of the facility. In the current market

the proposed CBD structure will cost three and a half billion rand more in interest expenses and that is based on the two and a half billion dollar debt. Based on these numbers we have looked at it on the one and a half billion dollars it equates to just about 2billion rand in additional or higher interest bills that was her calculation in August 2014. Chair under conclusion she talks as follows,

10 “It is my belief that the CDB facility in its current form is not in the best interest of the company or the country. Given potential capital leakage of up to 3.7billion in excessive interest expense and excessive arrangement fees which may be classified as a PFMA violation given information at our disposal. The additional interest expense will have a negative impact on the already fragile cash interest cover ratio. I therefore recommend that we terminate discussions with China Development Bank and explore other sources of funds. Transnet has proved its ability to raise funds from diverse funding sources even under trying circumstances. In 2008 and 2009 we were able to raise over 22billion rand even when the market was closed for other issues. The latest example is our
20 ability to raise 8billion rand for the locomotive deposit at short notice”,

And she goes on to explain her position.

ADV PHILLIP MOKOENA SC: Now she gives this detailed letter or memo to the two senior officials identified by itself in that letter, do you know whether – did they follow her advice?

MR MOHAMED SULEMAN MAHOMEDY: the advice as not followed because we continued with the China Development Bank loan, we continued to use Regiments as the advisors, we paid Regiments the 166million so clearly that was not necessarily – that advice was not taken...(intervention).

CHAIRPERSON: Do you know whether they responded to – that is Mr Brian Molefe and Mr Anoj Singh whether they responded to her memo or email?

MR MOHAMED SULEMAN MAHOMEDY: Chair I'm not aware of that,
10 I'm not aware of a response.

CHAIRPERSON: Okay.

ADV PHILLIP MOKOENA SC: If they'd responded – I mean in your review of these documents you would have actually come across such a document and clearly, you know, refer the Chair to such a document.

MR MOHAMED SULEMAN MAHOMEDY: Yes.

ADV PHILLIP MOKOENA SC: But throughout your review you never found any response?

MR MOHAMED SULEMAN MAHOMEDY: We haven't found any response to this. Chair there are certain pertinent facts that we must
20 also disclose around the China Development Bank loan.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMED SULEMAN MAHOMEDY: Transnet had paid what is common practice in the banking environment, we pay an upfront fee for certain facilities, not necessarily always the case but in some cases we pay an upfront fee. To China Development Bank we paid an upfront fee

which equated to 17.7million US Dollars. At the time of the transaction we believe the rate as closer to, about again, R12.00 which will mean that we paid 212million rand. The reason I state this Chair is because it was out of kilter with what was paid to other institutions at the same time. If it pleases the Commission under MSM20 page 367 we try to provide a summary to certain transactions focused on the funding of the 1064 locomotives.

CHAIRPERSON: Before we talk about MSM20, Mr Mokoena I think MSM22 the one we have just dealt with.

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

CHAIRPERSON: Is very important, it would be very helpful for steps to be taken if they haven't been taken to provide – to get proof that the email was received by the two persons to whom it was addressed.

ADV PHILLIP MOKOENA SC: We have gone far much more further than that Chair, we will be calling Ms Mathane Makgatho to testify on this specific issues.

CHAIRPERSON: Okay.

ADV PHILLIP MOKOENA SC: And other related issues.

CHAIRPERSON: Okay no that is fine thank you. Yes we are back at
20 MSM20?

MR MOHAMMED SULEMAN MAHOMEDY: Chair under the page number MSM367 .

CHAIRPERSON: Hm. Yes.

MR MOHAMMED SULEMAN MAHOMEDY: Chair we endeavour to provide the commission with an overall perspective of some of the key

transactions and funding arrangements that were put in place in and around 2015. This becomes relevant further when we talk about the interest rate swaps. And Chair if we look at the upfront fees in column C Chair

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: In Column C of page 367 we provide the upfront fees that were paid to the various institutions.

