

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

PARKTOWN, JOHANNESBURG

10

16 MAYH 2019

DAY 94

20

HEARING RESUMES

CHAIRPERSON: Good morning Mr Mokoena, good morning everybody.

ADV PHILLIP MAKOENA SC: Good morning Chair.

CHAIRPERSON: We are starting about five minutes late and I think yesterday too we were starting a few minutes later than we should have started and for all of that I am responsible. We are going to try and do better. Thank you. Are you ready to proceed?

ADV PHILLIP MAKOENA SC: We are ready Chair.

CHAIRPERSON: Thank you.

10 **ADV PHILLIP MAKOENA SC**: Mr Mahomedy before we move on to the new topic yesterday I was reflecting on your evidence in relation to the acquisition of the locomotives and I think one of the aspects that we did not touch on is the question of the pricing. Can you give us a sense as to from the time when Transnet engaged CSR up until the time when we are now referring to in terms of the locomotives what was the price difference?

MR MOHAMMED SULEMAN MAHOMEDY: Good morning Chair.

CHAIRPERSON: Good morning Mr Mahomedy.

MR MOHAMMED SULEMAN MAHOMEDY: Transnet had acquired
20 previously locomotives from various entities.

ADV PHILLIP MAKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: And as we provided testimony to the 95 locomotives that were provided or the agreement was signed somewhere in 2012 that was at a price of R28.2 million a locomotive. The 100 locomotives which was in 2014 we paid R44

million for those locomotives.

ADV PHILLIP MAKOENA SC: In two years?

MR MOHAMMED SULEMAN MAHOMEDY: Within two years. And the 20 – in 2014 we also at the time then signed the contract for the 359 which is part of the 1064 and that price is just over R50 million a locomotive. So in a two year period one sees the price of loco – this – a similar locomotive yes there are specification differences between the locomotive but the price has moved from R28 million to R50 million or just over R50 million a locomotive.

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

MR MOHAMMED SULEMAN MAHOMEDY: Alright that is the – sorry that was the electric locomotive with China South Rail.

ADV PHILLIP MAKOENA SC: Yes. Now may I then refer you to page 19 of your statement and we are just about to address a new topic on paragraph 5.6 which you have termed as the interest rate swops which were prejudicial to Transnet. But before doing that there are three if not four issues which I need to canvass with you so that we can be able to properly place your evidence in context. The first one if you can explain to us what are these interest swops alright? And the second
20 one is that when one considering this interest swops what are the factors that you might need to consider before you executive such an interest swop? And thirdly if you can educate us about the distinction between the floating interest rate and the fixed interest rate. And then lastly if you are able to do so also share with us the advantages and the disadvantages of those two types of interest. Obviously you will

link them to the transactions that you are going to be adducing evidence upon. Let us take them now in turn before we deal with the specifics, the interest swaps what does that mean?

MR MOHAMMED SULEMAN MAHOMEDY: Thank you. I think the – Chair the first thing is that we just need to recap that Transnet went into a number of loan transactions as we explained yesterday. We had the KFW Development Bank Loan which – out of Germany for R2.76 billion and the EDC the Canada Exim together with Investec for R6.991 billion.

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

MR MOHAMMED SULEMAN MAHOMEDY: Those two had direct relationships with the delivery of the Bombardier locomotives. We then had the United States Exim Bank together with South African Institutions for R5.7 billion which was directly associated with the General Electric locomotive contract. We had the ZAR Club Loan which we spoke about R12 billion. And then we had the China Development Bank facility which was for 1.5 billion dollars which was largely for the China South Rail and China North Rail locomotives. The reason that is important is because as we go further in the discussions all of those particular loan transactions were what we call floating rates but we will again discuss that. I think we also need to take a step back. Transnet as a business would require funding on a time basis depending on the activities, the capital expansion etcetera. Traditionally we could either fund our business through the cash that we generate from within the business and its operations.

20

ADV PHILLIP MAKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: Or we would have to borrow money and that is done through financial institutions both locally and globally. When one has to engage with financial institutions there are a few factors that you have to look at and it is no different to an individual borrowing money for whether it is a home or a car where you look at first and foremost you look at what is the interest rate? Whether that is affordable to you so the company in this case when – what is the repayment terms? What is the maturity period? Any other
10 fees that the lender is actually considering or will include and what are the collateral and guarantees that the lender will be requiring? Now when we look at all of that you will look at it you will then decide and assess whether this is a loan that you want to engage in. One additional thing from an institution perspective like Transnet we will ask whether the rate is floating or fixed.

ADV PHILLIP MAKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: A floating rate is simply a variable rate. Meaning that it has a link to an index. Traditionally in institutions like Transnet it would have a link to what is called JIBAR,
20 the Johannesburg Inter Bank Rate.

ADV PHILLIP MAKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: In an individuals' case it would be prime and it is either prime plus or prime minus. It is a similar example. So when we look at the floating rate as I said it would be linked to JIBAR. It would say JIBAR plus a number of basis points

or ex percentage. And if JIBAR increases then your interest will increase. If JIBAR decrease then you should see a decrease in your interest rate. When we talk about a fixed rate it is essentially looking at the term of the agreement and then applying a rate of interest that is not changeable over the period of this loan or the period of the agreement. Now there is a few factors around a fixed rate. The first is that if it is a long term loan that you have taken the fixed rate would ordinarily be higher than your floating rate because the bank or the financial institution that is lending money on a fixed rate will have to

10 factor in the risk of whether the rate is going to move in which direction that rate is going to move. And the longer the term the greater the risk to the bank because this is now based on a number of variables that could affect the interest rate. In this case in all of the loans that we outlined earlier on Transnet engaged with the lenders on a floating rate basis. Meaning these had all been linked to some index. Either JIBAR which is Johannesburg or LIBOR which is the London Inter Bank Rate.

CHAIRPERSON: And floating in this context floating interest rates means the same as like fluctuating interest rate?

MR MOHAMMED SULEMAN MAHOMEDY: Yes.

20 **CHAIRPERSON:** Ja.

MR MOHAMMED SULEMAN MAHOMEDY: So it would be linked to what happens to interest rates over a period of time.

ADV PHILLIP MAKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: Chair what is also important is that these were loan agreements that were over a period of time

some of them going to up to fifteen years. So they are long terms loans that are applicable to Transnet. That is the basis of the transaction.

ADV PHILLIP MAKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: So what is a swop? It is essentially where we enter into an arrangement with a financial institution and we then convert the floating rate to a swop – to a fixed rate. Now it is done in a – in a different way in the sense that it does not affect the underlying loan transaction. That loan transaction
 10 remains for Transnet's account but with the institution or what we then call the counterparty we will then engage in a transaction which is a derivative instrument where the financial institution will essentially buy the floating rate and sell us a fixed rate. I hope I am explaining that clearly. And using an example if we had a R100 000 loan which was at 9% on an annual basis that would mean that you are to pay R9 000 interest. That is a floating rate. And next year the rate goes to 10 then it is R10 000. The financial institution would essentially say okay we will take the R9 000 risk but we will now charge you 12% fixed. So you got no variability on the rate. But you will now have a higher interest
 20 rate which means Transnet must pay the financial institution R12 000 the financial institution pays us R9 000 at the end of the day it increases your interest bill by the R3 000. Now it gets a little more complex when it comes to transactions the sizes of that we are talking about which is multibillion rand. It goes into the cash flows etcetera but essentially Chair that is what it is.

ADV PHILLIP MAKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: It is a swop between the two rates. De-risking for Transnet or a perception of de-risking for Transnet to say well you now have a fixed rate for twelve years – fifteen years in this case.

CHAIRPERSON: Of course just as in the case of an individual having a loan with a financial institution the advantage of a fixed interest rate is that both parties have certainty as to what they are in for and that the financial institution is kind of protected in case the interest rates go
10 down but also the individual is kind of protected in case the interest rates go up. So they agree everyone is certain they can plan – the individual can plan his or her financial – make financial plans knowing what exactly the – his or her obligations would be if it is a fluctuation interest rate when the interest rates go down as a borrower you are very happy. When they go up you are not happy. Same considerations apply to an entity such as Transnet when it enters into these transactions?

MR MOHAMMED SULEMAN MAHOMEDY: Yes Chair.

CHAIRPERSON: Hm.

20 **MR MOHAMMED SULEMAN MAHOMEDY:** Those are exactly some of the considerations.

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: But one from a Trans – from a company – from a company perspective one has to look at the term of the loan as well and what the economists are saying in terms of

whether that interest rate will actually increase over a period of time. Because if you fix it you have to look at what rate you fixing it at and whether that is making business sense. And the reason that you are mandated to look at that from a fiduciary perspective is to ensure that you do not bring undue costs even though you correctly point out Chair it removes the – the uncertainty and gives you a fixed price number. The challenge is that if a rate that is quoted to you at a point in time interest rate, if that is deemed too high in the long term then it costs you a lot more money. And I think when we apply it to billions it
 10 translates into billions or rands that can be lost. So it is a calculated risk that a business should take. And there is significant amount of calculations that have to go into determining whether that risk or whether the company has the appetite for that risk.

ADV PHILLIP MAKOENA SC: Yes.

CHAIRPERSON: So you just whether it is a company or individual they must just do their homework.

MR MOHAMMED SULEMAN MAHOMEDY: Yes Chair.

CHAIRPERSON: Before agreeing to a fixed term – fixed interest rate or a fluctuating interest rate or floating interest rate.

20 **MR MOHAMMED SULEMAN MAHOMEDY:** That is true Chair.

CHAIRPERSON: Ja.

ADV PHILLIP MAKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: Realistically speaking the – to answer a question in terms of some of the advantages or possible advantages the loan really becomes advantageous to an institution

when the interest rates begin to increase.

ADV PHILLIP MAKOENA SC: Ja.

MR MOHAMMED SULEMAN MAHOMEDY: And if the interest rate stay very flat and you have taken a rate out at a much higher price then again as the Chair pointed out you will be sitting there with a loss position because you could have taken a loan at a much lower interest rate. And I there is also a number of other considerations. One of the key things is actually to understand the term as I said what is the forward view from the experts in the field in terms of what will happen
10 to the interest rate? That requires a number of – it has got a number of variables whether we talk about the inflation in the country or we talk about key positions that are held, the elections, all of these things the political stance that people take and analysis that is done, all of that has an impact on the potential of what could happen to an interest rate whether it would be impacted positively or negatively.

ADV PHILLIP MAKOENA SC: Yes. Now against that background and clarity that you have now furnished to us may we then proceed to interrogate the relevant facts pertinent to this topic starting from paragraph 5.6.1? Take us through.

20 **MR MOHAMMED SULEMAN MAHOMEDY:** Chair as I mentioned earlier on all of the loans that we had undertaken as Transnet were executed on what is called the floating rate which essentially means they were linked to an index. These were executed at a point in time. The Club Loan by the way for which we paid Trillian the R93.5 million was between a number of parties ABSA, Nedbank, OMS and Future Growth

and the Bank of China totalling R12 billion had two draw downs. Meaning that the R12 billion was not made available to Transnet in one cheque it was lent to Transnet in two tranches. The first tranche was on the 1 December 2015.

CHAIRPERSON: I am sorry I am interrupting you maybe I should have asked this yesterday. Why is it called a club loan? Are there multi parties to it?

MR MOHAMMED SULEMAN MAHOMEDY: Yes Chair. It is simply a syndicated loan with more than one party and therefore it was given
10 this term.

CHAIRPERSON: So different financial institutions who are prepared to lend you money on maybe different terms, is that right?

MR MOHAMMED SULEMAN MAHOMEDY: Yes Chair.

CHAIRPERSON: Ja but – but the agreement is the same?

MR MOHAMMED SULEMAN MAHOMEDY: The agreement is the same but it is held individually with those entities.

CHAIRPERSON: With – yes yes

MR MOHAMMED SULEMAN MAHOMEDY: It does not necessarily mean that the terms and conditions are exactly the same.

20 **CHAIRPERSON**: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: They would be similar.

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: We would have gone out to the market and said we are looking for R12 billion and our term is fifteen years.

CHAIRPERSON: Ja.

MR MOHAMMED SULEMAN MAHOMEDY: You need to present a proposal that will be assessed.

CHAIRPERSON: Ja okay.

MR MOHAMMED SULEMAN MAHOMEDY: So the ZAR Club Loan was essentially a syndication of four institutions – five institutions in this case Chair.

CHAIRPERSON: Okay. Thank you.

ADV PHILLIP MAKOENA SC: Yes you may then proceed. You were
10 saying – you had – still on paragraph 5.6.2.

MR MOHAMMED SULEMAN MAHOMEDY: Yes so on the 1 December 2015 of the R12 billion Club Loan there was a requirement that R4.5 billion be lent to Transnet on the 1 December. The balance of R7.5 billion was to have been provided later on. On the 3 December Chair the former head of treasury Mr Ramosebudi submits a memorandum to Mr Pita the then Group Chief Financial Officer recommending that the interest rate on the Club Loan be converted from floating to fixed.

ADV PHILLIP MAKOENA SC: Now before you proceed further with that. May I refer you to Folder number 23 Chair that is on page 454? It
20 is being marked as MSM23 and before you deal with your evidence any further just as a high level you know high level interrogation of that document please you know to take us through it and the essence and why was it important in relation to the evidence that you adducing now?

MR MOHAMMED SULEMAN MAHOMEDY: Chair I think page 454 gives a perspective of the involvement of certain entities.

CHAIRPERSON: I am sorry I was at 517 so...

ADV PHILLIP MAKOENA SC: 454 Chair.

CHAIRPERSON: 454?

ADV PHILLIP MAKOENA SC: Yes.

CHAIRPERSON: Okay.

ADV PHILLIP MAKOENA SC: That is Folder number 23.

CHAIRPERSON: But did you say anything Mr Mokoena about 33 – item?

ADV PHILLIP MAKOENA SC: No.

10 **CHAIRPERSON**: Oh I thought – I went to divider 33.

ADV PHILLIP MAKOENA SC: 23, 23.

CHAIRPERSON: Oh okay alright. 454 is where I should be.

ADV PHILLIP MAKOENA SC: Yes.

CHAIRPERSON: Okay. Let me just get there. Okay I am there. Thank you.

MR MOHAMMED SULEMAN MAHOMEDY: Chair it is the document that is titled '1064 timelines'.

CHAIRPERSON: Yes.

20 **MR MOHAMMED SULEMAN MAHOMEDY**: We have endeavoured to put together the entire perspective on the 1064 transaction. And the reason that it becomes quite important is for one to understand the role of certain entities in the entire process. When we consider the procurement of 1064 it tends to get a very focussed attention around the procurement principles and it – around the potential issues around R38 to R54 billion. And it is generally limited to that conversation.

However one has to look at the entire 1064 process commencing from July 2012 when the RFP was issued at which time the business case was not approved. It was approved subsequent to that but the RFP was issued subject to the approval.

ADV PHILLIP MAKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: We then have the locomotive advisory contract which we spoke about which initially was with the McKinsey consortium and then purported to have been ceded to Regiments. That fee structure as we explained yesterday Chair moved
10 significantly from R35.2 million and the beneficiary of that was largely Regiments.

ADV PHILLIP MAKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: To the tune of I think about R267 million. Chair it did not stop there. It then went further into the funding and the CDB loan of 1.5 billion dollars for which Regiments were paid 166 million success fee. Then we move to the ZAR Club Loan for which Trillian were paid R93.5 million which is including VAT so it was R82 million plus VAT. And then we move into this conversation of the interest rate swops. The interest rate swops are for
20 the total of the loan implications of that or the loans that were essentially swopped from floating to fixed total just over R23.3 billion.

ADV PHILLIP MAKOENA SC: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: And Regiments as far as we have been able to ascertain were paid by the Transnet second defined pension fund an amount just over R227 million for the execution of

these swops. We will explain all of this as we go through.

CHAIRPERSON: Just for the swops?

MR MOHAMMED SULEMAN MAHOMEDY: Correct Chair. There were two swops and one swop was directly between Transnet and the TSDBF the Pension Fund and the other one was done with Nedbank as the counterparty. Nedbank have confirmed subsequently that they have not paid any fees directly to Regiments.

CHAIRPERSON: Well I am a lay person to these financial things but you have explained to me that an interest rate swop is basically
10 converting from either fixed rate to a floating rate or from a floating rate to a fixed rate. That seems to suggest to me that there is not a lot of work that needs to be done obviously there may be a lot of homework to be done by somebody who must recommend whether a swop should happen or not and then the person must decide. But I am just not sure – is there a lot of work involved to justify such a high amount of fee generally speaking?

MR MOHAMMED SULEMAN MAHOMEDY: Chair before we asked the question about the amount of work.

CHAIRPERSON: Hm.

20 **MR MOHAMMED SULEMAN MAHOMEDY**: I think it is key to know that the Transnet Treasury team had the capability to do this work.

CHAIRPERSON: Yes. Yes. Yes.

MR MOHAMMED SULEMAN MAHOMEDY: The other thing that is also key is that the R227 million that was paid is what we call a present value.

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: Of all the fees that would have been – would have accrued to Regiments over a fifteen year period.

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: It is a lot more in what we would call nominal terms but it was paid out of the pension fund on day 1.

CHAIRPERSON: Hm.

10 **MR MOHAMMED SULEMAN MAHOMEDY:** So the pension fund lost R227 million but essentially it was all relating to this transaction with Transnet.

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: So in the one case Chair as we understand with Nedbank, Nedbank would have done the work in terms of the pricing, in terms of all of the analysis and then provided Transnet with the calculation of the interest rate. However that was done through Regiments.

CHAIRPERSON: Hm.

20 **MR MOHAMMED SULEMAN MAHOMEDY:** An intermediary.

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: That we believe was not necessary.

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: Because the capability

existed within Transnet to do this.

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: Yes the R227 million is quite significant Chair.

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: Actually from the documents that we have reviewed through the pension fund it was worked out on both the swops. The Nedbank swops what we call the Nedbank swops as well as the pension fund swops where we had done a direct
10 transaction.

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: So they essentially were I am not saying too specific swops but two groups of swops.

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: The first was a R12 billion loan the ZAR Club Loan.

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: Which was at a floating rate which was then swopped to a fixed rate and that was executed by
20 Nedbank in conjunction with Regiments.

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: We have also learnt that Nedbank then essentially sold that swop forward to the pension fund. So ultimately from a Transnet perspective we have got a complicated transaction between Transnet, Nedbank and the Pension Fund. Then

there was a second grouping of swaps Chair which was an amount of about R11.3 billion – the loans totalling 11.3 billion – which was swapped directly with the Pension Fund. Both – if you would like to call it the calculation of the commission for Regiments – I would use the word “commission” just to explain the concept – was calculated at 20 bases points which is 0.2 percent of all of the cash flows over the 15 year period and then present valued to today’s money at the time.

ADV PHILLIP MAKOENA SC: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: Which was calculated at
10 227.8 million – I think it was – which was paid out to Regiments from the Pension Fund. It was not paid out by Transnet but it was paid out from the Pension Fund. The Pension Fund is currently in a process of litigation with Regiments for those Funds.

CHAIRPERSON: But their fee – that is no Regiments - would have been – how much it was would have been in part if not solely influenced by the kinds of amounts that we are talking about like a commission. So the bigger the amounts that they are dealing with the bigger their fee because it is in the form of a commission. Is that – that right?

MR MOHAMMED SULEMAN MAHOMEDY: That is ...

20 **CHAIRPERSON:** So it does not depend on how many hours they put into the job and how much effort they put into the job?

MR MOHAMMED SULEMAN MAHOMEDY: That is correct Chair.

CHAIRPERSON: Okay, thank you.

MR MOHAMMED SULEMAN MAHOMEDY: Chair I think what is also quite interesting is the timelines for when these swaps were then

executed. As I said we entered into the Club Loan to receive the first charge on 1 December 2015. On 3 December 2015 there was a memorandum from – as I said Mr Ramosebudi and supported by Mr Pita – that suggested we should engage in these swaps.

CHAIRPERSON: And just remind me again Mr Pita what was his position at that time?

ADV PHILLIP MAKOENA SC:

MR MOHAMMED SULEMAN MAHOMEDY: He was the Group Chief Financial Officer – Acting Group Chief Financial Officer – at the time.

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

ADV PHILLIP MAKOENA SC: Chair, may I refer you to the folder number 24 – 2-4 – in order for us to be able to follow the evidence of Mr Mahomedy?

CHAIRPERSON: Thank you.

ADV PHILLIP MAKOENA SC: Mr Mahomedy may you please identify that document for us.

MR MOHAMMED SULEMAN MAHOMEDY: Chairperson this is a memorandum from Mr Phetolo Ramosebudi to Mr Garry Pita – the Acting Group Chief Financial Officer of Transnet at the time titled “R12
20 Billion Club Loan Interest Rate Risk Explanation”.