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: One will note that the
10 upfront fees equated to between .3 and .45%.

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: The upper limit being .45%. However as it relates to the China Development Bank facility which is at the bottom of the page we will note that we paid 17.7 million dollars which is based on what we have drawn up to today equates to 1.18% which is approximately twice even more than twice what was paid on all of the other facilities that we had taken. And again for purposes of transparency.

CHAIRPERSON: I am trying to look for the figure that you gave.

20 **MR MOHAMMED SULEMAN MAHOMEDY:** Chair if we look at the bottom of the page it says China Development Bank

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: US Dollar then there is an amount of 1044 that is the total amount we have drawn up to now.

CHAIRPERSON: That is the figure I was looking at but I thought you

said 17?

MR MOHAMMED SULEMAN MAHOMEDY: Yes then next to that on the right Chair is a – two columns down is 17.7 million dollars.

CHAIRPERSON: Oh yes. Okay. Ja. I think...

MR MOHAMMED SULEMAN MAHOMEDY: As a percentage of what we have drawn it equates to 1.18%.

CHAIRPERSON: Okay.

MR MOHAMMED SULEMAN MAHOMEDY: As compared to the .3 that we paid and .45% it is about – just about more than double.

10 **CHAIRPERSON:** Yes.

MR MOHAMMED SULEMAN MAHOMEDY: Close to 3 times

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: What we would have paid locally.

CHAIRPERSON: Yes.

20 **MR MOHAMMED SULEMAN MAHOMEDY:** It is also all of these facts give corroboration to Ms Magoto's mail where she says there was an ability for us to actually borrow this money cheaper on the local market. There is one very fundamental issue Chair that we have to put on the table at this point. By securing the funding in US dollar I go back to testimony that we gave earlier on around the hedging costs of the 1064 increasing ETC. I would like to try to simplify this but simply put Chair we spent billions literally to hedge the 1064 locomotive contract from – because all of the OEM's there were international service providers or OEM's and they would have quoted you their underlying currency would

have been a foreign currency. And we spent all that money to hedge it into rand. The problem is then we go and borrow in dollars to hedge it again into rand. So from a benefit to the country perspective and the benefit to Transnet or shall I say the erosion of value to Transnet it not on one front. It is running into multiple billions because we spent that money and if it may please the commission for a very simple explanation is – I buy a car and they tell me it is 100 000 dollars. But today's rate is R14 whatever and the bank says well if you want to pay it in two years you will – we will charge you R16. So that car will work

10 out to R1.6 million for me. But then I go back and I say no, no I cannot get funding locally I will go and borrow 100 000 dollars from a foreign bank and then convert that loan into rands again and pay for that conversion again. And because this is a long term loan because it is for fifteen years the cost of this what is now in the treasury term called a cross currency swop is what we pay for again. So we have hedged the 1064 locomotive programme. It has cost us billions and then we hedge – we borrow in billions and then we hedge again. So it is a double whammy as far as the total cost base of Transnet is concerned. And it is quite an important point Chair.

20 **CHAIRPERSON**: Yes, yes. So in a way it is difficult to find sense is that the point you make that it is difficult to find it is not sensible?

MR MOHAMMED SULEMAN MAHOMEDY: I actually support the submission of Ms Mokgatlhe. She says we should not be progressing with this transaction with China Development Bank.

CHAIRPERSON: Ja.

MR MOHAMMED SULEMAN MAHOMEDY: We had to have explored all of the opportunities locally.

CHAIRPERSON: Ja, ja, yes.

MR MOHAMMED SULEMAN MAHOMEDY: With our domestic financial institutions to decide.

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: And by the way Chair also financial institutions from overseas are prepared to lend us in rand as well.

10 **CHAIRPERSON:** Hm.

MR MOHAMMED SULEMAN MAHOMEDY: Transnet is largely an entity that conducts its business within the borders of this country. Its revenue and cost base is largely in South African rand so it does not necessarily make good financial sense to borrow in dollars particularly when you potentially have lenders who are willing to lend you in South African rand.