ADV PHILLIP MAKOENA SC: And is this the one that you are referring to in paragraph 5.6.3 of your statement?

MR MOHAMMED SULEMAN MAHOMEDY: Yes Chair.

ADV PHILLIP MAKOENA SC: Yes. Could you please just – you know – highlight the important aspects flowing from that document?

MR MOHAMMED SULEMAN MAHOMEDY: Chair I think essentially this document tries to explain why Transnet should engage in the swap transaction. However there is a shortcoming – significant shortcoming - in the transaction because the explanation given in terms of what may happen to interest rates in Clause 8 or paragraph 8. It says:

“The latest (indistinct) projection or forecast from BER is reflected below to give an indication of what may happen with floating interest rates over the medium term.”

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

MR MOHAMMED SULEMAN MAOMEDY: Now very clearly we were talking about a transaction that was for a period of 15 years. To give a view of two and a half years does not justify making a decision of a 15 year movement in interest rates. That is the one aspect of this particular memorandum that was concerning.

ADV PHILLIP MAKOENA SC: May I also refer you to under the heading “Motivation” and interrogate the issues that are listed therein and please comment whether in the light of what you have said to the Chairperson do they make sense at all?

20 **MR MOHAMMED SULEMAN MAHOMEDY:** So once again on - in paragraph 9 under “Motivation” it says:

“As per the interest rate forecast above the short term rates are expected to increase over the medium period ...”

I am not sure what that meant because it said we are talking about

short term interest rates and then say medium period.

“...and this poses a serious risk. However the reality is that what is proposed on the table talks about a movement from 6.5 percent to 6.8 percent.”

It is a 0.3 percent movement. It does not reflect what is in the motivation that would create a business case for us to consider a long term contract of 15 years to be swapped to a fixed rate. Chair what is also quite significant is that there were a string of emails on 2 December 2015 when one would assume that there was a
10 contemplation of whether we should move to a fixed or floating rate.

ADV PHILLIP MAKOENA SC: Are you referring to those from page 461?

MR MOHAMMED SULEMAN MAHOMEDY: 461 and 462.

ADV PHILLIP MAKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: But I would start with 462 Chair. This is a memorandum that was attached to this document that was sent by Mr Danie Smith who was the Deputy Treasurer at the time to Mr Garry Pita and Mr Phetolo Ramosebudi. On 2 December at 10:39 am he writes:

20 “My humble opinion on the interest rate exposure of the Club Loan.”

Mr Smith had submitted a detailed memorandum ...

ADV PHILLIP MAKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: To Mr Pita and Mr Ramosebudi suggesting that the interest rate swap was not a good

idea for Transnet.

CHAIRPERSON: In – in reaction to the memorandum that we have just dealt with?

MR MOHAMMED SULEMAN MAHOMEDY: No Chair. The memorandum that we dealt with ...

CHAIRPERSON: In respect from what Mr Ramosebudi?

MR MOHAMMED SULEMAN MAHOMEDY: Ramosebudi.

CHAIRPERSON: Ramosebudi.

MR MOHAMMED SULEMAN MAHOMEDY: Chair the memorandum ...

10 **CHAIRPERSON**: I am sorry.

MR MOHAMMED SULEMAN MAHOMEDY: Sorry my apologies Chair. The memorandum that we dealt with was dated 3 December.

ADV PHILLIP MAKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: So it is after this.

ADV PHILLIP MAKOENA SC: After.

CHAIRPERSON: Okay.

MR MOHAMMED SULEMAN MAHOMEDY: Prior to this memorandum being written Mr Danie Smith ...

CHAIRPERSON: Hm.

20 **MR MOHAMMED SULEMAN MAHOMEDY**: Was clear in his memorandum to say that he does not believe that swaps are a good idea for Transnet.

CHAIRPERSON: Oh, okay, okay, okay.

MR MOHAMMED SULEMAN MAHOMEDY: Mr Pita then response ...

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: As per page 462.

“It is well written and I understand the logic.

Phetolo are you (intervenes).”

CHAIRPERSON: I am sorry. At 462 I have the memorandum from the person referred to as Danie - and I think you said it is Mr Danie Smith?

MR MOHAMMED SULEMAN MAHOMEDY: Yes Chair.

CHAIRPERSON: And then on top of that or just above that I have got what appears to be an email addressed to – the name does not appear fully but it looks like something Danie.

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

CHAIRPERSON: He says it is well written and I understand the logic but that appears to be from Garry. Is that no Garry Pita?

MR MOHAMMED SULEMAN MAHOMEDY: Yes Chair.

CHAIRPERSON: That is Garry Pita?

MR MOHAMMED SULEMAN MAHOMEDY: Yes Chair.

CHAIRPERSON: Okay.

MR MOHAMMED SULEMAN MAHOMEDY: He actually acknowledges the document.

20 **CHAIRPERSON:** But where is the one to which they are responding – to which he is responding?

MR MOHAMMED SULEMAN MAHOMEDY: Chair this is the mail – the mail trail.

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: So it is a response ...

CHAIRPERSON: Yes, yes.

MR MOHAMMED SULEMAN MAHOMEDY: To that mail.

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: The memorandum is actually with me. I am not sure if it (intervenes).

CHAIRPERSON: It is not in - in the bundle?

MR MOHAMMED SULEMAN MAHOMEDY: No (intervenes).

ADV PHILLIP MAKOENA SC: No the previous – the previous memorandum Chair it is not.

CHAIRPERSON: Oh, (intervenes).

10 **ADV PHILLIP MAKOENA SC:** The previous memorandum alluded to by Mr Mahomedy is not in the bundle.

CHAIRPERSON: *Ja*, you see. That is why ...

MR MOHAMMED SULEMAN MAHOMEDY: But the memorandum ...

CHAIRPERSON: Because I am trying to get a sequence.

ADV PHILLIP MAKOENA SC: Yes.

CHAIRPERSON: Because we – we saw Mr Ramosebudi's memorandum ...

ADV PHILLIP MAKOENA SC: Memorandum.

20 **CHAIRPERSON:** Where he was arguing for an interest rate swap and then – then you referred to a memorandum and then read to us emails that seem to respond to that memorandum. So I am looking for that memorandum first.

ADV PHILLIP MAKOENA SC: Yes.

CHAIRPERSON: So that – so you say it is not here in the bundle?

MR MOHAMMED SULEMAN MAHOMEDY: No Chair.

CHAIRPERSON: Oh, but it can be found?

MR MOHAMMED SULEMAN MAHOMEDY: Yes Chair. It should be.

CHAIRPERSON: Oh, okay.

MR MOHAMMED SULEMAN MAHOMEDY: We will provide that.

CHAIRPERSON: Okay, alright because then it helps to connect ...

MR MOHAMMED SULEMAN MAHOMEDY: Yes.

CHAIRPERSON: Because I think from what you are telling me it looks like the – the author of that memorandum took a view that is contrary to the view expressed by Mr Ramosebudi. Am I right?

10 **MR MOHAMMED SULEMAN MAHOMEDY:** Yes Chair. You are correct Chair.

CHAIRPERSON: In terms of interest rates swaps. So Mr Ramosebudi comes with a view that is different from that one in circumstances where somebody has already said that is not the way to go. So one would therefore like to see the reasoning of both and – and one assumes that Mr Ramosebudi – one would want to know whether Mr Ramosebudi was aware of that other memorandum and how one compares their reasoning as to who had a sounder reasoning for the position they were taking. Okay.

20 **MR MOHAMMED SULEMAN MAHOMEDY:** Chair I think we will provide that memorandum.

CHAIRPERSON: Okay.

MR MOHAMMED SULEMAN MAHOMEDY: But I think it is key that the – on 2 December Mr Danie Smith was clear in his view that there was not a need or there was not a case for Transnet to enter into a swap.

ADV PHILLIP MAKOENA SC: And that is per the email on page 462?

MR MOHAMMED SULEMAN MAHOMEDY: 462.

ADV PHILLIP MAKOENA SC: Yes and then take us ...

CHAIRPERSON: And – and you said Mr Danie Smith was what position again?

MR MOHAMMED SULEMAN MAHOMEDY: He was the Deputy Treasurer of Transnet at the time reporting to Mr Ramosebudi.

CHAIRPERSON: Oh. That is important.

MR MOHAMMED SULEMAN MAHOMEDY: Yes Chair.

10 **CHAIRPERSON:** It is important. So – so – but his email is it prior to Mr Ramosebudi's one in terms of dates?

MR MOHAMMED SULEMAN MAHOMEDY: No Chair. It is actually ...

CHAIRPERSON: It is after?

MR MOHAMMED SULEMAN MAHOMEDY: His email is first ...

CHAIRPERSON: Ja.

MR MOHAMMED SULEMAN MAHOMEDY: On 2 December ...

CHAIRPERSON: Ja.

MR MOHAMMED SULEMAN MAHOMEDY: And just to give you the full email trail Chair.

20 **CHAIRPERSON:** Hm.

MR MOHAMMED SULEMAN MAHOMEDY: The email is from Mr Smith ...

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: To Mr Phetolo Ramosebudi and Mr Pita.

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: To say that he has a difference of opinion. He does not believe Transnet should do this.

CHAIRPERSON: Ja.

MR MOHAMMED SULEMAN MAHOMEDY: Mr Ramosebudi then responds ...

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: But also by the way on 2 December Mr Ramosebudi sends this exact mail ...

10 **CHAIRPERSON:** Hm.

MR MOHAMMED SULEMAN MAHOMEDY: And document to Mr Eric Woods at Regiments.

CHAIRPERSON: Okay, okay. Well part of what – what I would be looking for is where - where some of the people in Transnet were disagreeing with Mr Ramosebudi – part of what I would be looking for are their reasons because his – his email where he expresses his view on the face of it appears to be motivated. He gives reasons.

ADV PHILLIP MAKOENA SC: Yes.

20 **CHAIRPERSON:** Now one would therefore want to compare reasons for a different position and then see. Thank you.

ADV PHILLIP MAKOENA SC: Yes Chair. Yes Mr Mahomedy take us through that email trail.

MR MOHAMMED SULEMAN MAHOMEDY: So we said on 2 December ...

ADV PHILLIP MAKOENA SC: Ja.

MR MOHAMMED SULEMAN MAHOMEDY: This mail from Mr Smith says that the annual interest rate cost between the floating rate and what is called the midmarket rate would be – would cost Transnet in the region of approximately R200 million a year in additional interest and in his view he did not agree that Transnet should actually – he specifically says:

“It is recommended that the Club Loan not be switched to a fixed rate exposure by means of an interest rate swap.”

10 And he goes on to explain that. However a day later Mr Ramosebudi then prepares the memorandum that we just talked of where he says that he believes this should be executed by Regiments. He – the purpose of the memorandum if I may just add some – he says:

“The purpose of this memorandum is to obtain approval from the Acting Group Chief Executive - sorry – the Acting Group Chief Financial Officer – to: 1.1, hedge the interest rate exposures from a floating to fixed basis for an amount of R12 billion.”

ADV PHILLIP MAKOENA SC: Chair that is to be found on page 457.

20 **MR MOHAMMED SULEMAN MAHOMEDY:** 457.

ADV PHILLIP MAKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: “1.2, he says instruct Regiments Capital as per the 1 064 locomotive mandate to execute the hedges with Transnet approved counterpart; 3, the execution

cost hedges by Regiments Capital will be an all-inclusive – will be all inclusive in the rate of the interest rate swap. “

So Chair there is a few key issues that we have to point out. The first is at the time 1.2 was not valid. Regiments did not have a mandate. Their mandate had essentially been concluded a few months before that when the 166 million was paid. That particular memorandum had concluded that mandate. So Regiments had no mandate as far as Transnet is aware.

10 **ADV PHILLIP MAKOENA SC:** And procurement process that appointed Regiments?

MR MOHAMMED SULEMAN MAHOMEDY: There was no procurement process and Mr Pita was not authorised in terms of the delegation of authority to appoint Regiments. That had to have been done through a proper procurement process even at the time – if it were to be done through a confinement – but it would have had to have been approved by the Group Chief Executive not the Group Chief Financial Officer.

ADV PHILLIP MAKOENA SC: Did it serve ...?

CHAIRPERSON: Are we not still dealing with the matter where
20 Regiments came onto the scene by way of – of a session or purported session or that was in regard to ...?

MR MOHAMMED SULEMAN MAHOMEDY: Chair - Chair that was in regard to the 1 064 advisory.

CHAIRPERSON: Yes, *ja*.

MR MOHAMMED SULEMAN MAHOMEDY: But we have to also follow

the timeline...

CHAIRPERSON: Yes, yes.

MR MOHAMMED SULEMAN MAHOMEDY: Because the last approved memorandum by the BADC ...

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: Which was the authority at the time ...

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: Rightly or wrongly but it was
10 the authority who concluded the 1 064 transaction advisory when they
said that the total payment will be 265.5 million. I think there was a –
there was a memorandum in July 2015.

ADV PHILLIP MAKOENA SC: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: This memorandum is dated
3 December 2015. There was no prior approval – there was no prior
approval that Regiments could continue because there was no
agreement essentially. That agreement had terminated in July in terms
of procurement process. So they effectively ...

CHAIRPERSON: But ...

20 **MR MOHAMMED SULEMAN MAHOMEDY:** Just kept an agreement
open.

CHAIRPERSON: Ja, but was there somebody who made a decision
purporting to mandate them to continue and deed so without following
proper procurement procedures or was the position that they – they
kept being around and people thought they were still mandated to

continue or is that something that is difficult to tell?

MR MOHAMMED SULEMAN MAHOMEDY: Chair I think it is a mix of both to be honest with you. The first is obviously Mr Woods was a - you know - was - was somebody who was quite present at the Transnet Offices. So that could have created that perception but also the memorandum that is in front of us gives a sense that Regiments were appointed but there was no procurement event. What is also quite fascinating about this memorandum is that when we go to the recommendation of the document on page 460 it does not mention
10 anything about Regiments being instructed to have a mandate.

ADV PHILLIP MAKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: So it - it starts off in the purpose of the document but trails away into the conclusion of the document and it does not mention that.

ADV PHILLIP MAKOENA SC: But to be more specific - I mean - having reviewed all these documents pertaining to this transaction did you come across any document that could have actually given Regiments any mandate as per this memorandum?

MR MOHAMMED SULEMAN MAHOMEDY: Chair as I - as I mentioned
20 earlier on the timing is quite critical ...

ADV PHILLIP MAKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: Because the last memorandum that approved Regiments to execute on any transaction relating to 1 064 was significantly earlier - I think it was July 2015. There was not any subsequent process that appointed Regiments as a

mandated advisor to Transnet for this particular transaction.

ADV PHILLIP MAKOENA SC: And this particular transaction did it serve on any of the committees that you elaborated upon when you adduced evidence yesterday?

MR MOHAMMED SULEMAN MAHOMEDY: Not to my knowledge, no.

ADV PHILLIP MAKOENA SC: Yes. You were still at the point of highlighting those concerns which you are raising in relation to what is stated under the heading “Purpose”. Anything else that you wish to highlight?

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

CHAIRPERSON: Maybe before – before you do that. You just told us that the last email or memorandum relating to the mandate of ...

ADV PHILLIP MAKOENA SC: Regiments.

CHAIRPERSON: Regiments was around July. This is now – we are dealing with a memo that comes up in December. So there has been about five months or so or six months. So during these intervening months from July to December would there have been other activities that Regiments would have been known to be involved in with Transnet. So I am wondering whether there had been a lull of about five months
20 and suddenly there is a – a memorandum or whether there had been a lot of activities between involving Transnet and Regiments maybe in regard to other things.

MR MOHAMMED SULEMAN MAHOMEDY: Chair I just want to correct what I said earlier on. The last memorandum was in April 2015 ...

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: Relating to the transaction advisor not July sir.

CHAIRPERSON: Yes, yes and that gives us about eight months.

MR MOHAMMED SULEMAN MAHOMEDY: Eight months.

CHAIRPERSON: Intervening period, *ja*.

MR MOHAMMED SULEMAN MAHOMEDY: Yes. Regiments would have been involved at the time as I best understand in a number of other consulting arrangements. For example there is the general freight business transaction that they were involved in or consulting work that
10 they were involved in. I am not sure in terms of whether they had continued work in that eight month period on the Treasury side or ...

CHAIRPERSON: Okay.

MR MOHAMMED SULEMAN MAHOMEDY: Or anything relating to 1 064 advisory. That I am not aware of Chair.

CHAIRPERSON: Okay, thank you.

ADV PHILLIP MAKOENA SC: Yes Mr Mahomedy I am saying that in relation ...

CHAIRPERSON: I think then you can deal with your question.

ADV PHILLIP MAKOENA SC: To the issues that you are raising the
20 heading "Purpose" is there any issue that you wanted to highlight to the Chair?

MR MOHAMMED SULEMAN MAHOMEDY: Yes. Chair I think also one of the key issues on this memorandum - as I alluded to earlier on in 1.3 says:

"The execution cost of hedges by Regiments Capital

will be all inclusive in the rate of the interest rate swap.”

Which means this memorandum that the R12 billion ZAR Club Loan which was now going to be hedged on in an interest rate swap whatever the interest rate swap by the financial institution would be would include the - for want of a better word Chair as I said earlier on – include whatever commission was going to be paid to Regiments. So we will deal with that a little later on as well and there was no disclosure as far as we are aware in this memorandum of the
10 percentage or of the rate that Regiments was going to be paid...

ADV PHILLIP MAKOENA SC: Yes. You can ...

MR MOHAMMED SULEMAN MAHOMEDY: And this was then approved by the group.

ADV PHILLIP MAKOENA SC: If you go to page 460.

MR MOHAMMED SULEMAN MAHOMEDY: Four.

ADV PHILLIP MAKOENA SC: 4-6-0.

MR MOHAMMED SULEMAN MAHOMEDY: Yes.

ADV PHILLIP MAKOENA SC: Of the same document and take us what it said under - under “Recommendation” and comment in as far as it
20 relates also to Regiments.

MR MOHAMMED SULEMAN MAHOMEDY: So in the recommendation on page 460 under Item 24:

“It is recommended that the Acting GCFO – being the Group Chief Financial Officer – approves the hedging of the interest rate, the risk exposures on a

float for fixed basis for all the 12 billion Club Loan
drawdowns.”

And this is essentially compiled by the Group Treasurer at the time and signed off by Mr Pita who is the Acting Group Chief Financial Officer at that time. Again as I pointed out earlier on it is not in line with the purpose of the document. The purpose of the document was to get approval on three matters which was the hedging of the rate, instructing Regiments Capital and the fact that the rate would include the Regiments Capital commission ...

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

MR MOHAMMED SULEMAN MAHOMEDY: And when we go to the recommendation it just talks about approving hedging of the interest rate. So it – it is an anomaly in - in how we actually prepare documents but that is just an observation in terms of this particular document Chair.

CHAIRPERSON: Under “Purpose” that paragraph 1.2 namely one of the purposes of the memorandum was to:

20 “Obtain approval from Acting Group Chief Financial
Officer to instruct Regiments Capital as per the
1 064 locomotives mandate to execute the hedges
with Transnet approved counterparts.”

Now you made the point yesterday and I think you repeated it this morning that - and I am now paraphrasing – to the extent that Regiments may have had any mandate to do anything which – as I understand the position – would depend on validity of the session from

McKinsey to the extent that they had any mandate from Transnet. The mandate they had was the mandate that McKinsey had and that mandate was very limited. It did not include execution - that is – that is what I understood you to have said – to the extent that that maybe right. Would it be correct to say paragraph 1.2 under “Purpose” of that memorandum from Mr Ramosebudi would seek to give them the mandate to get involved in the execution? Am I correct in understanding reading it that way?

MR MOHAMMED SULEMAN MAHOMEDY: Yes Chair. You are correct
10 in understanding that way. This mandate is – this mandate of executing is fundamentally different.

CHAIRPERSON: Is new?

MR MOHAMMED SULEMAN MAHOMEDY: It is new.

CHAIRPERSON: Yes, yes (intervenes).

MR MOHAMMED SULEMAN MAHOMEDY: Chair what is also ...

CHAIRPERSON: And that is where you – that is where your point about failure to follow procurement prescripts and procedures arises?

MR MOHAMMED SULEMAN MAHOMEDY: Yes Chair.

CHAIRPERSON: Yes, okay.

20 **ADV PHILLIP MAKOENA SC:** Yes. Now may I refer you to page 19 and take us through from your paragraph 5.6.4? That is where we interrupted you.

CHAIRPERSON: That is now back to his statement?

ADV PHILLIP MAKOENA SC: His statement Chair, yes.

CHAIRPERSON: Ja.

ADV PHILLIP MAKOENA SC: Now that you have interrogated the relevant annexures.

MR MOHAMMED SULEMAN MAHOMEDY: Chair once again Chair the timeline becomes quite crucial in the conversation. As I said on 1 December 2015 Transnet has a drawdown with the ...

CHAIRPERSON: I am – I am sorry. We might have left some loose end in relation to that memorandum but I may have missed this – we should finalise that by saying that Mr Ramosebudi did get the approval that he was asking for. Is that right looking from ...?

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

CHAIRPERSON: Looking at the end of the memorandum (intervenes).

MR MOHAMMED SULEMAN MAHOMEDY: Chair I would say yes and no because the ...

CHAIRPERSON: Yes.

ADV PHILLIP MAKOENA SC:

MR MOHAMMED SULEMAN MAHOMEDY: Chief Financial Officer was not in a position to approve points 1.2 and 1.3 essentially but he did approve the hedging to continue.

CHAIRPERSON: Yes, okay.

20 **ADV PHILLIP MAKOENA SC:** (Intervenes).

CHAIRPERSON: So he got part of what he wanted?

MR MOHAMMED SULEMAN MAHOMEDY: He got ...

CHAIRPERSON: Part of what he wanted?

MR MOHAMMED SULEMAN MAHOMEDY: He go part of what he wanted.

CHAIRPERSON: *Ja*, okay thank you. Alright.

MR MOHAMMED SULEMAN MAHOMEDY: And largely what he got was the approval to actually go into the swaps agreement.

ADV PHILLIP MAKOENA SC: Swap yes.

MR MOHAMMED SULEMAN MAHOMEDY:

CHAIRPERSON: And – and did he get paragraph 1.2 of his memo? That is the approval to instruct Regiments to execute. He did not get that?

MR MOHAMMED SULEMAN MAHOMEDY: Chair as far as we are
10 concerned the delegation of authority did not allow for the Group Chief Financial Officer – Mr Pita – to give that approval because it was something that the Sub Committee of the Board could only do.

CHAIRPERSON: No, no that is – that is a different issue. You are answering the question whether Mr Pita had the power to grant the approval. My question is at a factual level. Rightly or wrongly Mr Ramosebudi thought that Mr Pita was the right person to get approval from and my question is whether he got approval from Mr Pita as a matter of fact whether or not Mr Pita had authority to give that approval is another issue.

20 **MR MOHAMMED SULEMAN MAHOMEDY:** Chair in terms of this memorandum he got that approval.

CHAIRPERSON: Okay, thank you but you make the point that Mr Pita as far as you are concerned did not have the authority to grant such approval?

MR MOHAMMED SULEMAN MAHOMEDY: Correct Chair.

CHAIRPERSON: Okay.

ADV PHILLIP MAKOENA SC: Yes. You are taking us through the timeline. You said it is important.

MR MOHAMMED SULEMAN MAHOMEDY: Chair I think it is necessary as I said that the drawdown occurs on 1 December 2015 and then here is the memorandum from Mr Danie Smit on the 2nd of December and then the memorandum from Mr Ramosebudi that we've just discussed on the 3rd of December.

ADV PHILLIP MOKOENA SC: Yes.

- 10 **MR MOHAMED SULEMAN MAHOMEDY:** To be clear this was quite a significant transaction and one gets the sense that it seems to have been rushed through because the transaction, or the first part of the transaction was executed on the 4th of December. All of this happens in a three day period, which is interesting as an observation, considering the magnitude of the values that we are referencing Chair.

- So on the 4th of December Regiments then execute as per 5.1.5 in my statement they execute an interest rate swap on behalf of Transnet, with Nedbank. This is a R4.5billion drawdown, the execution of the interest rate swaps are at a fixed interest rate of 11.83%. Chair
- 20 if it may please the Commission that we look at page 455, I think it's under Annexure MSM23.

CHAIRPERSON: Yes.

MR MOHAMED SULEMAN MAHOMEDY: Chair this schedule endeavours to give the Commission a perspective on the timelines but also some detail that gives you perspective on the loans that was

swapped and the differentials in the interest rate. At the time when the transaction was entered into there were – for the ZAR Club Loan the rates, the interest rates at the time were around 9.03, between 9.03% and 9.12%. These were then fixed at 11.83%, and the 2.7% on average or 2.6% on average movement is quite significant when you take into consideration the value of R4.5billion.

We also there was a second swap with Nedbank on the 1st of March 2016, the second draw-down of R7.5billion was made and this drawdown was also swapped from floating to fixed on the 7th of March,
 10 in a six day period, with Nedbank as the counterparty and that execution rate on the fixed basis was 12.27%, and when we look at those transactions the original floating rate at the time was between 9.53% and 9.72% but they were fixed at 12.27%.

Chair I referenced the Commission to MSM25.

ADV PHILLIP MOKOENA SC: It's on page 464 Chair.

CHAIRPERSON: 46?

ADV PHILLIP MOKOENA SC: 4.

CHAIRPERSON: Thank you.

MR MOHAMED SULEMAN MAHOMEDY: Chair there's a – it has been
 20 brought to my attention ...(intervention)

CHAIRPERSON: I'm sorry, at a convenient time, Mr Mokoena you can just watch where the convenient time would be, I want to go back to Mr Ramosebudi's memorandum and ask you a question, but I want you to finish what you are dealing with first. 464 you said?

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Thank you.

MR MOHAMED SULEMAN MAHOMEDY: Chair in the review of this documentation and the review of the transactions it was brought to my attention that the Nedbank Compliance Department required confirmation from Transnet that it was satisfied with the pricing and value of the transaction. If it pleases the Commission I would request to read out the email on page 464.

CHAIRPERSON: Yes do that.

MR MOHAMED SULEMAN MAHOMEDY: Chairperson ...(intervention)

10 **ADV PHILLIP MOKOENA SC:** Firstly identify it, as to who the role-players that email, it was despatched to who by who and the date and take us through the context.

MR MOHAMED SULEMAN MAHOMEDY: Chair it is despatched from a Moss Brickman of Nedbank on Wednesday the 16th of March 2016 at 1:30 pm to Mr Phetolo Ramosebudi at Transnet under the subject “finalisation of documentation surrounding the swap transaction”. I will read the entire document, it’s not that long.

CHAIRPERSON: Yes that’s fine.

MR MOHAMED SULEMAN MAHOMEDY: It says:

20 “Hi Phetolo,
Once again thank you for the opportunity provide to Nedbank
[I’m reading it verbatim Chair] ...”

CHAIRPERSON: Ja, that’s fine.

MR MOHAMED SULEMAN MAHOMEDY: With any possible grammatical issues.

CHAIRPERSON: Yes it must be provided but you can read it as it is.

MR MOHAMED SULEMAN MAHOMEDY: Yes.

“Once again thank you for the opportunity provide to Nedbank to participate in your heading requirements. As per our discussion in order that we are able to close the loop on the transaction completed it would be most appreciated if you could share with us the special authority granted you to go ahead with the hedging. We are still awaiting” ...(intervention)

CHAIRPERSON: I think it's “if you would share with us”.

10 **MR MOHAMED SULEMAN MAHOMEDY:**

“...if you would share with us the special authority granted you to go ahead with the hedging. We are still awaiting the signed confirmations but are aware that some people are travelling. Additionally our compliance is requesting a letter that essentially states that Transnet has looked at the transaction and the rates concluded and that Transnet is satisfied with the pricing and value of the transaction. For ease essentially they are looking for something along these lines. “In terms of the interest rate swap transactions entered into with Nedbank on
20 or about 8 March 2016. I am aware that these trades priced a a pure mid-market rate of approximately 11.42% NACQ. I am further aware and agree that these trades were executed of a level of 12.37% NACQ which results in a difference of 95 BPS, meaning basis points, above or over mid-market value. The trade numbers of the trades in question are set out below and

they are given, and then your assistance in this matter is much appreciated.

Regards

Moss Brickman

Head Balance Sheet Management

Treasury

Nedbank Corporate and Investment Banking”

Chair the reason this mail is for our review is Mr Ramosebudi subsequently copies and pastes that particular paragraph and this mail
10 is sent at 1:30 pm and he then responds, I think through his office, at 5:24pm to say “please find attached approval for the transaction”.

A few pertinent points out of this is ...(intervention)

CHAIRPERSON: I’m sorry let’s hear first where his response is.

ADV PHILLIP MOKOENA SC: Take us through his response.

MR MOHAMED SULEMAN MAHOMEDY: Chair the next page is 465.

CHAIRPERSON: Yes.

MR MOHAMED SULEMAN MAHOMEDY: We will see a note from Carol Perry who was the then assistant to Mr Ramosebudi on the 16th of March 2016 at 5:24pm says:

20 “Good day Moss,

For ease of reference Mr Ramosebudi has rephrased the content of his mail in the form of a letter for the supporting documents.”

And that letter is then sent through to ...(intervention)

CHAIRPERSON: It is sent to the person from Nedbank who had sent

the email that you read?

MR MOHAMED SULEMAN MAHOMEDY: Yes sir.

CHAIRPERSON: So this is sent on the same day, a few hours later.

MR MOHAMED SULEMAN MAHOMEDY: Yes.

CHAIRPERSON: From Ramosebudi's office by a person called Carol.

MR MOHAMED SULEMAN MAHOMEDY: Yes.

CHAIRPERSON: Yes, okay, yes, you may continue.

MR MOHAMED SULEMAN MAHOMEDY: Chair what is interesting from our observations on this particular email is that the request for the
10 authority that is made in this email on the 16th of March is post the transaction has been executed in December 2015 and on the I think it was the 7th of March 2016.

CHAIRPERSON: Well shouldn't you first take us to what he is attaching because I think your comments are on the content thereof, or the date thereof, isn't it? Because the person from Nedbank, Mr Brickman was asking basically for proof that there was the right authority isn't it?

MR MOHAMED SULEMAN MAHOMEDY: Yes Chair.

CHAIRPERSON: And the letter from the person referred to as Carol
20 purports to attach the required authority and you have some comments to say about that, but I think we must just identify where that is first.

MR MOHAMED SULEMAN MAHOMEDY: Chair as I see it's not in the document that is submitted but I think from my perspective Chair the point that we're making is that this request came in post the execution of the transactions. The transactions were executed, the first one in

December 2015 on the 4th and the second one was on the 7th of March 2016. This request from Nedbank is required on the 16th of March 2016.

CHAIRPERSON: Oh so you're saying – or maybe they have, they may have, there may have been a reason that made them think you know what we should have asked for this before but to the extent that that authority may have existed as at that time let's ask for it now, but hoping that what they would be given would show that it was authority that existed before execution, and if that happened, if that was the
10 case then from their point of view they might feel that they are fine, but if the authority seems to have come after they may or may not have been happy with that depending on a number of things, but you are saying that from your point of view that's the issue, that's the point you wanted to make that the authority comes after.

MR MOHAMED SULEMAN MAHOMEDY: Yes Chair.

CHAIRPERSON: Yes okay.

ADV PHILLIP MOKOENA SC: But let's go back to page 464, and let's entertain for a while what has been placed in inverted commas by Nedbank when requesting that authority in those terms. What was
20 Nedbank actually conveying to Mr Ramosebudi, what was really being sought Mr Mahomedy so that the Chair should understand the essence of your evidence in this regard.

MR MOHAMED SULEMAN MAHOMEDY: In essence Chair I think there's two things being requested in this email, the first is that Mr Ramosebudi to provide the authority, the special authority that he

would have had, that's in the upper most paragraphs. The second ... (intervention)

CHAIRPERSON: This is for the swap that ... (intervention)

MR MOHAMED SULEMAN MAHOMEDY: To execute the swap.

CHAIRPERSON: To execute the swap, ja.

MR MOHAMED SULEMAN MAHOMEDY: Which was already executed.

CHAIRPERSON: Yes.

MR MOHAMED SULEMAN MAHOMEDY: The second piece is an authority from Transnet to say that the pricing was acceptable, now the
10 reason why this is important is because there's a fact that says that – in this document that says the mid-market, the pure mid-market rate was 11.42% and the rate that was billed to Transnet was going to be 95 basis points points higher. In a transaction of this nature it is our view and our opinion that the 95 basis points was outside market conditions, it was too high, and essentially what is happening here is that there's a requirement or a request from Nedbank or the gentleman from Nedbank who is asking Transnet to say after the fact, I keep saying that Chair because it's quite critical, after the fact to say that it's acceptable that we charged you 12.37% when the market, mid-market was 11.42%.
20 This also has to be thought of in conjunction of my previous testimony on the swap approval memo which said that Regiments rate will be all inclusive, which means that somewhere in between this rate we believe Regiments commission was added into the rate as well which would give one a view in terms of why the rate was 95 basis points higher.

CHAIRPERSON: You see when I read the email from Mr Moss

Brickman to Mr Ramosebudi it seems to me that it's an email that comes from a client of Transnet or that comes from somebody who finds something strange in what is being done, and just wants to make sure that whoever says this must be done from Transnet, one, has authority to say so, two, knows or appreciates the implications for Transnet if what he is requesting to be done is done, in other words it seems to me to be somebody who says I don't want Transnet to ask anybody later on to say I was party to doing this and that maybe I failed in my obligations in that I didn't make sure that Transnet appreciated what

10 the implications of doing this would be, therefore I wanted to make sure that if anybody accused Nedbank or him of not having done his job properly they would say here is proof they said they know all this, they are aware of all of this, we can go ahead and then we went ahead, is that a justified impression of the email from your point of view as financial person?

MR MOHAMED SULEMAN MAHOMEDY: Yes Chair, I think this is a document that was requested to ensure exactly what you just put out because that was the as per the mail it says our compliance and one would understand that to be the Compliance Department, so the

20 question is who actually found, or what was it that they were looking for, what did they find that was not necessarily in line with what was in the swap agreements.

CHAIRPERSON: Okay thank you.

MR MOHAMED SULEMAN MAHOMEDY: Chair it's also worthy to mention at this point and we will come back to the calculations of all of

the values etcetera, but it's also necessary to mention we have dealt with what we call the Nedbank swaps, which was the ZAR Club Loan which was in a floating rate initially that was converted to these two tranches of fixed. There were also other transactions that were then converted into – from floating to fixed.

CHAIRPERSON: Before we go to other transactions I think it is convenient for us to talk about, to go back to Ramosebudi. Now you remember that I asked you whether Mr Ramosebudi got the approvals that he was asking for by way of that email, and you said partly yes
10 partly no, and I think you said what you got related to hedging. I just want us to go back, is it 46 ...

MR MOHAMED SULEMAN MAHOMEDY: 457.

CHAIRPERSON: Okay thank you. You see he was asking, that memorandum was addressed to Mr Pita and in paragraph one under the heading "purpose" he sets out three issues in respect of which he was saying he was seeking approval, okay and again the one is the hedging of the interest rate risk exposure from a float for fixed basis for the amount of R12billion, two, to instruct Regiments Capital as per the 1064 locomotives mandate to execute the hedges with Transnet
20 approved counterparts. Three, the execution cost of hedges by Regiments Capital will be all inclusive in the rate of the interest rate swap.

Now when you go to the end of the – or to the last page at page 460 it says compiled by and then you've got his name and his signature, and then below that it says approved/not approved and then

below there is a signature for Mr Gary Pita and his name and the part that is crossed out seems to be the not approved part which suggests that he was approving, he was being given an opportunity to say he is not approving or saying he approves, and he seems to have said I approve.

Now that seems to me to suggest that he is approving everything for which approval was being sought from him, and if that interpretation of the memo is correct that means he approved all the three items that Mr Ramosebudi set out under the heading “purpose”.

10 It may be that the reason why you answered my question the way you did is because under recommendation in paragraph 24 maybe that might not have been wide enough in your view to cover all the three purposes, I’m not sure. Is that the reason why you answered the way you answered?

MR MOHAMED SULEMAN MAHOMEDY: Yes Chair.

CHAIRPERSON: Ja.

MR MOHAMED SULEMAN MAHOMEDY: I think that’s the key reason because when we at Transnet prepare a memo the requirement is that whatever you want must be very explicitly stated under the
20 recommendation.

CHAIRPERSON: Yes, but you accept ...(intervention)

MR MOHAMED SULEMAN MAHOMEDY: I accept.

CHAIRPERSON: That there may be a different interpretation that approval for all three items was granted.

MR MOHAMED SULEMAN MAHOMEDY: I actually agree that

technically all, whatever was requested in the memo was approved.

CHAIRPERSON: Yes, yes, okay, thank you.

ADV PHILLIP MOKOENA SC: Now Mr Mahomedy before you proceed with the other relevant facts in your – and under that heading, may I refer you to page 465, Chair that is under folder number 25.

CHAIRPERSON: 25?

ADV PHILLIP MOKOENA SC: 25, just to complete the evidence of Mr Mahomedy pertaining to the sequence of emails that passed between the parties and I think that on page 465 you might have omitted an
10 important email if you look right at the bottom of that page you may wish to indicate to the Chair as to who wrote that email and to whom was he writing to, and what did he say, and you can tie it up with what it conveyed to the Chair.

MR MOHAMED SULEMAN MAHOMEDY: Thank you Advocate. I think ... (intervention)

CHAIRPERSON: We are on 464, is that correct?

ADV PHILLIP MOKOENA SC: 465.

MR MOHAMED SULEMAN MAHOMEDY: 465.

CHAIRPERSON: 465, okay.

20 **ADV PHILLIP MOKOENA SC:** At the bottom, that is the last email appearing there.

CHAIRPERSON: Yes okay.

MR MOHAMED SULEMAN MAHOMEDY: Chairperson this email is from Mr Ramosebudi, Phetolo Ramosebudi of Transnet to Mr Moss Brickman because the email addresses are exactly the same, mossb@nedbank,

this one is @nedbankcapital, on the 16th of March 2016 at 3:14pm. The conversation is:

“Hi Moss,

In terms of the interest rate swap transactions entered into with Nedbank on or about 8 March 2016 I am aware that these trades priced at pure mid-market rate of approximately 11.42% NACQ. I am further aware and agree that these trades were executed at a level of 12.37% NACQ, which results in a difference of 95 basis points over mid-market value.”

- 10 This is Mr Ramosebudi then confirming to Mr Brickman it is a copy and past Chair of the exact paragraph on page 64 in which Mr Brickman wrote to Mr Ramosebudi requesting where he says for ease essentially they are looking for something along these lines, so exactly what is in inverted commas is copied and pasted by Mr Ramosebudi to Mr Brickman an hour and a half or an hour forty four minutes later.

ADV PHILLIP MOKOENA SC: Would that have been ...(intervention)

- CHAIRPERSON:** It may be that copy and paste is correct but effectively what he does, that is Mr Ramosebudi is to give Mr Brickman, Moss Brickman, exactly the wording that he knows Mr Brickman will be
20 happy with, is that correct?

MR MOHAMED SULEMAN MAHOMEDY: Yes Chair.

CHAIRPERSON: Ja, no change of anything.

MR MOHAMED SULEMAN MAHOMEDY: No change.

CHAIRPERSON: Ja, okay.

ADV PHILLIP MOKOENA SC: Would that swap have been in the

interest of Transnet?

MR MOHAMED SULEMAN MAHOMEDY: Chair I think the additional cost that – before I answer that question Chair I would like to just explain that there was another swap as well, another interest rate swap.

CHAIRPERSON: Okay, before you deal with another swap just to make sure that we don't lose track of some of the things, we are still going to look at the – at whatever document Mr Ramosebudi may have provided purporting to be authority, is that right?

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

CHAIRPERSON: We've got such a document?

MR MOHAMED SULEMAN MAHOMEDY: Yes Chair.

CHAIRPERSON: Okay, alright, okay, you may proceed.

MR MOHAMED SULEMAN MAHOMEDY: Chair as I explained earlier on this was a total of R12billion in loans, it was essentially the ZAR Club Loan that we had entered into on a floating rate of rates between 9.03% and 9.27% at various times, this entire transaction was swapped with Nedbank. Chair there is a further R11.3billion which was entered into as a separate ...(intervention)

20 **CHAIRPERSON:** Okay I'm sorry, I want to make sure I follow, you say this entire transaction was swapped with Nedbank, we have been using swap so far in the context of an interest swap, is that what you are talking about?

MR MOHAMED SULEMAN MAHOMEDY: Yes Chair.

CHAIRPERSON: Oh, okay, it's just that you said the entire transaction

was swapped and I wasn't sure if it still meant the same thing as swapping an interest rate?

ADV PHILLIP MOKOENA SC: It's still interest rates.

MR MOHAMED SULEMAN MAHOMEDY: My apologies Chair, you are 100%.

CHAIRPERSON: Ja, okay.