CHAIRPERSON: Hm. Thank you.

ADV PHILLIP MOKOENA SC: But is these transactions were no prejudicial to Transnet why would they still be proceeded with having to
20 take into account what you say as serious losses that could have been incurred by Transnet? And I am asking this question against the background of also a thorough advice that it is now being preferred by one of the experienced internal members of Transnet dealing with the same issues why would anyone proceed with such a transaction?

MR MOHAMMED SULEMAN MAHOMEDY: The only possible and

plausible explanation from my perspective would be that there was an agenda for a payment to be made to Regiments ultimately or some entity that existed outside of the system. Why would Transnet in good conscience engage in a loan agreement that has got a significantly or a possibly prejudicial interest rate in the first place that comes at a higher cost? Also on page 367 Chair across the line you will note under column F.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: An amount of 330 million
 10 that was paid to China Development Bank for what is called a commitment fee. That is when you do not use the full facility that you ask for. So every time you draw down you pay a commitment fee on the difference. So when you consider all of these factors this would have been more expensive particularly if you consider the cost and I am using the term loosely the cost of hedging the loan. Because the banking institutions may get offended it is actually called a cross currency swop but the cost of all of these things when you add them in they have brought additional cost to Transnet's financial position and it has affected us adversely.

20 **ADV PHILLIP MOKOENA SC:** Yes. While you are still on that also if you can comment on the Column H on the very same page as to who the beneficiary and what does it represent?

MR MOHAMMED SULEMAN MAHOMEDY: We put that for purposes of clarity and confirmation as I said on the ZAR Club Loan R82 million plus VAT was paid to Trillian. For – at this point in time we do – have

not seen any evidence of work performed by Trillian on the ZAR Club Loan. And then on the China Development Bank Loan the R166 million that I referred to earlier on was paid to Regiments. So just based on the funding you see just about a quarter billion rand.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: Being paid out when expertise existed in Transnet to execute these transactions. Which by the way we currently are executing transactions maybe not the size of this transaction but we do execute with local and foreign institutions
10 these type of transactions with the people that are currently employed in the Treasury team who largely are there for a number of years.

CHAIRPERSON: You – you worked with both Mr Anoj Singh and Mr Brian Molefe for quite some time at Transnet or not really?

MR MOHAMMED SULEMAN MAHOMEDY: I worked with Mr Anoj Singh for quite some time Chair.

CHAIRPERSON: Yes and Brian – Mr Brian Molefe as well?

MR MOHAMMED SULEMAN MAHOMEDY: Mr Molefe for a period of about probably just – he was the Chief Executive for a while but I worked with him.

20 **CHAIRPERSON:** Yes.

MR MOHAMMED SULEMAN MAHOMEDY: For a big period of about two years.

CHAIRPERSON: Yes. When you look at that email or memo that was written to them by it is Ms Mokgatle?

MR MOHAMMED SULEMAN MAHOMEDY: Yes.

CHAIRPERSON: You are satisfied that all the points she makes in that memo to them points that they would both have easily understood?

MR MOHAMMED SULEMAN MAHOMEDY: Chair Mr Singh...

CHAIRPERSON: In terms of their knowledge and experience and their qualifications

MR MOHAMMED SULEMAN MAHOMEDY: Yes Mr Singh on a number of occasions acted as the Group Treasurer of Transnet in the absence of Treasurers at the point. So when I say that meaning at points when the position of Group Treasurer was vacated and there was an absence of
10 an appointed person he would act as the Group Treasurer. And Mr Molefe I think we all are aware of his experience at the public investment corporation at the PIC and that is an institution that is very heavily driven by Treasury related transactions and investments. So what the points that are made here would be easily understood by people

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: With their extreme expertise and experience.