MR MOHAMED SULEMAN MAHOMEDY: Chairperson the R12million in loans, the interest rate swap was with Nedbank. There were certain other transactions as I provided an analysis earlier this morning again
10 which involved EDC, Exim of Canada with Investec, Lipfin, Omsfin and Standard Bank, where we had entered into these loan transactions between 2014 and 2015, these had existed, these were transactions that were already in progress. These were then involved in an interest rate swap with the Transnet Second Defined Pension Fund, which is called for short the TSDPF. Also by the way Chair executed with Regiments as the intermediary. Those rates were converted between the original floating rates were between 8.8% and 9.9% and they were converted at between 11.15% and 12.07%, and those were done in March 2016 and April 2016.

20 Chair the key issue with the pension fund swaps or the interest rate swaps that were done with the pension fund was that at the time, which is prior to the pension fund in terms of Transnet policy did not qualify as what we call an approved counterparty in terms of whether we could actually be doing this kind of transaction with them.

There was a subsequent mail that – a memorandum again that

was signed by two or three people that said that it would be approved – it would become an approved counterparty. Saying that Chair I think one of the key things is that the calculation at the time of the commission again I use the word commission loosely and that was then paid out, calculated and paid out by the pension fund. That was for loans totally R11.3 billion. So the interest rate swops for Transnet effected two different loan types totally R23.3 billion. Chair the reason that becomes very key is when you have to do the calculations of the incremental interest.

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

MR MOHAMMED SULEMAN MAHOMEDY: It is quite significant. But just before we go into the calculations of the interest as it relates to mandates Chair it is also quite important to note that Transnet being a player of significant nature in the financial services sector in terms of loans and facilities that we generate and commercial paper that we put into the market we ordinarily do send out to the local and global banking sector what we call the mandate for trades. And this is done annually. So in 2014 and 2015 as per my Annexure MSM26 on pages 472 to 476 Chair these are examples of mandate letters that would
20 have gone through to various financial institutions which confirm who are the employees that are mandated to act for Transnet in certain specific transactions.

CHAIRPERSON: Let us pick the one on page 472 and just read for us what does it say in order for us to understand what you are testifying on?

MR MOHAMMED SULEMAN MAHOMEDY: It is a mandate for domestic market traders.

10 “The employees of Transnet SOC Limited indicated below are hereby authorised in the normal course of their employment to enter into capital and money market transactions and more specifically to participate and deal in bonds listed on the Johannesburg Stock Exchange, repurchase agreements, money market instruments and interest rate derivatives on behalf of Transnet SOC Limited. Within the limits set out in the delegation of authority framework and or the financial risk management framework as approved by the Transnet Executive Committee or board of directors. It produces...”

Or it goes on to name the people, provides their Identity number and the signature of the relevant individual. And then it says:

“Thus done and signed at Johannesburg in accordance with the Transnet delegation of authority framework.”

20 It is signed by the Group Treasurer at the time and then countersigned by the Group Chief Financial Officer at that time. In 2014 and in 2015 it was signed by the then CFO's or the then CFO both of them by Mr Anoj Singh. The 2015 document on 473 is signed by Mr Ramosebudi on the 12 May 2015.

CHAIRPERSON: I see I am trying to see the date of the document

itself at 472 and I do not see any date other than the date on which Mr Anoj Singh signed it. I had expected that where it says 'thus done' that would give a date. So are you – when you say it is a 2014 document simply because Mr Anoj Singh's signature indicates that he signed it on the date given there which is on the – in 2015 / 14?

MR MOHAMMED SULEMAN MAHOMEDY: Yes Chair.

CHAIRPERSON: Okay.

ADV PHILLIP MAKOENA SC: Now Mr Mahomedy I do not understand that if there are those mandates that are sent to look to financial
10 institution and international institutions how would one find Regiments trading on behalf of Transnet in those media transactions that we have actually canvassed?

MR MOHAMMED SULEMAN MAHOMEDY: Chair that can only be the case if specific delegation or mandate was provided to Regiments to execute a particular transaction. Later on in my testimony I talk about the concerns as it relates to Transnet practice and Transnet processes and Transnet frameworks as it relates to all of the swap transactions. I think we – save to say that our financial risk management frameworks and delegations etcetera do not allow for third parties to be executing
20 on Transnet's behalf. Unless there was a specific delegation given or a specific mandate that was given to Regiments.

ADV PHILLIP MAKOENA SC: Yes.

CHAIRPERSON: But if Transnet had a practice of sending out these mandates that would mean that anybody within the relevant market, anybody of significance would be aware that there would be specific

people that Transnet would have mandated to do certain things and therefore they would before engaging with anybody one would expect them to double check whether that person is somebody who is mandated by Transnet to do that. Obviously if that person's name does not appear in the mandate such as this but he or she is able to produce a special mandate or authorisation then and that authorisation is seen as legitimate by the third party then they could continue but the question would – one would expect the third parties to want to check whether they are dealing with somebody whose name appears in a
10 document such as this.

MR MOHAMMED SULEMAN MAHOMEDY: Chair that is accurate.

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: And I think more so.

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: In the case of the significance of this value and this transaction.

CHAIRPERSON: Hm, hm.

MR MOHAMMED SULEMAN MAHOMEDY: So I think I agree with you Chair.

20 **CHAIRPERSON:** Thank you.

ADV PHILLIP MAKOENA SC: Yes. May I – May I take you back to page 20 of your statement and simply to clarify one or two issues arising from there? You have testified about a number of interest swaps and others you are referencing in those relevant paragraphs, paragraph 5.6.5 and 5.6.6 and you also mentioned the others.

Financially what does it mean to Transnet when these swops are executed from time to time? Have you ever computed as to how much did Transnet lose?

MR MOHAMMED SULEMAN MAHOMEDY: Chair yes we have done the computation. I would like to just explain the computation.

ADV PHILLIP MAKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: If it – if I am allowed to. The first thing is that when you do an interest rate swop you are essentially looking at the future of interest rates as compared to where
10 you are. As I explained earlier on. Which means that if the agreement was signed at I am using an arbitrary number of 9.5% floating at a point in time and we then engage at 12% as long as that rate stays at 9.5 you will have a 3.5% deficit and you will be always paying 2.5% more. But one has to obviously always match this because the curves the interest rates do change. Your fixed will be exactly that it is fixed and as the forward view gets taken on an interest rate and you have interest rate increases in the market etcetera the differential will be lower if the interest rate goes lower than the 9.5 that you originally went at then it will be greater. So yes in terms of 5.6.11 in my statement we
20 endeavour to explain ...

ADV PHILLIP MAKOENA SC: It is on page 21 Chair.

MR MOHAMMED SULEMAN MAHOMEDY: Page 21

ADV PHILLIP MAKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: The decision to swop from floating interest rates to fixed interest rate has resulted in the following

additional interest rate cost to Transnet and this was as of the 25 February 2019. And Chair the context to that is that this is the differential between the interest rate over the last three odd years when this was signed in 2015 December to today to the 25 February 2019 just over three years. For the Nedbank transactions Transnet has paid additional interest of R785.3 million. For the Pension Fund transactions Transnet has paid an additional interest or paid additional interest of R696.6 million.

ADV PHILLIP MAKOENA SC: And this is on swops nothing more but
10 swops?

MR MOHAMMED SULEMAN MAHOMEDY: This is just on the swops. This is what we call realised loses meaning we have paid physically realised these particular losses. We also do a calculation of what we call the unrealised loss meaning what we estimate will be the loss of interest to the end of the transaction.

CHAIRPERSON: Does this represent a loss that Transnet says it would not of it probably would not have incurred had the swop not happened?

MR MOHAMMED SULEMAN MAHOMEDY: Yes Chair. If the swop was not executed.

20 **CHAIRPERSON:** Hm.

MR MOHAMMED SULEMAN MAHOMEDY: Then we would not have had this particular cost, additional cost.

CHAIRPERSON: Yes. Do – have you – I assume that in order to answer that you would – in order to be able to answer that question you would have been – you would have worked out exactly what Transnet

would have paid if there had been no swop in interest rates and the –
and because you have done that homework you are able to say this
loss would have been avoided?

MR MOHAMMED SULEMAN MAHOMEDY: Yes Chair this is that
homework that has been done.

CHAIRPERSON: YEs.

MR MOHAMMED SULEMAN MAHOMEDY: To actually look at

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: What did transpire on the
10 floating rate.

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: And again Chair I think it is
a crystal ball that not everybody owns but it is taking a view on the
long term interest rates.

CHAIRPERSON: Ja, ja.

MR MOHAMMED SULEMAN MAHOMEDY: The contrary position to this
is one would say well you know it was fixing the rate, it was all of these
good things that the advantages being that as you pointed out earlier
on it gives you a – it takes away the availability etcetera. That is in its
20 place.

CHAIRPERSON: Hm ja.

MR MOHAMMED SULEMAN MAHOMEDY: However the key question is
should Transnet have gone into the swops at all? And as I mentioned
the Deputy Treasurer at the time did not agree with the swops. The
consequence of entering into the swop agreement is as I pointed out in

terms of the realised losses of R785 million with the Nedbank transaction and R696.6 million with the Transnet Second Defined Pension Fund transaction.

CHAIRPERSON: That is altogether about R1 billion what?

MR MOHAMMED SULEMAN MAHOMEDY: Just over R1.4 billion Chair. Just about – sorry my apologies. Just about R1.4 billion.

CHAIRPERSON: About R1.4 billion.

MR MOHAMMED SULEMAN MAHOMEDY: And that is the differential in the interest rate between what was floating, what we would have paid.

10 **CHAIRPERSON**: Ja.

MR MOHAMMED SULEMAN MAHOMEDY: Versus what we are currently paying.

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: And that is only to the 25 February 2019.

CHAIRPERSON: Yes. And as we go on...

MR MOHAMMED SULEMAN MAHOMEDY: These contracts...

CHAIRPERSON: And as we go on you will be carrying more losses?

20 **MR MOHAMMED SULEMAN MAHOMEDY**: These contracts terminate in 2030 Chair.

CHAIRPERSON: Yes okay, okay.

ADV PHILLIP MAKOENA SC: I see that Chair you are now venturing into mathematical computation.

CHAIRPERSON: Yes.

ADV PHILLIP MAKOENA SC: Despite what happened between us when

Mr Volmink testified.

CHAIRPERSON: Yes. Let us take the – let us take the short adjournment and we will resume at half past eleven.

ADV PHILLIP MAKOENA SC: Yes.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Mr Mahomed my watch might be ahead of your – of your watch. It says 29 minutes to 12 now but I did say in the morning
10 that I was responsible earlier for about five minutes delay in our starting and also yesterday a few minutes. So – but I did say we try and improve.

MR MOHAMMED SULEMAN MAHOMEDY: My apologies Chair.

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: I was ...

CHAIRPERSON: Yes. No that is fine. Thank you.

ADV PHILLIP MAKOENA SC: Mr Mahomed just before the tea adjournment you were still dealing with paragraph 5.6.11. If you can summarise what you are conveying to the Chair please?

20 **MR MOHAMMED SULEMAN MAHOMEDY**: Chair as I said that the figures that we provided the 785 million and the 696 million in what we deem as realised losses. Meaning that based on the information up to 25 February that gap between the floating rate and the fixed rate has not closed. It has not narrowed for us to gain benefit from this transaction.

ADV PHILLIP MAKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: In addition ...

CHAIRPERSON: (Intervenes).

MR MOHAMMED SULEMAN MAHOMEDY: We also do a calculation of what we would call the unrealised portion of the loss looking forward to the end of the contracts and the calculations that we have performed to date say that there would be an additional - based on the forward curves of the intrastate as well. So it is not based on today's rate. It is based on the future perspective as well. We have an unrealised loss
10 of approximately a further R1.8 billion on these two transactions which essentially means that if things stay as they are and the forward curves stay as they are then Transnet will be – what we would call – out of the money by an estimated R3.2 billion over the 15 years.

CHAIRPERSON: Of course what is most important to consider when one looks at such a – a big amount of financial loss to Transnet that arose from the decision to swap from a floating interest rate to a fixed interest rate is to what extent that decision could be said to have been as a result of negligence – maybe gross negligence – or incompetence or a criminal agenda. In other words it is important as one looks at all
20 of this to be able to say to the extent that making the decision to swap from a floating interest to a fixed interest which has now produced this loss – future loss for – for Transnet. Was this simply because somebody may have meant while but just got things terribly wrong or is this a situation where one can say looking at the information that was available to the person and looking at that person's experience and

qualifications and competence in the – this kind of area that decision could simply not have been made by somebody who meant well for – was trying to look after the interest of Transnet as they should. So – so – and it may well be that sitting there you yourself might not be able to go as far as a certain point but you can only go up to a certain point but it is important that I know how far you can go in terms of saying when I criticise this decision I criticise it because I think the person who made it was somebody who had another agenda or you say I cannot go that far but I think it was just grossly wrong or grossly negligent for anybody with that kind of experience with those kind of qualifications and in that position to make this decision maybe in the light of what other people were saying on the same issue.

MR MOHAMMED SULEMAN MAHOMEDY: Chair I think one has to look at it very circumspectly and we have reviewed a number of documents in this regard and the overall management of the Treasury function. It is worthy to note in this particular transaction that there were no Transnet Treasury Officials involved in the execution in the calculations in the assessment of the swaps which in itself tells a story of in my humble opinion somebody not willing to take a risk that people will actually do the calculations and say no. That is the first point. The second point Chair in reviewing the documentation one does not get the sense that we actually considered a 15 year position on what may or may not have happened to the interest rates for us to make an informed decision. As per the memorandum that we discussed Chair it is clear. It says:

“We have reviewed the short term interest rate on
the medium period.”

This was a 15 year transaction which would have required at best for us to take a longer view than two and a half years. The memorandum from Mr Smith is also very clear. It says that he does not as the Deputy Treasurer with somebody who had at the time – I think - more than 30 years’ experience or about 30 years’ experience. It would not be opportune for somebody to ignore that for the Executives that were in place. You would have had to have considered this. Chair one other
10 key piece of information is that Transnet had not executed an interest rate swap for many years which then begs the question why this one – why suddenly and one has to draw the inference that it was done to benefit an entity in the like of Regiments specifically with the significant amount of money that then flowed to Regiments around this time and that is as far as I would go in terms of my assessment based on the reviews that we have undertaken. The issues of negligence or gross – dereliction of duty etcetera would be one for I guess another day but presented with information of this nature at the time and I guess one will also say well some of it is in hindsight but for a business
20 the size of Transnet one is always expected to take decisions in the interest of the business. The entity is a significant player in the South African space but also not just in itself but also in the space of public funding. So it would be something that you would have expected for the Executives to have obtained multiple opinions on this not to have executed based on – right now it is based on one individual that writes

memorandums to say that this is what I think should happen. Magnitudes of the transactions of R23 billion should have been considered a lot more diligently by the Executives at the time – in my view Chair.

CHAIRPERSON: Well you – you say something that is quite significant. You say negligence and gross negligence might be for another day but what you do say is in your view when you look at the facts and when you look at how this came about the surrounding circumstances you – you infer that the person who made this decision made it for the benefit
10 of Regiments. Is that correct?

MR MOHAMMED SULEMAN MAHOMEDY: Yes Chair.

CHAIRPERSON: To assist – to assist or benefit Regiments. In other words that would mean that that person did not seek to protect Transnet's interests at that stage and that person's – what you are saying would suggest that that person sought to benefit Regiments even to the detriment of Transnet. So I just want to – to make sure that I understand you what you are saying whether I understand you correctly.

MR MOHAMMED SULEMAN MAHOMEDY: Chair that is a – that is
20 correct from my perspective.

CHAIRPERSON: Yes. Okay, thank you.

ADV PHILLIP MAKOENA SC: Yes. Now if we can move on for you to summarise for us the contents of paragraphs 5.6.12 to 5.6.14 of your statement.

MR MOHAMMED SULEMAN MAHOMEDY: Chair I think it is necessary

to say that – you know – for what we could call an unwind of this transaction for us to actually get to a position where these losses ...

CHAIRPERSON: I am terribly sorry Mr Mahomed and Mr Mokoena. I just want to go back to the question I asked you just a minute ago. You did not want to express any opinion on the issues of negligence or gross negligence and that – that is why you said maybe that is for another day. I just want to mention this to you and then you can comment on it. If a person who was making the decision that there should be an interest rate swap was doing so in order to advantage or
10 ensure benefits to Regiments as opposed to looking after the interest of Transnet. That would exclude negligence because that person would have an intention – would be intending to benefit Regiments as opposed to Transnet. So in other words it is a – it is a much more serious conclusion to make against them – against that person than to say maybe it was negligence or competence. That you understand? You have no problem with that?

MR MOHAMMED SULEMAN MAHOMEDY: Yes that is correct Chair.

CHAIRPERSON: Yes, okay thank you.

MR MOHAMMED SULEMAN MAHOMEDY: But just to also – sorry – to
20 add to this I think it is also important – the one point that is important or two of them Chair is that the short period of time between the time we executed the loan and executed the swap one has to question why did we not think about entering into a fixed loan – fixed interest loan upfront.

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: As required by the dictates of our financial risk management framework ...

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: Within Transnet.

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: It is not a decision that you should be making ...

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: In between a transaction ...

10 **CHAIRPERSON:** Yes, yes.

MR MOHAMMED SULEMAN MAHOMEDY: Or intermittently.

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: It should also form part of your strategy.

CHAIRPERSON: Yes from the beginning?

MR MOHAMMED SULEMAN MAHOMEDY: From the beginning ...

CHAIRPERSON: Yes.

20 **MR MOHAMMED SULEMAN MAHOMEDY:** You should have a funding strategy that says X amount will be floating. X amount will be fixed and you will adhere to that.

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: Now had we gone into that transaction up front with a perspective of entering into a fixed rate ...

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: For that period of time we

would have a very difficult discussion today.

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: The rates may have been different. I do not say it would have been different. It could have been different.

CHAIRPERSON: Yes, *ja*.

MR MOHAMMED SULEMAN MAHOMEDY: But it questions the entire process in terms of why this was made and as I also presented Chair it was all done ...

10 **CHAIRPERSON:** Hm.

MR MOHAMMED SULEMAN MAHOMEDY: The decision to change from fixed to floating was done in a 24/48 hour period.

CHAIRPERSON: This was in – this was in March 2016. Is that right? When the swap ...?

MR MOHAMMED SULEMAN MAHOMEDY: Chair the first tranche was in December 2015.

CHAIRPERSON: December, yes.

MR MOHAMMED SULEMAN MAHOMEDY: On 4 December 2015.

20 **CHAIRPERSON:** Yes and the – the earlier – the time when it would have – the thing would have been considered as a long term view was how many months earlier than that?

MR MOHAMMED SULEMAN MAHOMEDY: Chair we had a number of discussions that go back to September/October 2015 ...

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: When the loans were being

conceptualised at the time.

CHAIRPERSON: Yes. So – so the – the point you are making – the latest point you are making is this that when – when you were considering the whole issue part of what you would have considered is whether the interest rate regime that should be applicable is a fixed rate - interest rate regime or a floating interest rate regime and in considering that you would have looked among other things at the long term nature of the transaction – 15 years and you would have looked also at the amounts involved and then you would have taken a
10 deliberate decision to go one – one way or another and in this case you took the decision to go the route of a floating interest rate. So the point you are making is that two/three – two/three months thereafter a decision is taking early December by one person maybe two persons. One recommend – asking for approval another one granting the approval to change that and you make the point. You say but if three months or so earlier looking at a long term view a decision was taken to say the floating interest route – rate route is the correct one. It should have been quite difficult to change it within such a short time. That is what you are saying?

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

CHAIRPERSON: There should have been something very special.

MR MOHAMMED SULEMAN MAHOMEDY: Yes Chair. I think your last point everything that you said is 100 percent correct but your last point needs a little more explanation.

CHAIRPERSON: Yes, yes, yes.

MR MOHAMMED SULEMAN MAHOMEDY: The question is what changed.

CHAIRPERSON: What changed?

MR MOHAMMED SULEMAN MAHOMEDY: For Transnet.

CHAIRPERSON: What was so special to change that earlier decision?

MR MOHAMMED SULEMAN MAHOMEDY: Correct.

CHAIRPERSON: And when you look at that memorandum from Mr Ramosebudi addressed to Mr Pita asking for the approvals you say you do not find anything special in – in the contents of that
10 memorandum that would justify the change?

MR MOHAMMED SULEMAN MAHOMEDY: Chair right up to 1 December ...

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: We are still in the process with the funding institutions to provide us the money.

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: They provide it on
1 December ...

CHAIRPERSON: Hm.

20 **MR MOHAMMED SULEMAN MAHOMEDY:** And we changed this strategy on 4 December.

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: Literally within – or the 2nd or 3 December ...

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: Within a few days.

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: So as you very succinctly point out Chair four or five months before that ...

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: Why was the strategy not reconsidered?

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: Why was the strategy to go
10 into floating? Why did it – what occurred?

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: Or what information was available to whom that would actually ...

CHAIRPERSON: Ja that had not been available before?

MR MOHAMMED SULEMAN MAHOMEDY: Correct but that is a very important question you asked Chair.

CHAIRPERSON: Hm and – and the persons or people from Transnet who had been involved in the earlier decision to say let us go the floating interest rate route would that have been a number of different
20 people who came to that decision?

MR MOHAMMED SULEMAN MAHOMEDY: Chair that transaction was the Club Loan. There would have - I assume – there would have been individuals ...

CHAIRPERSON: Ja.

MR MOHAMMED SULEMAN MAHOMEDY: That may have been

involved in that.

CHAIRPERSON: Yes, yes, yes but – but the change was made by ...?

MR MOHAMMED SULEMAN MAHOMEDY: An individual or two individuals.

CHAIRPERSON: An individual with the approval of another individual/

MR MOHAMMED SULEMAN MAHOMEDY: Yes Chair.

CHAIRPERSON: Yes, okay.

ADV PHILLIP MAKOENA SC: But coupled with that Mr Mahomedy there was a comprehensive advice by the Deputy Treasurer.

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

ADV PHILLIP MAKOENA SC: Who said that you cannot go on this interest swap in that manner and that advice was never taken?

MR MOHAMMED SULEMAN MAHOMEDY: That advice was not taken no, agree but I think Chair as we go further we will give more colour to what processes within Transnet should have been applied that in our view were not applied as a result of bringing in an intermediary like Regiments.

ADV PHILLIP MAKOENA SC: You were at the verge where you were now summarising for us the contents of paragraphs 5.6.12 to 5.6.14.

20 **MR MOHAMMED SULEMAN MAHOMEDY:** Chair as we said there is different cash flows over this – these particular transactions. However if the interest rates were to move in the wrong direction and one assumes that Transnet can recover from this position it would have to be very significant because we first have to recover the 1.4 billion that we are out of the money already and you would have had to look at that

benefit accruing a lot sooner and we do not in terms of the current trends and the current forward projections that is not where we think this transaction will conclude in any profit to Transnet. I must also hasten to point out that as I said the beneficiary of the TSDPF transaction is the Transnet Second Defined Pension Fund. We have also learnt that - as I said earlier on - that the Nedbank swap - interest rate swap was then effectively - if I can use the word - forward sold to the Pension Fund as well. For these transactions we understand the 20 bases point fee was included in the rates as a fee. We say it is

10 payable by Nedbank. I think it has been confirmed by Nedbank that they have not paid the fee directly. However we are looking at the calculation that has been provided by Regiments. As I also said earlier on Chair from the documents that we reviewed Regiments were paid R227 million by the Pension Fund. Now it is a matter of debate as to whether they were paid the amount or whether they had extracted the amount ...

ADV PHILLIP MAKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: And that is something that is under debate in the courts.

20 **CHAIRPERSON:** Is that about whether they helped themselves to the amount or whether they were paid by - by the Pension Fund? Is that what - what you are talking about?

MR MOHAMMED SULEMAN MAHOMEDY: Yes Chair.

CHAIRPERSON: Okay.

ADV PHILLIP MAKOENA SC: Now in relation to those swap

transactions you identified certain irregularities and you raised some of the concerns. Can you take us through those concerns that you are raising?

MR MOHAMMED SULEMAN MAHOMEDY: Chair I think as I mentioned earlier on Transnet had not entered into any major interest rate swaps in the recent past and the decision to enter into a loan agreement or the decision to enter into a loan agreement with a floating or fixed rate should have taken place at inception of that loan ideally. Whilst there may be circumstances and these are normal market conditions the
10 outlook on the interest rate does not change on a daily basis or a weekly basis. It is sometimes – unless you have quite a significant event that will create a swing in the market conditions. We did not see that in the three days or in the three months before that. I reiterate and reemphasise the point that the Transnet Treasury Team had and still has the expertise to handle these transactions what we term vanilla transactions. These are stock standard transactions or stock standard swaps. That the Transnet dealing room would have the expertise to assess and execute. I further go on – on page 22 under 5.6.15.2 – to explain what the normal process should have been within Transnet if
20 these swaps were executed by the Transnet Treasury Team. In all probability they would have looked at the transaction and then decided how many parties should have participated in the transaction up front. That would depend on what is called the counterparty appetite. The dealing room will then obtain pricing from counterparties and do a match and understand and assess which entity provided the right price.

Now how is the right price determined? The pricing obtained under 5.6.15.5 on page 22 Chair – pricing obtained is always benchmarked – benchmarked internally by the dealing team and they utilise independent pricing models of entities like Reuters and Bloomberg. Post the event – sorry Chair – none of these processes were followed internally at Transnet. The dealing room was not involved. They essentially were given the transaction after the conclusion to say you will record this particular transaction. When they were given this particular ...

- 10 **CHAIRPERSON:** And you have not come across any document in your review of these transaction which reflects any explanation by the people concerned as to why these processes that would normally have been expected to be followed were not followed?

MR MOHAMMED SULEMAN MAHOMEDY: Chair we have not come across any of that.

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: In fact to the contrary we have discussed this with Transnet Treasury Officials and the dealing room ...

- 20 **CHAIRPERSON:** Hm.

MR MOHAMMED SULEMAN MAHOMEDY: Individuals. They raised this as a concern.

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: They were told things like we will work around you. We will work above you. We will work

through you. Those were the kinds of statements that were made when people raised objections to some of these type of transactions to say why it is that we are not being considered ...

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: For providing our expertise. So to the contrary it was actually - in my humble opinion – an intent to have Regiments execute these transactions.

CHAIRPERSON: Well if – if that true that seems to say do not both us. You do not matter.

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

CHAIRPERSON: Is - is that a fair interpretation of what you understand was told to them?

MR MOHAMMED SULEMAN MAHOMEDY: Chair towards the latter part of yesterday I mentioned that the Chairman of the Board had made a statement at one of the Board meetings suggesting that Regiments had gained access to our dealing room.

CHAIRPERSON: Hm.

ADV PHILLIP MAKOENA SC:

20 **MR MOHAMMED SULEMAN MAHOMEDY:** And when I addressed that to the officials in the dealing room they said Regiments never gained access to the dealing room.

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: The dealing room just moved to Regiments.

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: So they executed the transactions on Transnet's behalf and the dealing room the individuals were not engaged or ...

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: Consulted in any shape or form.

CHAIRPERSON: And Mr Ramosebudi and Mr Pita would have been part of what is considered to be the dealing room?

MR MOHAMMED SULEMAN MAHOMEDY: No Chair.

10 **CHAIRPERSON:** In – in terms of normal processes at Transnet?

MR MOHAMMED SULEMAN MAHOMEDY: No Chair.

CHAIRPERSON: That would – they would not be part of that?

MR MOHAMMED SULEMAN MAHOMEDY: No they would not be part of that process. There is a much focused team.

CHAIRPERSON: Yes, yes.

MR MOHAMMED SULEMAN MAHOMEDY: Who works on – on these type of transactions.

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: It is the dealing room ...

20 **CHAIRPERSON:** Yes.

MR MOHAMMED SULEMAN MAHOMEDY: And they would report to Mr Ramosebudi as the departmental supervisor or superior ...

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: And Mr Ramosebudi would be the direct report of Mr Pita at the time and Mr Pita would not - as

the CFO – not necessarily have a direct line with the Treasury Team.

CHAIRPERSON: But if – if the people in the dealing room reported to Mr Ramosebudi then that means Mr Ramosebudi was in charge of the dealing room or was in charge of the people in the dealing room?

MR MOHAMMED SULEMAN MAHOMEDY: Yes Chair he was in charge of the people yes.

CHAIRPERSON: Yes. So he – he might not ordinarily have been expected to be part of a certain team maybe but he was in charge of them ...

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

CHAIRPERSON: And therefore if he was in charge of them I take it he was in charge of the dealing room.

MR MOHAMED SULEMAN MAHOMEDY: Yes, no I agree with you on that Chair.

CHAIRPERSON: Yes.

MR MOHAMED SULEMAN MAHOMEDY: But you, yes, so it would have reported to him ...(intervention)

CHAIRPERSON: Ja, I was trying to understand the concept of saying the dealing room went to Regiments, so if – because if you say Mr
20 Ramosebudi was not part of the dealing room then I'm wondering how did the dealing room go to Regiments, but if Mr Ramosebudi was in charge of the people in the dealing room then maybe I understand what they meant.

MR MOHAMED SULEMAN MAHOMEDY: Okay, no you're right ...(intervention)

ADV PHILLIP MOKOENA SC: The question might be which dealing room, the one at McKinsey or the one at Transnet.

CHAIRPERSON: No, no, the – what he was saying was that he was told, what Mr Mahomed was saying was that he was told by the people in the dealing room that the dealing room had gone to Regiments and I can only – in the context of his evidence I can only understand that to mean that somebody other than the team that normally forms the dealing room but somebody else connected with the dealing room went to Regiments, okay alright. So my understanding is correct?

10 **MR MOHAMED SULEMAN MAHOMEDY:** Correct Chair.

CHAIRPERSON: Okay thank you.

MR MOHAMED SULEMAN MAHOMEDY: Chair I think 5.6.1.16 on page 22 we say, “post the event of the interest rate swapped transactions in question the dealing team then obtained external indicative pricing from other market participants which suggested that the margin on the second (indistinct) of the Nedbank swop transactions, which was on the 7th of March 2016 were in the region of between 32 and 54 basis points higher as compared to quotes received. At the end of the transaction the dealing room was then given the documents to
20 record, some of those dealers decided to go and check on this pricing and they found that the Nedbank pricing was between 32 and 54 basis points higher than compared to quotes received. This is probably due...(intervention).

CHARPERSON: So in other words does this mean that somebody in the dealing room of Transnet went outside to test the quote that was

being approved by those above the dealing room team and established that those above them had actually received different quotes some of which were 32 and 54 basis points lower than the ones that were being approved. In other words one would have expected that they would have gone for a lower one, is that right but they'd gone for higher ones?

MR MOHAMED SULEMAN MAHOMEDY: That's correct Chair.

CHAIRPERSON: Okay which must have been quite surprising I would guess to the dealing team?

10 **MR MOHAMED SULEMAN MAHOMEDY:** Correct.

CHAIRPERSON: Okay.

MR MOHAMED SULEMAN MAHOMEDY: Because they then said that this is probably due to the fact both the swops with Nedbank and the pension fund was secured in a non-competitive environment and in addition both of these swops had to include the fee of 20 basis points payable to Regiments.

CHAIRPERSON: And that payment to Regiments you would say when you – when we hear about it we must remember that the fees for Regiments, or the commission had already been provided for elsewhere
20 earlier is that right?

MR MOHAMED SULEMAN MAHOMEDY: Yes, that's right.

CHAIRPERSON: Okay.

MR MOHAMED SULEMAN MAHOMEDY: Chair the premium or what we call the premium of 54 basis points on this quantum of debt over 15 years represents an approximate additional cost to Transnet of

246million rand on a net present value at the time of the trade and a premium of 32 basis points over 15 years approximates 146million rand of additional cost to Transnet over the period on a net present value.

ADV PHILLIP MOKOENA SC: And you conclude on that topic with paragraph 5.6.16 can you please summarise it for us?

MR MOHAMED SULEMAN MAHOMEDY: Chair in the local advisory – and my apologies to take us all the way back but in the local transaction advisory contract which initially was a confinement, and I may have stated yesterday, it was an open tender but it was actually a

10 confinement that went through a process and McKinsey or the McKinsey consortium was selected at that point in time. The McKinsey consortium had provided a submission to Transnet and it included Nedbank as one of the consortium partners. We also discussed then, that Nedbank – and I draw inference by the various communications between Transnet and McKinsey informing McKinsey of the conflict of interest that was identified or perceived at the time where Nedbank requested to be excused from the consortium as a result of them considering the need to get into funding transactions later on in the transaction.

20 What my point here is that, Nedbank had, essentially submitted a bid together with McKinsey and then later on Nedbank was replaced with Regiments as the party. That perceived conflict which existed when Nedbank withdrew was no different, in my view, to the conflict that existed when Regiments began executing transactions on Transnet's behalf as it related to the 1064 funding and I go further to

explain this. In my view, in 2015, Regiments had largely become the lead consortium partner with the exit of McKinsey at the time. They now provide advice through their advisory service, they provide advisory service on the funding programme. They then execute the swaps for Nedbank and the TSDBF the interest rates swaps for Transnet and the counter party being Nedbank and the Transnet Second Defined Pension Fund as the counter parties. Regiments receives significant payment from the TSDBF for this transaction. Regiments also gets paid for the arranging of the China Development Bank loan

10 which we spoke about earlier of 166million.

One other fact, Chair, is that Regiments a different company name within the Regiments stable is also the asset manager or one of the asset manager's of this Transnet Second Defined Pension Fund. So they acted as advisor to Transnet, they then act as the executor of the transaction with Nedbank and Transnet, on the other side they're acting as the asset manager for the pension fund and for me Chair, in my opinion Regiments were conflicted in their functions on many levels.

ADV PHILLIP MOKOENA SC: And having paid in all those different roles.

20 **MR MOHAMED SULEMAN MAHOMEDY:** In their different roles they were being paid by different entities. Some of them directly and others in-directly with the inclusion of the 20 basis points in the rate and I think, that for us, looking at that Executives across all of the entities should have identified this as an immediate red flag and also Chair I must also state that Transnet is conducting a detailed review of this

transaction with the pension fund, the implications thereof and also the entire process around which some of these were managed at the time and subsequently we have also in the recent days read about a very significant transaction that was done on the 9th of December 2015, the date on which a specific Finance Minister was removed and another appointed which, in some essence from the information that we currently have impacts the Transnet Second Defined Pension Fund as well. So the total flow of this Chair, is still a matter that is under review from Transnet's perspective.

- 10 **ADV PHILLIP MOKOENA SC:** Can we now move on to deal with the 1064 locomotive deferral options starting from paragraph 5.7 of your statement and firstly give us a background facts pertaining to that deferral.

- MR MOHAMED SULEMAN MAHOMEDY:** During the latter part of 2015 the signing of the 1064 contract – now the consequences of this were being felt in the business in the sense that we had paid, as I stated at that time, significant upfront deposits with not many locomotives by this time being received. This was causing a lot of challenges in the liquidity position at Transnet and Mr Pita, the then Group Chief
- 20 Financial Officer at the time contacted my office and asked that we assist in understanding the consequences and implications if Transnet were to defer the delivery schedule with the current OEM's. It was a request that obviously, when we looked at it, meant that we would be going back to the six-year delivery schedule that was originally envisioned in the business case largely. However we were also

informed, at the time, by the Group CFO that the Regiments team were working and reviewing what the costs may be if we extended these contracts further. In addition the Regiments team were also considering a number of different options giving due consideration to the (indistinct) of volume at the time, they were looking at whether there were opportunities to lease some of these locomotives to other parts of the Continent, creating special purpose vehicles for sale of excess locomotives etcetera, these were just some of the different options that apparently the Regiments team were looking at, as I was
10 informed by the CFO.

On the 26th of February 2016 one of the employees at Regiments submitted estimated calculations to my office to say that the possible, maximum deferral cost for another two years would be a further 13billion rand. Chair this would have been on top of the 54billion rand. My team and I were not aware of which contractual mandate this team at Regiments was working on, however, at the time I commissioned the Mckinsey team to review the Regiments proposals and consider all of the different nuisances of any potential deferral of the delivery programme. The McKinsey team were contracted under
20 what was then called SWAT2 at no additional cost it was within the contract that was established.

Chair there is a submission in the document that talks to the process that we followed and all of the different options that were considered, however, to put a shortened version on the table, we had considered all of the current – at the time, the current progress that

was being made or lack of it with the original equipment manufacturers and there were significant challenges that each one of them was facing. Some of them to date, have not yet been resolved. We had provided, to the Group Chief Financial Officer in writing that there was absolutely no need for us to engage with original equipment manufacturers to incur additional cost giving consideration to the production challenges that a few of them were facing and in some cases some of the OEM's had not even commenced production in South Africa. So based on that we had, I would say, concluded and informed the Group Chief Financial Officer

10 that nothing should happen. The reason we put this on the table is because there was a submission from Regiments that supposed a 13billion rand increment in the cost of the locomotives which we are grateful was not implemented at any point that is the reason for this.

ADV PHILLIP MOKOENA SC: Did you question at this stage as to how Regiments was appointed?

MR MOHAMED SULEMAN MAHOMEDY: Yes we did, we to date have not receive any response at that time we were not aware of which contract they were working on.

ADV PHILLIP MOKOENA SC: Yes, now can you proceed (indistinct)

20 SWAT contracts with McKinsey and Regiments?

MR MOHAMED SULEMAN MAHOMEDY: Chair as I made an effort yesterday to explain the concept of SWAT, this was just the project that was created to assist Transnet at the time in making sure that the capital portfolio was something that was achievable and that it was within the constraints of the various functions within Transnet whether

it was an executable portfolio, considering that it was quite a significant portfolio at the time. At points the portfolio was over 340billion and it was something that we needed to manage. I think the rationale for SWAT1, essentially was also – I think also it's important to point out that SWAT1 was envisaged in 2012, there was an open tender process, there was a whole lot of work that was done in 2012, I was not present in 2012 in this particular function, I only joined this department, as I said, around February 2013 when the – it was in the final stages of contracting with McKinsey.

- 10 I think the key issue was that the team – there wasn't a very significant team in Transnet at that point and there weren't very strict and formalised processes around the capital projects and capital programmes of Transnet. The key objectives for McKinsey at the time, for SWAT1 were that they had to formulate a capital strategy, they had to define the capital portfolio of Transnet, as I said, look at whether there were opportunities to optimise this portfolio, it was 340billion but we had to look at it in terms of affordability at Transnet, cash availability and all of the financial ratios and also look at whether this portfolio was doable and when I say doable meaning, could it be
- 20 executed within the then strategy of Transnet called MDS, the Market Demand Strategy. We attached in the documents some of the benefits at the time that were achieved which were signed off by the then Group CFO as well as the Group Chief Executive.

ADV PHILLIP MOKOENA SC: May I (indistinct) to page 499, it is folder number 29 Chair.

CHAIRPERSON: Thank you.

MR ADV PHILLIP MOKOENA SC: Are you there Mr Mahomedy?

MR MOHAMED SULEMAN MAHOMEDY: Yes.

ADV PHILLIP MOKOENA SC: Could you please identify that document?

MR MOHAMED SULEMAN MAHOMEDY: Chair it's a memorandum that's addressed from Mr Anoj Singh to the then Group Chief Financial Officer, to Mr Brian Molefe, the then Group Executive of Transnet.

ADV PHILLIP MOKOENA SC: Is it the one that you're referencing in
10 your testimony?

MR MOHAMED SULEMAN MAHOMEDY: Yes Chair, the purpose of this submission is to notify the Group Chief Executive of the capital portfolio savings and benefits of the McKinsey led consortium engaged in the capital optimisation SWAT initiative.

ADV PHILLIP MOKOENA SC: And you're also involved in this transaction?

MR MOHAMED SULEMAN MAHOMEDY: Yes I was involved in the management of this contract and the McKinsey and Regiments teams essentially reported into my office for the execution of SWAT1 and the
20 next programme which was called SWAT2.

CHAIRPERSON: And SWAT was that an acronym for anything?

MR MOHAMED SULEMAN MAHOMEDY: No Chair.

CHAIRPERSON: It was just a combination of letters?

MR MOHAMED SULEMAN MAHOMEDY: I'll have to ask somebody who was there at the time Chair, this was something that was defined in

2012 but it has, from what I've checked it has no specific – the abbreviation is not a representative of any specific nature.

CHAIRPERSON: Okay thank you.

ADV PHILLIP MOKOENA SC: And if you may turn now to page 506, Chair that is MSM13, it should be the folder number 13.

CHAIRPERSON: Thank you.

ADV PHILLIP MOKOENA SC: And also for completeness just take us – identify the document and take us through the contents thereof in summary.

- 10 **MR MOHAMED SULEMAN MAHOMEDY:** Chair I think this relates to what we call – it's a document from myself to the McKinsey led consortium at the time specifying very detailed what the billing and invoice processes should entail specifically in terms of who should be issuing the invoice, who should review the invoice, where it gets the proof of payment etcetera, quite clearly stated to both the McKinsey teams as well as the Regiments teams that were in the organisation at the time. This becomes more relevant as we go further down the document Chair, there is reason for this but it's actually just highlighting exactly what process was implemented at that time, who
- 20 would be the responsible manager, what would they prepare there would be a detailed benefits memo, we would have an understanding of how far they are in a particular piece of the contract etcetera, all that was relayed through this particular memo, making sure that there was an appropriate process for the approval of invoices for this particular project.