CHAIRPERSON: Yes. So some of these things that – some of the
20 points that Mr Mokgatle makes and some of them you have made yourself to the extent that they make it – they make what Mr Anoj Singh and Mr Brian Molefe may have been doing not to make sense. Maybe they would be the ones who could explain why they did not follow – go along with these points made by Mr Mokgatle.

MR MOHAMMED SULEMAN MAHOMEDY: Chair I think in reading this

today and in preparation for the commission one looks at the very clear perspective that Mr Mokgatle provides. And also Chair I would like to add in discussion with the officials that were in Transnet Treasury at the time who have been – some of whom have been at Transnet for decades literally they were perplexed by the choice of loans, by some of the transactions that Transnet persevered with if I can call it that and in some cases they were also deep in the dark when these transactions were being negotiated. As you know Ms Mokgatle says the involvement of Regiments as a lead arranger or advisor did not make
 10 sense to her.

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: But it also Chair if I may provide an opinion from myself. It does not make sense from a PO business point of view in terms of the conflict of Regiments. They were in terms of the LOI tasked with defining the funding principles and the funding mechanisms and methodologies and then become the executors of that funding transaction. Then later on we will see that it did not just stop there they then became the executors of the swop transactions which again talked to a very deep rooted conflict that was
 20 not declared. Neither was it acted on when the people who signed off these payments were very well aware that Regiments were conflicted in all of these things that they presented to Transnet. They were – they formulators of the funding plan. They were the executors of the funding plan. They became the executors of the interest rate swops and collected significant amount of money and then they were also by the

way you will see later on Chair where the counterparty of some of these swops were the Transnet Pension Fund and they became – and they were the Pension Fund Asset Managers and then became the recipients of the Pension Fund paying them literally a couple of 100 million. So we have to look at it holistically to get that perspective and understanding that Regiments involvement and I think Advocate Mokoena started out with that conversation. They are dropping into the local advisory as a supply development partner suddenly when there were other conflicts has to question one has to question the intention
 10 of that particular decision by the powers that be at the time.

ADV PHILLIP MOKOENA SC: Yes. I mean...

CHAIRPERSON: Thank you.

ADV PHILLIP MOKOENA SC: Following up from these pertinent questions raised by the Chair and I think this it is important in the light of the testimony of Mr – of the Chair of Transnet Mr Popo Molefe and Mr Volmink who throughout their evidence emphasised the importance of this treasury department and its efficiency. Maybe let us spend some time on it and just tell us for us to be able to understand the composition of this unit and the calibre of people that were employed
 20 within it and the qualifications that they possessed for them to be able to undertake this transaction. I think it is quite important in the light of these issues that you have now raised?

MR MOHAMMED SULEMAN MAHOMEDY: Chair I think if we look at the Transnet Treasury environment in 2014 and I am going to try to give a perspective in terms of the years.

ADV PHILLIP MOKOENA SC: Yes, yes.

MR MOHAMMED SULEMAN MAHOMEDY: Mr Mokgatle was the Group Treasurer. Prior to her was Ms Disebo Moephuli who was the treasurer for a while – a long period of time as I remember and she was widely regarded as a very significant treasurer in the local and global banking circles. Ms Mokgatle had been in the treasury team as a Deputy Treasurer for a long period of time as well. We had a gentleman Mr Danny Smith who was also a Deputy Treasurer and if my memory serves me correctly Mr Danny Smith spent more than 30 years at
 10 Transnet and retired at Transnet. We also have an area called the dealing room and the dealers that are in that dealing room ordinarily will get involved in assessing loans, arrangements for certain vanilla transactions, swops, they will be the ones who will actually look at whether this is plausible for Transnet to continue. They will assess it in line with global trends. What facilities we are able to secure at what rates, whether these things make sense. The terms. Looking at how a loan may impact our ability to repay the loan in years to come. Because these are termed loans some of them you know up to fifteen years. So the Transnet Treasury team are a very competent group of
 20 people. They have different roles. Some of them are client facing or facing the banks, talking to the banks on a regular basis. Others are sitting in the back office and actually crunching out the numbers and making sure that the transactions are processed correctly and assessed correctly. They deal with very complex financial models. Truth be told Chair some of them I battle to grasp at the first sense and sometime

not even the third time but that is their job. And these are people they are looking at complex finance structures, deal structuring etcetera so there is a high level of competence in this particular environment. It is not you know it is um – there will be ordinarily people that are qualified in degrees in finance and you know in the field of corporate finance. So that is ordinarily what we look at.