ADV PHILLIP MOKOENA SC: Yes, can you then take us through the other contracts involving McKinsey and Regiments as per your paragraph 5.9?

MR MOHAMED SULEMAN MAHOMEDY: Chair I think there were a number of other projects...(intervention).

ADV PHILLIP MOKOENA SC: And the reason why are you highlighting them in this statement?

MR MOHAMED SULEMAN MAHOMEDY: I think it's key to – for me to provide full transparency of my role with teams from McKinsey, 10 Regiments over the period of my tenure at Transnet. There were a number of projects that Regiments and McKinsey were involved in, as I put out the SWAT1 and SWAT2 these are two separate contracts, two separate projects, then there was the Manganese Support contract and I will touch on that just now and the NNPP project which was the new multi-purpose pipeline. These were significantly large capital projects that were under execution or getting close to execution and my role as the General Manager at the time of Group Capital Integration and Assurance was to look at some of these projects and whether we were ready for the execution of these projects and the NNPP was to address 20 some of the challenges. At the time the NNPP project was termed a project in distress, there was significant challenges to that project depends who you speak to the costs had escalated exponentially from the originally envisaged business case at the time which was written many years before that. There was a risk of security of supply to the inland of our country, the project was experiencing delays that were

going on, not for months but they were now going on for years and McKinsey was brought in at that time to assist, together with Regiments, to assist to try to bring this project back online. It was at that time, in 2014 before the locomotive contracts, it was about the biggest single investment Transnet was going to be involved in which was ranging between 25 and 30 billion rand, so that's the context of that particular one.

The Manganese project was also, at that time, envisaged to cost Transnet anything in the region of between 15 and 26 billion rand, the McKinsey consortium were brought in to assist with preparation to make sure that the project was viable, it was ready for execution.

ADV PHILLIP MOKOENA SC: And how were they appointed, the McKinsey consortium?

MR MOHAMED SULEMAN MAHOMEDY: As far as I'm aware these contracts were also through confinement. Now in my particular role in these it would have been, in one case, to integrate the different entities that would have been involved in the – in these particular projects to assist McKinsey in coordinating all of the stakeholders and the reason being that if we look at Manganese for example, it spread across a number of operating divisions within Transnet including Transnet Freight Rail, the Ports Authority as well as the Port Terminal Operator. So to assist in making sure that there was an integrated solution that was put on the table I would have played quite a role in integrating the key stakeholders of the various divisions.

We would also have been involved in looking at the

governance processes and making sure, from a capital perspective not a procurement perspective, that these projects were moving in the right direction and ultimately one of the key accountabilities was to always look at making sure the project could be delivered at the right value with the value engineering and that's largely the role that we would have played in a number of other transactions that involved McKinsey and Regiments.

ADV PHILLIP MOKOENA SC: We are now going to spend much more time on the next topic where you are dealing now with the relevant
10 issues pertaining to Trillian from page 27 paragraph 5.10 can you trace those events from 25th February 2016, you may proceed to outline those facts for us.

MR MOHAMED SULEMAN MAHOMEDY: Chairperson, I think it's also, here, relevant to give some context as I spoke about the SWAT2 contract, that was between Transnet and the heads of agreement was with McKinsey and at the time we were informed that the supplier development partner was Regiments. On the 25th of February 2016, Chair, if I may reference the Commission to the index MSM31 page 511.

ADV PHILLIP MOKOENA SC: It's folder 31 Chair.

20 **MR MOHAMED SULEMAN MAHOMEDY:** Folder 31, under the page number 511, I received an email from an employee of Regiments on the 25th of February 2016 at approximately 22h45pm and I will read this mail it says – it's from an employee at Regiments Ms Fahima Badat on the 25th of February as I said to undisclosed recipients, I was one of those recipients and it says,

“Good evening I trust that you are well. This email is to inform you that my email address will be changing effective 1st March 2016 to Fahima.Badat@tcp.co.za. as a consequence of the partnership re-configuration the Regiments Advisory Business Unit will form part of a new group of companies Trillian Capital Partners. We remain committed to exceptional client service during the transition. Please use my new email address going forward, kind regards”.

Chair on the 25th of...(intervention).

10 **CHAIRPERSON**: Well it says to undisclosed recipients that’s what the author would have written?

MR MOHAMED SULEMAN MAHOMEDY: No Chair they would have blind-carboned it to a whole lot of people so it wouldn’t actually reflect who it’s actually sent to but it was sent to me, amongst others.

CHAIRPERSON: Yes so the part that says undisclosed recipients would have been put by whom?

MR MOHAMED SULEMAN MAHOMEDY: That’s because there wasn’t a specific individual that was – it was sent to from an email perspective Chair from the system so this is just a system...(intervention).

20 **CHAIRPERSON**: Oh so this is what the system says when you don’t ... (intervention).

MR MOHAMED SULEMAN MAHOMEDY: When you blind-carbon.

CHAIRPERSON: Oh okay so but whatever the author would have done he or she – it’s a she is that right – she didn’t want the recipients to be known, is that right?

MR MOHAMED SULEMAN MAHOMEDY: That's correct Chair so I'm not sure who it was written to, all I'm aware of that I was one of the people.

CHAIRPERSON: Okay thank you and you knew the author?

MR MOHAMED SULEMAN MAHOMEDY: Yes Chair.

CHAIRPERSON: Before that?

MR MOHAMED SULEMAN MAHOMEDY: This was an individual who worked at the – at Regiments.

CHAIRPERSON: Yes okay.

10 **MR MOHAMED SULEMAN MAHOMEDY:** And had also worked on the SWAT1 and SWAT2 projects.

CHAIRPERSON: Okay, alright thank you.

MR MOHAMED SULEMAN MAHOMEDY: Chair within ten minutes of receiving that email I then forwarded that email to certain key partners and principals at McKinsey. Namely Mr Prakash Parbhoo, Mr David Fine and Mr Kannan Lakmeharan...(intervention).

CHAIRPERSON: Before you proceed you say that this was the author of this email was somebody at Regiments?

MR MOHAMMED SULEMAN MAHOMEDY: Yes Chair.

20 **CHAIRPERSON:** Who was involved in work relating to Swat 2?

MR MOHAMMED SULEMAN MAHOMEDY: Yes Chair.

CHAIRPERSON: How – what was her position? I just want to see how high she was in the Regiments hierarchy?

MR MOHAMMED SULEMAN MAHOMEDY: Chair I would not actually be able to confirm that but she was one of the seniors.

CHAIRPERSON: One of the senior people.

MR MOHAMMED SULEMAN MAHOMEDY: That was on the project yes.

CHAIRPERSON: Ja okay alright. You may proceed.

ADV PHILLIP MOKOENA SC SC: But at this stage Mr Mahomedy did you encounter Trillian before?

MR MOHAMMED SULEMAN MAHOMEDY: No Chair.

ADV PHILLIP MOKOENA SC: This will be the first time?

MR MOHAMMED SULEMAN MAHOMEDY: We had not encountered Trillian. We heard that there were – at this point we heard there were
10 rumblings of some discomfort within the Regiments space. We did not know about Trillian.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: And therefore I think the first thing or the first action from my side was to send it to the heads of agreement partner being McKinsey. And as I said I addressed – I literally just sent this mail on directly to them to the various – Mr Pabo was one of the key principles in Swat 2. Doctor Fine was one of the partners and Mr Lakmeharan was also one of the principles at the time on the Swat 2 contract.

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

MR MOHAMMED SULEMAN MAHOMEDY: We sent it for information to them.

ADV PHILLIP MOKOENA SC: You were just about to tell us as to what you did after receiving this email?

MR MOHAMMED SULEMAN MAHOMEDY: Chair subsequent to that I

forwarded the email to Mr Garry Pita and Mr Edward Thomas amongst others but these were the two key individuals. Mr Pita being the Group Chief Financial Officer and Mr Edward Thomas being the Group Supply Chain Officer, the head of procurement requesting their guidance as in my view at the time I said no procurement relationship existed with this new entity called Trillian. Again as I stated to them the Swat 2 engagement at the time was signed with McKinsey and Regiments as ...

CHAIRPERSON: I am sorry are you reading from an email you sent to them?

10 **MR MOHAMMED SULEMAN MAHOMEDY**: No Chair I am reading from my statement.

CHAIRPERSON: Oh from your statement okay.

MR MOHAMMED SULEMAN MAHOMEDY: On page 27.

CHAIRPERSON: Okay thank you.

MR MOHAMMED SULEMAN MAHOMEDY: Paragraph 5.10.2.

ADV PHILLIP MOKOENA SC: .2

CHAIRPERSON: Yes.

20 **MR MOHAMMED SULEMAN MAHOMEDY**: Chair as I said on the 1 March after sending this mail requesting guidance around the procurement issue because Trillian were not mentioned in any correspondence as far as I was aware of around the McKinsey contract. And I followed up and escalated the matter because I did not receive any response. I followed up and escalated the matter further to Mr Pita at a team meeting where I was informed that McKinsey was in the process of replacing Regiments with Trillian. This was the feedback

that was provided to me.

CHAIRPERSON: So – but – so McKinsey was not completely gone from the picture?

MR MOHAMMED SULEMAN MAHOMEDY: No Chair and the – in February 2016 they still had the Swat 2 contract which was continuing.

CHAIRPERSON: Ja.

MR MOHAMMED SULEMAN MAHOMEDY: They were still there.

CHAIRPERSON: Okay.

MR MOHAMMED SULEMAN MAHOMEDY: But then this problem with
10 Regiments came about.

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: Then we receive a note to say that Trillian is coming into the picture. We follow this up. We get told that there is a process between McKinsey and Trillian to replace Regiments.

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: However I cannot remember exactly but there was a letter that was circulated to my office by the McKinsey partnership at the time which was dated the 23 February
20 2016 which I annex as Folder 32 on page 513.

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: Chair this letter is signed by two directors of McKinsey and addressed to Mr Garry Pita. And in this document they make clear that we have been informed – sorry Chair I am reading on page 514.

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: Towards the middle of this particular page.

“We have been informed that Regiments Capitals management advisory business is transitioning ownership to Trillian Capital Partners. They will be subject to the ownership composition management and staff composition and capability criteria above. We are not able to commence a relationship with
10 Trillian or any other partner or sub-contractor until these criteria have been met and approved by our global risk and legal teams.”

What is clear is that on the 23 February 2014 – 2016 McKinsey had already given clear indication to the then CFO Mr Garry Pita that they had made no decision on engaging with Trillian.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: Yet on the 1 March 2016 when I escalated the matter I was told that there was a discussion between McKinsey and – in the – they were in the process of replacing
20 Regiments with Trillian. Chair further to that on the 10 May 2016 under Folder 33 page 517 there was a special acquisitions and disposals committee meeting which was held.

CHAIRPERSON: That is now a committee of the board?

MR MOHAMMED SULEMAN MAHOMEDY: Yes Chair.

CHAIRPERSON: Ja okay.

MR MOHAMMED SULEMAN MAHOMEDY: This committee approved the session of certain contracts from Regiments to Trillian.

ADV PHILLIP MOKOENA SC: Can you read for us paragraph 5.2?

MR MOHAMMED SULEMAN MAHOMEDY: It says:

“Firstly this is the special acquisitions and disposals committee meeting held on the 10 May 2016 resolution number 5.2 – my apologies sorry item number 5.2 session between Regiments and Trillian. Resolved that the committee approved.

10 The session of the contract from Regiments Limited PTY Limited to Trillian Capital Partners being satisfied that the BBBE status is not affected. The increase in scope for the detailed capital optimisation services and the increase in contract value from R375 million to R463.3 million and the contract extension on the 30 September 2016 to the 31 March 2018 subject to zero budget implications for the company.”

ADV PHILLIP MOKOENA SC: Now before you comment on the
20 contents of that approval as per resolution that you have just read now when this acquisition disposal committee approved or purported to approve the session do you know whether they were furnished with any sessionary agreement between the parties?

MR MOHAMMED SULEMAN MAHOMEDY: As far as we have reviewed all of the documents Chair we have not come across a formal session

agreement.

ADV PHILLIP MOKOENA SC: And this body was it aware that Trillian had not submitted any tender to Transnet in order for it to provide these services?

MR MOHAMMED SULEMAN MAHOMEDY: In terms of what was submitted to this body for approval was again – once again a memorandum that was presented to the board acquisition disposals committee which I have under Folder 34 but that was all.

CHAIRPERSON: Is it Folder 34?

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

CHAIRPERSON: Hm. Does it – I am going there. Does it purport to tell the committee what the terms and conditions of the session were going to be?

MR MOHAMMED SULEMAN MAHOMEDY: Chair as far as I have reviewed this document it does not go into a detailed discussion on the terms of the session but rather focusses on a letter I think that is – well that was annexed to this document at the time. It is not annexed to this particular memorandum. On page 521.

CHAIRPERSON: Yes.

20 **MR MOHAMMED SULEMAN MAHOMEDY:** The bottom and it just states that: “On the 13 April 2016 Mr Eric Wood sent a letter to Transnet Annexure B indicating that he is ceding his rights received from Regiments to Trillian Capital Partners effective 1 March 2016. Trillian – Transnet

then initiated its vendor process and there is no reason why Trillian cannot be a vendor to Transnet.”

ADV PHILLIP MOKOENA SC: And that was all?

MR MOHAMMED SULEMAN MAHOMEDY: That is what is being – what is stated here.

ADV PHILLIP MOKOENA SC: And at that stage Mr Mahomedy do you know whether any due diligence was conducted in relation to Trillian who is now going to acquire the services that were initially performed by McKinsey?

10 **MR MOHAMMED SULEMAN MAHOMEDY:** Chair on page 521.1, 521.1 the very next page there is an attempt to explain that where they say that the EME affidavit provided for the level 2 BBBE certification indicated that they are 60% black owned. The shareholding of Trillian Holdings Pty Limited 60% wholly owned by Mr Salim Essa. [Indistinct] Pty Limited Pty Limited 25% wholly owned by Mr Eric Wood. Daniel Benjamin Roy 1.8%. Jan Johannes Fourie 1.2%. Another company which is I think pronounced Arium Nominees 12%. A holding vehicle whose shares will be transferred to staff at a later stage. And the directors of this company were Eric Anthony Wood, Tebogo Leballo, 20 Jeffrey Irvine Afriat at the time. And he just goes on to explain that Trillian or the company its shareholders are nought on the Transnet list of excluded tenderers.

ADV PHILLIP MOKOENA SC: Yes. So Trillian was going to take those services from Regiments by merely that letter and the memorandum that you have indicated to the Chair and nothing more. No

procurement, no committee having reviewed any of the relevant documents.

MR MOHAMMED SULEMAN MAHOMEDY: That is correct. But I would like to add.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: In terms of point number 17 on this memorandum just mid-way through that or it says:

“There is a requirement for the scope of the contract.”

10 The second sentence Chairperson.

“There is a requirement for the scope of the contract to be increased to include the full ambit of the capital optimisation programme and to include increase the value of the contract by the unspent...”

CHAIRPERSON: I am sorry you have lost me, where are you reading from?

MR MOHAMMED SULEMAN MAHOMEDY: Chair I am still on page 521.1.

CHAIRPERSON: Okay.

20 **MR MOHAMMED SULEMAN MAHOMEDY:** It is point number 17.

CHAIRPERSON: Okay alright thank you.

MR MOHAMMED SULEMAN MAHOMEDY: My apologies Chair.

“There is a requirement for the scope of the contract to be increased to include the full ambit of the capital optimisation programme and to increase the

value of the contract by the unspent portion of the previous capital optimisation contract of R88.3 million. That contract is the previous capital optimisation contract is what we call Swat 2.”

I will give some context to that now Chair.

“And to increase the contract date from 30 September to the 31 March.”

So essentially there were two particular sessions. The one was what was commonly called the General Freight Optimisation Programme
10 which was heads of agreement was with Regiments. As per point 17 it talks about the capital optimisation contract. And they talk about the unspent portion of R88 million. This contract heads of agreement was with McKinsey. As far as I am aware there has been no indication from McKinsey written or otherwise in a form of an agreement or a letter that ceded this contract to Trillian. So there were two parts of this that we have to keep in mind. It was not just one session. It was essentially in my humble opinion two sessions. One was the General Freight Contract which Regiments were the heads of agreement with and that is a purported session that they talk about. But the second one is the
20 Capital Optimisation Contract which at the time was the heads of agreement was with McKinsey. In addition as far as my memory serves that contract terminated in April 2016 which makes it strange that in May 2016 we see the contract that is essentially terminated. It – from

CHAIRPERSON: Purported to be ceded?

MR MOHAMMED SULEMAN MAHOMEDY: Yes.

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: It is purported to be ceded. Firstly there is no indication from McKinsey that they ceded this contract to anybody because the contract terminated if my memory serves me correctly I think it was the 8 April 2016.

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: A month later there is a document that purports to cede that part of the contract to Trillian.

CHAIRPERSON: Hm.

10 **ADV PHILLIP MOKOENA SC:** Yes. But there was also this increase scope of capital optimisation of R88.3 million was that subjected to any formal tender or procurement within Transnet?

MR MOHAMMED SULEMAN MAHOMEDY: No as far as I am concerned there was not even a request for that service because at that time this particular activity rested within the confines of my department. We were not even aware that there was this requirement or submission that was being made on our behalf. But as I said there was a contract that previously existed which terminated in April 2016 that talks to this little piece that is called 'increase scope for capital optimisation' but there
20 was no procurement event, no.

ADV PHILLIP MOKOENA SC: Now I pose this question to you at the time when we are still on page 517 dealing with what was approved in paragraph 5.2 and I wish to invite your comment on that paragraph?

MR MOHAMMED SULEMAN MAHOMEDY: Well Chair I think again you know for me it is a purported session. The documents that were

submitted did not carry a session agreement. There were would be a number of questions that one could ask around the due diligence of Trillian at that point in time. But again also whether it was even appropriate that we could have as management and the management who submitted this submission made the claims that were did around the value, the session as well as the increased scope of R83 million.

CHAIRPERSON: This session referred to in Item 5.2 at page 157 that is a resolution of the acquisition or special acquisitions and disposals committee of the board does not the wording – does not refer to an approval in principle or approval of a session in principle which is different from approving the actual

MR MOHAMMED SULEMAN MAHOMEDY: Session.

CHAIRPERSON: Session and to the extent that that is a correct reading of that resolution then one would say how could the committee approve a session without seeing the actual session where the terms and conditions would be set out. And you have said that you – through your process of reviewing all these transactions and looking at all kinds of documents you have been unable to come across the actual agreement, the actual session.

MR MOHAMMED SULEMAN MAHOMEDY: Chair that is correct. And to your previous point Chair I agree whole heartedly because as the executives and non-executive directors of the business the key issue is one has to understand the terms and conditions of that session to ensure that the session was not going to put Transnet through any undue risk. That would have been expected of the – of that committee

as well as the executives who made this – the submission.

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: However there is a single letter as far as I am aware that says: Mr Wood is proposing that this be ceded. The problem with that is that he is a member of Regiments at the time and he is a member of Trillian later on as well so again one could question this from a – many different conflict angles as well.

CHAIRPERSON: Because the importance of an in principle decision is where the board or the committee might be saying in principle we
10 approve negotiations for a session but in the end we must see the session and then see whether we in the light of the terms and conditions we approve.

MR MOHAMMED SULEMAN MAHOMEDY: Yes.

CHAIRPERSON: But you cannot – it is difficult to see how you can approve an agreement without seeing the terms and conditions of the agreement.

MR MOHAMMED SULEMAN MAHOMEDY: I agree Chair.

CHAIRPERSON: Yes. Okay.

ADV PHILLIP MOKOENA SC: But could this be the services that one
20 could simple cede without having to really invite tenders and ensure that there is an open, fair, transparent, competitive procurement system?

MR MOHAMMED SULEMAN MAHOMEDY: No that is clearly not apparent in the process that was followed here. It was merely a transfer of a contract from one entity to another with no procurement

event. If that entity was not going to actually execute the transactions you would have had to have gone back and asked why because there was a contract in place for that entity to deliver in this Regiments whatever the deliverables were expected. So it does not from a procurement perspective it does not necessarily make sense that we would have just ceded over a contract without understanding the session agreement, without understanding the risks to Transnet. Without assessing whether there was a need to actually go out on a new procurement event instead of just – so this was essentially for
 10 want of a better phrase Chair and would like not – this is not part of a procurement principle in Transnet but it became a confidential confined session. That is really what happened here because this entity came out of nowhere.

CHAIRPERSON: Well a question which I asked Mr Volmink last week when he gave his evidence was whether a session is compatible with the whole idea of tenders or procurement because the idea of procurement of a tender is that:

1. The body issuing the tender Transnet in this case wants to get the best service for as reasonably priced as possible for the
 20 cheapest price they can get out of the market. Sometimes they may be certain factors that are taken into account but basically that is where you start from you know. If two companies are going to give you a service that is equal and one offers you a cheaper price than the other you go for the one with the cheaper price. Excuse me. There may be factors where you may led you

to [indistinct] tamper with that but that is the starting point. And now but then the other factor is that you have an obligation to ensure that who you give business to is dealt with transparently to avoid corruption. And one of the factors you have to take into account is can they deliver?

2. You want to see a lot of things about their credibility and so on and so on and you will invite different people to tender. And if – and nobody who meets the requirements is excluded as long as you meet the requirements you may put in your bid. So if now
10 having gone through that process you are going – and you have chosen a particular service provider and then before they can finish the job they saying well we will give this job to somebody else and from now on it is so and so that will do this job. It does not seem that it is compatible with the whole idea of a tender. It seems that a service provider which for one or other reason realises that they can no longer perform in accordance with the contract should be – should come back and say we have difficulties we cannot perform and then you as the business must then decide how that should be dealt with and it may well be that
20 you should put out a tender for somebody who can finish that job. So I do not know whether you are able to say anything on this but the more I think about it the more it seems to me that the whole idea of a session is incompatible with the whole idea of tenders and open and transparent processes that are required by Section 217 of The Constitution and our procurement legislation.

MR MOHAMMED SULEMAN MAHOMEDY: Chair if I may comment on that?

CHAIRPERSON: And I appreciate that maybe some of this might be law.

MR MOHAMMED SULEMAN MAHOMEDY: Yes.

CHAIRPERSON: And you might not be able to express a view but I just give you a chance to comment if you want to.

MR MOHAMMED SULEMAN MAHOMEDY: Chair earlier in my testimony we talk of the McKinsey consortium on 1064 advisory.

10 **CHAIRPERSON:** Hm.

MR MOHAMMED SULEMAN MAHOMEDY: And we mention that because there was a change in the consortium composition that process was deemed irregular. It would hold the same principle in my view in terms of the consortium in this case here was Regiments and McKinsey became Trillian with McKinsey being excluded. And you bring in this case even further you remove Regiments as the entity, the juristic entity that the contract was entered into with and replace them with an entity that is completely different. To Advocate Mokoena's point as well I think it is important that when we talk about the due
20 diligence did we do a due diligence on the capacity and capability of this entity to execute exactly what was originally envisaged in the contracts. And that question remains unanswered or is absent in terms of the memorandum. And I think Chair to opine on what you have just put out I think that it is not compatible to have sessions as you would bring in – you could bring in significant undue risk to – into a

procurement event that was essentially de-risked at the time of the event. There could be a whole host of other matters that we will have to look at but I think this particular session is flawed fundamentally because the consortium that had put in the bid was McKinsey and – or at the time Regiments and McKinsey and that was fundamentally changed firstly by removing McKinsey and then replacing them with Trillian. So I think that I support some of your views Chair.

ADV PHILLIP MOKOENA SC: Yes. May I refer you to page 28, 28 of your statement.

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

ADV PHILLIP MOKOENA SC: With particular reference to paragraph 5.10.5.3 where you state that where it was stated by the ADC that there was an increase in contract value of GFB contract from 375 million to 463.3 million. Do you know which contract are they referring to here?

MR MOHAMMED SULEMAN MAHOMEDY: Yes there is a – there was a contract called General Freight Optimisation.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: Which I believe the heads of agreement was between Transnet and Regiments with McKinsey as a
20 partner or a supply development partner to that – to Regiments.

ADV PHILLIP MOKOENA SC: But they were now going to be performed by

MR MOHAMMED SULEMAN MAHOMEDY: Trillian.

ADV PHILLIP MOKOENA SC: Trillian?

MR MOHAMMED SULEMAN MAHOMEDY: Yes.

ADV PHILLIP MAKOENA SC: And when that scope of that magnitude was been envisaged also that component did not go to any procurement of any tender processes?

MR MOHAMMED SULEMAN MAHOMEDY: As far as I am aware the initial contract to Regiments was also a confinement.

ADV PHILLIP MAKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: So it went through a confinement process but this increase in scope did not go through any procurement activities.

10 **ADV PHILLIP MAKOENA SC:** Yes. Chair would this be an appropriate time to adjourn for lunch?

CHAIRPERSON: Yes, let us take the lunch adjournment and we will resume at two. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Are you ready Mr Mokoena?

ADV PHILLIP MOKOENA SC: Chair we are ready.

CHAIRPERSON: Thank you, proceed.

20 **ADV PHILLIP MOKOENA SC:** Chair before we proceed with the remaining paragraphs under that heading that we were dealing with before the lunch adjournment we managed to trace some of the documents which the Chair requested us to locate, we beg leave to hand in the memorandum dated the 2nd December 2015 and also the letter dated the 16th of March 2016. We will then try to locate – Chair

we propose subject to your directions that the memorandum dated the 2nd December 2015 be inserted immediately after the documents in folder number 24, because it makes sense, that's where they feed in in terms of chronology and the evidence of Mr Mahomedy and subject to your directions to mark them as page 462.1 to page 462.3.

CHAIRPERSON: Oh this memorandum that has just been handed up is not Mr Ramosebudi's memorandum that we discussed earlier?

ADV PHILLIP MOKOENA SC: It's not Chair we will lead the witness through this memorandum then you'll follow the sense is the one which
10 was advising against the swap and it was only referenced in an email but we did not have the memorandum itself. So if Chair could go to folder number 24.

CHAIRPERSON: Yes that's where I am.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: What I'm looking at is when you said it's a memorandum dated 2 December I thought it would be the memorandum that Mr Mahomedy told me about which had preceded Mr Ramosebudi's memo which was taking a position in relation to interest rate swaps that was directly against the position taken by Mr
20 Ramosebudi...(intervention).

ADV PHILLIP MOKOENA SC: This is the memorandums Chair if you look at the sequence...(intervention).

MR MOHAMED SULEMAN MAHOMEDY: (Indistinct) from Mr Ramosebudi.

ADV PHILLIP MOKOENA SC: No Chair if you go to the last page,

page 463 – 462.3.

CHAIRPERSON: What page?

ADV PHILLIP MOKOENA SC: 461 – oh the document that we've just handed to you Chair, of the document that we've just handed to the Chair.

CHAIRPERSON: Ja.

ADV PHILLIP MOKOENA SC: And then go to the last page of that document.

CHAIRPERSON: Yes.

10 **ADV PHILLIP MOKOENA SC:** Mr Mahomedy will explain to you that this was in fact a document by Mr Denis Smit, the Group Treasurer.

CHAIRPERSON: Yes.

ADV PHILLIP MOKOENA SC: And he'll explain to you as to why you find the name of Mr Gary Pita and Mr Ramosebudi but he'll do that through his evidence, you'll follow it.

MR MOHAMED SULEMAN MAHOMEDY: Oh okay alright.

ADV PHILLIP MOKOENA SC: Yes so this is the one that precedes...(intervention).

CHAIRPERSON: Oh okay so where should we slot this one in?

20 **ADV PHILLIP MOKOENA SC:** This one should go immediately after page 460.

CHAIRPERSON: Shouldn't it come before page 457 in terms of the dates in comes before and in terms of the logic of the story it seems to be long before?

ADV PHILLIP MOKOENA SC: Chair we can then amend the page to

become 457.1 instead.

CHAIRPERSON: What should we mark it page?

ADV PHILLIP MOKOENA SC: Page 457.1 and then we'll number the following pages as 457.2 and 457.3 in order to follow that chronology and the sequence.

CHAIRPERSON: We'll mark it MSM – or should we make a reference to MSM or not?

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: MSM457.1, the only thing is that in the affidavit does
10 he refer to such a memo?

ADV PHILLIP MOKOENA SC: No Chair he doesn't refer to it.

CHAIRPERSON: Okay we'll slot it in with the understanding that it's not a memo referred to in his affidavit but it should have been referred to and it belongs immediately before the one that is at page MSM457 but you have said that we must put .2 for the other one.

ADV PHILLIP MOKOENA SC: For the next page.

CHAIRPERSON: Yes for the next...(intervention).

ADV PHILLIP MOKOENA SC: Yes and the other page should be .3 so that we are able to follow in terms of reference.

20 **CHAIRPERSON:** Okay now let's – the new memo the first page on the new memo is MSM457.1.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Must I then say 2, 3 for the next one?

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Okay.

ADV PHILLIP MOKOENA SC: 457.2 and 457.3, the last page.

CHAIRPERSON: Is – has the witnesses one already been taken care of?

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Okay and then the one that was – that is 457 remains as 457 or do we do anything to it?

ADV PHILLIP MOKOENA SC: That will go to folder now – if you go to folder number 25 Chair.

CHAIRPERSON: Ja.

10 **ADV PHILLIP MOKOENA SC:** You'll see that's where on page 464 Mr Mahomedy is referencing a number of emails and they go up until the last email which is on page 470 therefore we are proposing that this one document, it should be page 470.1.

CHAIRPERSON: Are you talking about the letter now?

ADV PHILLIP MOKOENA SC: The letter Chair, yes.

CHAIRPERSON: Oh I'm not there yet.

ADV PHILLIP MOKOENA SC: Oh you're still on the memo?

CHAIRPERSON: I'm still on the memo we have marked the new memo MSM457.1 up to 3.

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

CHAIRPERSON: And I think we have agreed that it should come immediately before MSM457.

ADV PHILLIP MOKOENA SC: Definitely.

CHAIRPERSON: So my question was whether we should leave MSM457 as it is in terms of the numbering of the page or whether we

should put any new thing.

ADV PHILLIP MOKOENA SC: No Chair...(intervention).

CHAIRPERSON: You want us to leave it like that?

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Okay this will have to be punched then in due course okay then you say we – in regard to the letter...(intervention).

ADV PHILLIP MOKOENA SC: The letter should go immediately after page MSM470 which is the last email in the sequence of those correspondence.

10 **CHAIRPERSON:** And you suggest that it should be MSM what?

ADV PHILLIP MOKOENA SC: 470.1 so that it doesn't tamper with any other numbers.

CHAIRPERSON: Okay, alright thank you, yes.

ADV PHILLIP MOKOENA SC: Yes Chair, having done that then we can proceed to place them properly by means of evidence of Mr Mahomedy. Mr Mahomedy earlier on, with reference to folder number 24...(intervention).

20 **CHAIRPERSON:** Maybe just before you proceed because there is a context to the new memo or are you going to go back to it at some stage with the witness?

ADV PHILLIP MOKOENA SC: Yes that's what I'm...(intervention).

CHAIRPERSON: Oh okay I wanted to – ja that's fine then.

ADV PHILLIP MOKOENA SC: With referenced to folder 24 which is page MSM457 you indicated that there was a memo – this was the memo by Mr Ramosebudi which was despatched to Mr Gary Pita, do

you recall?

MR MOHAMED SULEMAN MAHOMEDY: Yes.

ADV PHILLIP MOKOENA SC: And you also referred to a memorandum preceding this one wherein there was a clear advice not to make a – an interest rate swap do you recall that?

MR MOHAMED SULEMAN MAHOMEDY: Yes.

ADV PHILLIP MOKOENA SC: Unfortunately that document was not part of the papers and you have now since located that document, am I correct?

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

ADV PHILLIP MOKOENA SC: Now may I refer you to MSM457.1 and please identify that document.

MR MOHAMED SULEMAN MAHOMEDY: Chair it's a memorandum which is unsigned but attached which was Annexed to an email from Mr Danie Smit to Mr Ramosebudi and Mr Pita which is titled, "12billion rand club loan interest rate, risk explanation" and dated the 2nd of December 2015.

ADV PHILLIP MOKOENA SC: Yes but when you look on the fact of that document it says to Gary Pita acting Group Chief Financial Officer
20 then it says from Phetolo Ramosebudi Group Treasurer. Can you explain how do you come to the conclusion that it was in fact from Mr Danie Smit?

MR MOHAMED SULEMAN MAHOMEDY: Chair as I testified earlier the email that was sent on the 2nd of December 2015 at 10h30am from Mr Danie Smit which is evidence pack 462 where he states, my humble

opinion on the interest rate exposure of the club loan and as you will note there, there was a document attached to that email, this is the document that was attached to that email. So it was essentially prepared as is stated on the document on page 457.3 that it was compiled by Danie Smit and it was supposed to have been then recommended by Mr Ramosebudi for submission to – for approval by the then acting Group Chief Financial Officer and we are now aware that, that document did not get approved.

CHAIRPERSON: I think you said Mr Danie Smit reported to Mr
10 Ramosebudi, is that right?

MR MOHAMED SULEMAN MAHOMEDY: Yes Chair.

CHAIRPERSON: So Mr Danie Smit would have prepared a – this document on the basis that it would be – it would go, ultimately to Mr Gary Pita but after Mr Ramosebudi had signed it – had signed it to say he was recommending what was said in the memo.

MR MOHAMED SULEMAN MAHOMEDY: Yes Chair, that would have been the flow ordinarily.

CHAIRPERSON: Yes so the intention was that in effect Mr Danie Smit and Mr Ramosebudi would be making a recommendation to Mr Gary
20 Pita and that the recommendation would be based and supported by the contents of the memo.

MR MOHAMED SULEMAN MAHOMEDY: That is correct.

CHAIRPERSON: But if Mr Ramosebudi did not agree with it then he could amend it or change it or whatever but Mr Danie Smit prepared it on the basis that he and Mr Ramosebudi would agree but as it turned

out Mr Ramosebudi does not appear to have agreed.

MR MOHAMED SULEMAN MAHOMEDY: That is correct Chair.

CHAIRPERSON: Okay, alright.

ADV PHILLIP MOKOENA SC: Now may I refer you to page 457.2 of that memorandum that we've just introduced into evidence and take us what Mr Danie Smit says under the heading, conclusion?

MR MOHAMED SULEMAN MAHOMEDY: Chair under the conclusion point number 14 of this memorandum it states,

10 "it is recommended that the club loan not be switched to a fixed rate exposure by means of an interest rate swap due to the following: if there was a definite need to fix the rate during the finalisation of the club loan, the loan should have been dealt as fixed as any swap will create an amount of volatility in the income statement due to fair value movements which could be minimised by the application of hedge accounting. Interest rate swaps will use massive credit lines from banks which is not that freely available over a 15 year tenure and these lines are required to hedge foreign exchange related exposures due to the MDS requirements. Swaps will
20 come at a cost which need to be determined in the market. Liquidity for the 12billion will have to be tested in the market. There is currently a gap of around 200 basis points between the cost of a floating rate and the indicative cost to fix and based on the forecasts from BER and the additional pressure the cost of swapping to fixed will create, on the cash interest

cover ratio of the Group. It is not recommended to swap the club loan from floating to fixed”.

ADV PHILLIP MOKOENA SC: So this was the advice conveyed by Mr Danie Smit to Mr Ramosebudi?

MR MOHAMED SULEMAN MAHOMEDY: Yes.

ADV PHILLIP MOKOENA SC: And despite this advice you’ve already testified that we know that the swap were executed.

MR MOHAMED SULEMAN MAHOMEDY: That is correct.

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

- 10 **CHAIRPERSON:** This memo gives reasons of motivation why it was not a good idea in the view of Mr Danie Smit to swap interest rates regime from floating interest rate regime to a fixed interest rate regime and – but we know that about two days later – is it two days later Mr Ramosebudi prepared a document that was saying that there should be a swap. Now have you had the chance to look at the reasons given by both these memo for the different positions they take and are you able to say whether or not the one that Mr Ramosebudi sent to Mr Pita whether it does reflect that he had an answer for the arguments in the other memo. In other words does his memo tell us that he did consider
- 20 the various arguments against a swap and he had an answer for those arguments and that’s why he went ahead and didn’t agree with Mr Danie Smit’s position?

ADV PHILLIP MOKOENA SC: Chair we have had a chance to look at the two, the peculiar thing is that if you look at the two memo’s the two memorandums under discussion points 4 to 8 is essentially, largely a

copy and paste from one memo to the other which actually doesn't make sense because the one memorandum is saying you shouldn't be actually executing this and the other – the memorandum on the 3rd of December says you should but there are some slight nuisances that have been amended, so that's the first thing but the second thing is that...(intervention).

CHAIRPERSON: I'm sorry just to get that, did you say from what, 2 to 8?

ADV PHILLIP MOKOENA SC: Chair points 4, if you look at both
10 memorandum point 4...(intervention).

CHAIRPERSON: On each one?

MR MOHAMED SULEMAN MAHOMEDY: Point 8 or 10 on 457.1 it's point 4 to 10 has largely been copied and pasted into memorandum number 457 from point 4 to 8 with some minor tweaks.

CHAIRPERSON: Yes and that's the discussion part.

MR MOHAMED SULEMAN MAHOMEDY: Yes.

CHAIRPERSON: Okay and I see that on the purpose Mr Danie Smit's one has got one purpose, Mr Ramosebudi's one has got three purposes, is that right?

20 **MR MOHAMED SULEMAN MAHOMEDY:** Yes Chair that's the difference.

CHAIRPERSON: Yes and then you can go on.

MR MOHAMED SULEMAN MAHOMEDY: Chair then if we look at the key issues that have been raised by Mr Smit, the first one is, if there was a definite need to fix it should have been at the finalisation of the

club loan, that matter is not responded to in any way.

CHAIRPERSON: Is not dealt with ja.

MR MOHAMED SULEMAN MAHOMEDY: No Chair, the interest rate swaps will use massive credit lines from banks which is not that freely available, that again, when we look at the memorandum under the motivation, it's not mentioned at all in terms of how that was going to be mitigated, it's a significant risk. Swaps will come at a cost, that is somewhat addressed in the discussion which was a copy from the previous document...(intervention).

10 **CHAIRPERSON:** But then if – but then if it is part of the discussion that was in Mr Danie Smit's memo then it can't possibly support contradictory conclusion.

MR MOHAMED SULEMAN MAHOMEDY: Chair the only thing they did was, they used that argument and then added a line that says, this eliminates the interest uncertainty for the loan and fixed the commitments for the duration of the loan. So to convert the negative they created – they haven't addressed the fact that this brings more than 200million rand of additional cost to the income statement that's still not addressed. The liquidity issue of 12billion rand has not been
20 addressed and the impact of the (indistinct) from BER that has not been addressed so nowhere in the document has it actually addressed the risks that Mr Smit actually raised in the memo or the email of 2nd of December 2015.

CHAIRPERSON: Okay thank you.

ADV PHILLIP MOKOENA SC: You, earlier on also took the Chair

through folder 25 and testified on a number of emails that has passed hand and you even used the words that there was cut and paste in what was written in the email from Nedbank which was subsequently – which subsequently found its way into the letter of Transnet by Mr Ramosebudi, do you recall that evidence?

MR MOHAMED SULEMAN MAHOMEDY: Yes Chair.

ADV PHILLIP MOKOENA SC: Now if you go to MSM470.1 and please identify that document and while doing that also contextualise it in relation to the evidence that you've deduced before this Commission
10 earlier on today.

MR MOHAMED SULEMAN MAHOMEDY: Chair we provided evidence earlier on in terms of page 465 which says that Ms Carol Pillay who was the assistant to Mr Ramosebudi on the 16th of March 2016 sent an email with an attachment to Mr Moss Brickman of Nedbank saying that Mr Ramosebudi has rephrased the content of his email in the form of a letter for the supporting documents and the Chairperson asked for that specific letter. Chair we've been able to trace that letter and provide it accordingly where in 470.1 is a document that's in front of us which is on a Transnet letterhead signed off by Mr Phetholo Ramosebudi on the
20 16th of March 2016 as the Group Treasurer addressing that letter to Mr Moss Brickman and essentially the first paragraph of that letter is a copy and paste of the email Mr Brickman had sent requesting this particular paragraph to be included and there is a second paragraph which says,

“furthermore a copy of the approval of the transaction was sent

to you on the 16th of March, please note the second subsequent transaction for the CPI loan novation as per the GC approval detailing no fees for Regiments as the 1064 locomotives agreement”.

That is the two documents that were requested Chair.

ADV PHILLIP MOKOENA SC: Yes now having dealt with those issues that were still pending may we then proceed with your evidence and may I refer you to page 28 of your statement with particular reference to paragraph 5.10.7 and take us through the summary of the payments
10 which were made to Trillian.