CHAIRPERSON: I think it would be helpful if in due course we could just get a profile of that unit during that time when it was decided that it was necessary to get an outside firm to do what they could do to say
 10 it consisted maybe I do not know what the numbers are but you might not need to include everybody but the important you know people what their qualifications were, what experience they had at the time, how long they had been at Transnet and maybe even some of the big transactions in which they had been involved if possible. Just to compare what Transnet had in terms of expertise and experience compared – that could have been used.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Okay thank you.

MR MOHAMMED SULEMAN MAHOMEDY: Chair I think to summarise I
 20 will provide that in due course Chair.

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: But to give you a summary of some of the – the seasoned professionals that are in the Transnet Treasury when we commenced this process to unravel what actually transpired as I said in one meeting the board Chairperson made a

statement to say that information at his disposal was that the Regiments people had infiltrated our dealing room. Our dealing room is a very sacristan environment. And what we then later found out and the people sat with us and said no, no, the Regiments team never came into the dealing room. The dealing room just left went to Regiments offices. That is the – that is essentially the summary that one of the traders put on the table which is – which is quite a telling statement that the transactions were now not being executed by Transnet they were being executed by a third party who had a very significant interest
10 because they were getting paid literally hundreds of millions of rands.

CHAIRPERSON: Yes thank you.

ADV PHILLIP MOKOENA SC: Chair I see now it is almost five to four we are just about to deal with a new topic that is quite long. We will not be able to finalise it even if we try. Would this be appropriate to adjourn at this stage?

CHAIRPERSON: I am jealous of the fact that it is...

ADV PHILLIP MOKOENA SC: I know Chair but when you come to this raid swops and everything it needs a far more fresher mind

CHAIRPERSON: Ja. Okay no that is fine. But we may have to start
20 earlier tomorrow. Now we do need to I know we talked about starting earlier. We need to really go back to that to try and cover as many witnesses as we can. Because if we start for example at nine o'clock every day and finish nine o'clock instead of ten and finish at five o'clock instead of four that means we add two hours to the day. After five days that is ten hours.

ADV PHILLIP MOKOENA SC: Ten hours.

CHAIRPERSON: And that means you know another witness or two witnesses. But having said that I am aware of other considerations. So but I just want to mention that we do need to see what we can do bearing in mind that I appreciate other considerations. With regard to tomorrow I would not like a situation where we finish with Mr Mahomed and maybe an hour earlier and then we have to lose an hour or two earlier. I do not know how long we will be with him so if there is any chance that if we finish

10 **ADV PHILLIP MOKOENA SC:** With him.

CHAIRPERSON: With [indistinct] normal with him there would be a witness ready that would be helpful.

ADV PHILLIP MOKOENA SC: We will look into that Chair.

CHAIRPERSON: Ja.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: So what do you think about starting at least maybe half past nine tomorrow or you – Mr Mahomed you ...

ADV PHILLIP MOKOENA SC: It is in order Chair we can start at half past nine.

20 **CHAIRPERSON:** Okay. I do have – there is an unlikely possibility that I might have to change that so I just want to mention so let us leave it at half past nine but if the situation that might demand my presence somewhere prevails then Mr Mahomed we you will – would be advised and I will let you know and then we could start either at ten o'clock or a little later than that.

ADV PHILLIP MOKOENA SC: Just a little later yes.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: Thank you Chair.

CHAIRPERSON: Thank you. Okay we will adjourn now for the day and then tomorrow subject to advice to the contrary or for another time we will start at half past nine. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 16 MAY 2019