MR MOHAMED SULEMAN MAHOMEDY: Chair, the payments that we reflect in the 5.10.7, a number of them and we will identify them were done in line with the purported session that we discussed before lunch in some level of detail. That was the – essentially the contract under which these payments were made. There was a payment that was marked Transnet Property for 41.04million, a payment – well there were three invoices that were marked General Freight Business for 23.94million, there were two invoices that had the reference SWAT and another one the reference GCIA being Group Capital Integration and
20 Assurance for 38.7million, there was an invoice for Transnet Engineering for 11.4million and as we mentioned earlier on that for the ZAR Club Loan there was a payment of 93 odd million which included VAT. We did state that under 5.10.7.5 that there was no evidence as far as we have reviewed and requested that any work was done for the provision of the service under the arranging of the ZAR Club Loan for

93million or 93.5million.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMED SULEMAN MAHOMEDY: Chair it is also necessary to note that under 5.10.7.3 for the SWAT and GCIA invoices totalling 38.7million rand this amount was refunded to Transnet in December 2016 as we believe no work was executed by Trillian even though the payment was made in July 2016. I will deal with that in a little more detail as we look at the next part of the statement Chair.

CHAIRPERSON: But I do want to know, just what the – whether in
10 refunding this amount Trillian considers that no work had been done or whether they gave another reason for refunding it?

MR MOHAMED SULEMAN MAHOMEDY: Chair a number of these invoices had made their way into the public domain before this time, before the December period as I'm aware Regiments had taken exception to some of these payments, claiming that they had executed the work and why was Trillian the beneficiary of the payment, that was one of the key disputes that occurred at the time. The other key piece of evidence is that these two invoices particularly related to my area of control at the time. As I mentioned earlier on, the SWAT contract as
20 well as Group Capital Integration, these were my areas in Transnet at that point in time. We got to hear of these invoices and the costs were wanting to be allocated to my department, we resisted and asked them what work, where was the evidence of any work. As I pointed out earlier on, when – in March 2016 we had wanted to understand the procurement event with Trillian and at time we had asked all of the

people who represented Trillian that were previously with Regiments to leave the building or leave our side of the building as we didn't have any procurement event with them. So when these invoices surfaces sometime in July I think it was or late June 2016 it was quite surprising to say the least because we were certain that Trillian had not executed any work at the Group – in the Group Capital Integration and Assurance function. I will later on, also provide testimony to the processes that were implemented at Transnet to investigate the leaks of information.

This amongst others and the reason I say that was because we
 10 had made very clear to those particular investigators that these invoices were invalid because Trillian had not done any work in the Group Capital Integration space neither had they done any work referencing the Swat 2 contract. In fact they had done now work in our department. So it was a – I would say a – a combination of factors that would probably have led them to refund this particular amount.

CHAIRPERSON: Yes but I want is their version as far as you know it if you do know it? They had received payment a large payment and you were now demanding the money to be paid back. Did they just pay back without saying anything? Did they say we believe we are entitled to
 20 this amount but for reasons a, b, c, d we are giving it back to you? Or did they not say anything they just transferred the money back that is what I want to know?

MR MOHAMMED SULEMAN MAHOMEDY: Chair I am not...

CHAIRPERSON: Whether is it – they...

MR MOHAMMED SULEMAN MAHOMEDY: I am not in the know. This

particular transaction was as is evidenced by the documentation managed by largely Mr Edward Thomas who was the Group Supply Chain Officer at the time and Mr Garry Pita.

CHAIRPERSON: Yes, yes.

MR MOHAMMED SULEMAN MAHOMEDY: Outside of that very few people seemed to have an understanding of what actually transpired Chair.

CHAIRPERSON: Yes. And you are not aware of any correspondence that may have accompanied the refund from them?

10 **MR MOHAMMED SULEMAN MAHOMEDY**: I am not – I am not aware of anything Chair.

CHAIRPERSON: Okay.

ADV PHILLIP MOKOENA SC: Can I pose the Chair's questions slightly different? If indeed Trillian had performed and executed work or render the services for the amount which they have been paid for would there be any reason for them to pay back that money?

MR MOHAMMED SULEMAN MAHOMEDY: No there would not be any reason if the work was executed.

ADV PHILLIP MOKOENA SC: Yes.

20 **MR MOHAMMED SULEMAN MAHOMEDY**: So it – also Chair one of the invoices is reflected as work done on the 1 February to the 1 April at which point there was no contract, session or otherwise because the session only existed on the 10 Feb – 10 May 2016. So how could they have actually executed work as Trillian in February, March and April 2016? It goes against all logic even though it was problematic in the

session in the first place. But even though it does not make sense because these payments were – or the invoices were reflecting work done prior to any commitment Transnet had with Trillian.

ADV PHILLIP MOKOENA SC: You conclude on this topic by identifying some of the deviations from the Transnet practice. Could you please take us through them flowing from paragraph 5.10.8.1?

MR MOHAMMED SULEMAN MAHOMEDY: Chair earlier on I brought to the attention the – of the commission the payment process that had been implemented by our team which required that the manager
10 responsible will sign off. There would be an explanation of the fees, what they were – what work was actually executed etcetera. Chair under MSM35 one will note that the invoices were all literally one liners. Work done, fees for work done, fees for professional fees, work done, professional fees, work done to close [indistinct].

ADV PHILLIP MOKOENA SC: It is fine.

CHAIRPERSON: Ja what page is – are those invoices?

MR MOHAMMED SULEMAN MAHOMEDY: 525.

ADV PHILLIP MOKOENA SC: Folder 35 Chair.

MR MOHAMMED SULEMAN MAHOMEDY: So folder 35 Chair my
20 apologies. All of those invoices from page 524 through to 529 they have got the signature of two key executives. And the reason we raise this is because it would ordinarily be expected that a business process owner signs off the invoice to say that he has received the goods or service. That is Transnet practice and the payments process that we attach in MSM36. But here we had the Chief Procurement Officer

essentially signing on the invoice together with the Group Chief Financial Officer Mr Pita. So those signatures identified as Mr Edward Thomas and Mr Garry Pita. As I said it is not appropriate for the person not receiving the service if the service was provided there would have been a process owner in Transnet who would sign off to say he accepts the service, the quality of the service and the product that was delivered.

CHAIRPERSON: Well I still have not found where those invoices are. You said

10 **ADV PHILLIP MOKOENA SC**: Folder 35.

CHAIRPERSON: Divider 25.

ADV PHILLIP MOKOENA SC: 35

MR MOHAMMED SULEMAN MAHOMEDY: 35

CHAIRPERSON: 85?

ADV PHILLIP MOKOENA SC: 35.

CHAIRPERSON: It looks like today as the day progresses the equipment is making sure that I cannot hear you.

ADV PHILLIP MOKOENA SC: It is 35 Chair and you will see what the – what Mr Mahomedy is talking about with lack of information or any
20 peculiarity pertaining to why those invoices should be paid. And he was also giving testimony on who signed the two – who signed those invoices and contrary to what is the practice of Transnet as contained in one of the documents in Folder number 36.

CHAIRPERSON: It looks like the – the signatures that appear on each of the invoices are signatures of the same people, is that correct?

MR MOHAMMED SULEMAN MAHOMEDY: That is correct Chair.

CHAIRPERSON: And you were making a certain point about the people signing, what was the point you made?

MR MOHAMMED SULEMAN MAHOMEDY: Chair the signature of the right is Mr Edward Thomas who was the Group Supply Chain Officer.

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: In normal processes within an organisation the procurement individual or the procurement head should not be signing invoices.

10 **CHAIRPERSON:** Yes.

MR MOHAMMED SULEMAN MAHOMEDY: Because that is the process post his accountability.

CHAIRPERSON: Because his or hers is to check that the process is correct?

MR MOHAMMED SULEMAN MAHOMEDY: Correct Chair.

CHAIRPERSON: Not – not so much the product.

MR MOHAMMED SULEMAN MAHOMEDY: That is correct Chair. The product or the service delivered would be attested to by a process owner.

20 **CHAIRPERSON:** Yes. Yes.

MR MOHAMMED SULEMAN MAHOMEDY: And on all of these documents there is a lack of a process owners' signature.

CHAIRPERSON: Yes, yes.

MR MOHAMMED SULEMAN MAHOMEDY: And that is key in terms of trying to understand why these payments were made in the first place.

CHAIRPERSON: And – and are you able to say in terms of your own experience at Transnet that generally the person who would sign an invoice would not be a procurement person?

MR MOHAMMED SULEMAN MAHOMEDY: Two principles Chair. The one is that it would not be a procurement person.

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: And the second would be that a process owner

CHAIRPERSON: Yes.

10 **MR MOHAMMED SULEMAN MAHOMEDY**: Whoever that may be will sign for the receipt of that service.

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: And deliverable.

CHAIRPERSON: And what – what type of person would be a process owner if you are able to clarify that?

MR MOHAMMED SULEMAN MAHOMEDY: Chair if you look at the...

CHAIRPERSON: Would it be like the head of the department whose needs or which needed the service or the product.

20 **MR MOHAMMED SULEMAN MAHOMEDY**: That is one hundred percent correct Chair.

CHAIRPERSON: Okay.

MR MOHAMMED SULEMAN MAHOMEDY: And when you look at the invoice for example on page 479.

CHAIRPERSON: YEs.

MR MOHAMMED SULEMAN MAHOMEDY: The invoice says Transnet

general freight breakthrough. One would have expected that somebody from that division

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: That managed this for general freight be it the Transnet Freight Rail Chief Executive or the Chief Operations Officer

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: They would have signed this to say that this invoice is valid, people delivered the service.

10 **CHAIRPERSON**: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: If we look at another one it says Swat 2 that would have expect – been expected to have my signature because it was on page 527 my apologies 524 and 527.

CHAIRPERSON: I am sorry you are too fast for me. Where does it say Swat 2 the first one which is...

MR MOHAMMED SULEMAN MAHOMEDY: 527 Chair.

ADV PHILLIP MOKOENA SC: Page 527 Chair.

CHAIRPERSON: Oh I was looking at the one at 524 Okay. 527 wait – where about in the

20 **MR MOHAMMED SULEMAN MAHOMEDY**: It says...

CHAIRPERSON: Where about in the invoice does it say Swat 2?

MR MOHAMMED SULEMAN MAHOMEDY: Chair it says work done, professional fees, work done

CHAIRPERSON: Oh there is Swat 2 now I see it. It is has got two projects.

MR MOHAMMED SULEMAN MAHOMEDY: Yes. Yes Chair.

CHAIRPERSON: Yes so you would have been the process owner?

MR MOHAMMED SULEMAN MAHOMEDY: Correct.

CHAIRPERSON: So you – it should have come to you for you to sign?

MR MOHAMMED SULEMAN MAHOMEDY: Yes Chair.

CHAIRPERSON: If you were happy with that the work had been done?

MR MOHAMMED SULEMAN MAHOMEDY: In the first place if Trillian pitched Chair.

CHAIRPERSON: Yes okay. So but your signature is not there.

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

CHAIRPERSON: And it was never brought to you at the time?

MR MOHAMMED SULEMAN MAHOMEDY: No Sir.

CHAIRPERSON: And the other signature is it Mr Pita's signature?

MR MOHAMMED SULEMAN MAHOMEDY: That is right Chair.

CHAIRPERSON: And he was – he was in treasury? He was in...

MR MOHAMMED SULEMAN MAHOMEDY: No Chair he was the Group Chief Financial Officer.

CHAIRPERSON: Yes Group Chief Financial Officer.

MR MOHAMMED SULEMAN MAHOMEDY: Of Transnet.

20 **CHAIRPERSON:** Would a person in that position normally sign invoices?

MR MOHAMMED SULEMAN MAHOMEDY: He would ordinarily sign after the process owner signs.

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: If it was beyond the process

owners' delegation.

CHAIRPERSON: Okay, okay.

MR MOHAMMED SULEMAN MAHOMEDY: So if it was above – in this case he would have signed post ...

CHAIRPERSON: After you had signed?

MR MOHAMMED SULEMAN MAHOMEDY: After I would have signed.

CHAIRPERSON: Ja. Do they all relate to your department or only the one you mentioned related to your department?

MR MOHAMMED SULEMAN MAHOMEDY: Chair there is two that relate
10 to my department.

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: There is – page number 529 as well.

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: These two relate to my department and the others relate to a variety of functions at Transnet.

CHAIRPERSON: Yes. But you are able to say in regard to the others as well the process owner, the person who was supposed to have signed had not signed. So the process owners' signature has to be
20 there even if in addition to it there must be the Chief Financial Officer's one?

MR MOHAMMED SULEMAN MAHOMEDY: And the process owner's signature should be before the Chief Financial Officer signs.

CHAIRPERSON: Yes, yes.

MR MOHAMMED SULEMAN MAHOMEDY: So if there is one that shows

it after then this was authorised for payment essentially before.

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: The process owner confirmed it.

CHAIRPERSON: So you say that these invoices are defective, raise question marks to say the least?

MR MOHAMMED SULEMAN MAHOMEDY: Yes Chair.

CHAIRPERSON: Ja.

MR MOHAMMED SULEMAN MAHOMEDY: In addition to the fact that
10 these invoices some say services were rendered in March 2016.

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: April 2016 when Trillian had no contract at Transnet.

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: The session only took place on the 10 May.

CHAIRPERSON: Yes, yes.

MR MOHAMMED SULEMAN MAHOMEDY: 2016.

CHAIRPERSON: Yes. Okay thank you.

20 **ADV PHILLIP MOKOENA SC**: Mr Mahomed there is also a policy document governing the internal controls with the processing of payment and if I may refer you to Folder number 36 Chair, 36 and ...

CHAIRPERSON: Folder number?

ADV PHILLIP MOKOENA SC: 36, 36.

CHAIRPERSON: Thank you.

ADV PHILLIP MOKOENA SC: And then maybe respond to the questions of Chair in relation to that document as well and why do you believe that in this instance it was never adhered to?

MR MOHAMMED SULEMAN MAHOMEDY: Chair I think under page 532 one line amongst the entire process says:

“The cost centre manager is responsible for all appropriate documentation supporting the invoice such as agreements, order forms, tender documents, quotes, all goods received.”

10 So it is largely the cost centre owner or the manager receiving that specific service. And in this case as I mentioned that did not follow that due process.

CHAIRPERSON: Where is the sentence that you just read about all cost centre manager or something?

MR MOHAMMED SULEMAN MAHOMEDY: Chair page 532.

CHAIRPERSON: Yes I am there.

MR MOHAMMED SULEMAN MAHOMEDY: The section 1.2 supporting documentation.

CHAIRPERSON: Yes.

20 **MR MOHAMMED SULEMAN MAHOMEDY:** It goes through and then somewhere in the middle of that.

CHAIRPERSON: Oh.

MR MOHAMMED SULEMAN MAHOMEDY: I think the third bullet.

CHAIRPERSON: The third bullet point?

MR MOHAMMED SULEMAN MAHOMEDY: Yes Chair.

CHAIRPERSON: So would the cost centre manager be the same as the person you referred to as the process owner?

MR MOHAMMED SULEMAN MAHOMEDY: That would ordinarily...

CHAIRPERSON: Or they different people?

MR MOHAMMED SULEMAN MAHOMEDY: It would ordinarily be the same person.

CHAIRPERSON: Ja.

MR MOHAMMED SULEMAN MAHOMEDY: If the costs are being allocated to my cost centre.

10 **CHAIRPERSON**: Yes but it can be somebody different?

MR MOHAMMED SULEMAN MAHOMEDY: It could be.

CHAIRPERSON: Okay.

MR MOHAMMED SULEMAN MAHOMEDY: And also Chair under 1.3 the last bullet on the page

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: It says:

20 “The goods receipt is done by the requisitioner and
all relevant supporting documents must be sent –
must be submitted to the corporate accounting –
corporate centre accounting in line with the date
etcetera.”

That is also saying that the person who requests the service must confirm he received the service.

CHAIRPERSON: Hm. So – so in many respects in terms of the evidence given by yourself as well as by Mr Volmink and the

Chairperson of the board so far it appears that the – unless we find or we are furnished with proper explanations by the people who were involved in some of these things it appears that there was just blatant disregard of procedures and processes which are put in place to try and minimise chances for abuse, for corruption and of minimising losses, potential losses to Transnet. So unless one finds – unless there is somebody who comes up and gives a sound explanation why these procedures and processes were disregarded it appears that it was just a blatant disregard of processes.

- 10 **MR MOHAMMED SULEMAN MAHOMEDY:** Chair in support of your view I think a number of these processes that we reference are standard processes in Transnet. None of them are complex, none of them are difficult to follow. We have been doing this in a particular way for a long period of time.

- CHAIRPERSON:** Of course it is – it is possible that some of the persons or all the persons who may be implicated in disregarding these processes may come forward and give possible explanations for why the disregard of those processes and procedures was justified and so on. So we will wait and see but we – in the absence of that it does
20 appear that some of the acts of disregard were – may have been quite blatant. Hm yes.

ADV PHILLIP MOKOENA SC: You conclude on that topic on paragraph 5.10.8.2 and 5.10.8.3 can you simply summarise for the Chair some of the points which I am sure you have already highlighted?

MR MOHAMMED SULEMAN MAHOMEDY: Ja I think key to this is the

processes were not followed for the payment of Trillian invoices. The second point is that in a number of cases the services that were supposedly vended were before Trillian had any valid procurement event. It was before the 10 May even if we question the session but before the 10 May 2016 it is clear from the invoices some of them date back to 19 February 2016. So the entire – all of the payments to Trillian are at best questionable Chair. And we did receive a refund for R38.6 million and that is not normal in any of this kind of situation.

ADV PHILLIP MOKOENA SC: Yes.

- 10 **CHAIRPERSON:** Well I see that you mentioned in your statement that you received a refund of R38.7 million from Trillian and you say there was no work that had been done by Trillian in that regard – in regard to that amount. But you also say that there was no work done in regard to the invoice or the payment of R93 million but that one has not been refunded, is that correct?

MR MOHAMMED SULEMAN MAHOMEDY: That is correct Chair.

CHAIRPERSON: Yes and you are not aware whether that no work was done is being disputed or not?

- MR MOHAMMED SULEMAN MAHOMEDY:** No Chair we have
20 commenced a process through our attorneys to ...

CHAIRPERSON: To recover.

MR MOHAMMED SULEMAN MAHOMEDY: Civil action against the company.

CHAIRPERSON: Okay.

ADV PHILLIP MOKOENA SC: Yes we can now proceed to deal with the

facts pertinent to Nkonki Incorporation. You started dealing then – with them from paragraph 5.11 on page 29. But before you do that please give us the background you know relevant to Nkonki?

MR MOHAMMED SULEMAN MAHOMEDY: Chair it is necessary to note that Nkonki were a service provider to Transnet for certain internal audit functions that were outsourced. In 2013 Transnet went through an open tender process to appoint a firm or firms to assist with the internal audit function which was outsourced. At the time three bidders were appointed as the preferred bidder of a consortium for the internal
 10 audit function. They included KPMG, Nkonki and Sekela Xabiso. The Nkonki contract at that time was awarded for a five year period commencing on the 1 August 2013 to end on the 31 July 2018. That initial contract was for a value of R500 million for the five year period. In around March 2018 there were a number of announcements made by various authorities in the accounting, auditing profession including the auditor general at the time asking for state organs to consider termination of contracts with Nkonki as a result of a number press articles that appeared with re – relating to their association with the Guptas. Transnet followed suit and terminated the internal audit
 20 contract prior to the 31 July 2018. We have reviewed some of the contracts that Nkonki had and we note the following. It around January 2017 Transnet received unsolicited bids. Chair I am on page 29 of my statement under 5.11.2. In January 2017 Transnet received unsolicited bids from Nkonki as well as one that was under Nkonki and Oliver Wyman for a variety of services including what was called supply chain

efficiencies, coal and iron ore line volume and tariff optimisation.

ADV PHILLIP MOKOENA SC: May I refer you to page 452. Chair that is Folder number

MR MOHAMMED SULEMAN MAHOMEDY: 5, 54

ADV PHILLIP MOKOENA SC: Folder number 37. 37

CHAIRPERSON: 37?

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: Okay.

MR MOHAMMED SULEMAN MAHOMEDY: 542 ja.

10 **ADV PHILLIP MOKOENA SC:** Yes. And if you could please identify that document for us?

MR MOHAMMED SULEMAN MAHOMEDY: Chair this a document that Nkonki had submitted. This is one of the documents.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: Chair at that time in early 2017 as I said Nkonki had – already was providing the internal audit service and they had an existing contract for that. In a memorandum dated February 2017 which was addressed to the assets – my apologies, the acquisitions and disposals committee the ADC Transnet
20 executives proposed that Transnet utilise the existing internal audit contracts for these unsolicited proposals. And in the Transnet contract it allows for something called non-audit work. Under the Folder 38 we have included the specific requests that went through to the Transnet Acquisitions and Disposals Committee.

ADV PHILLIP MOKOENA SC: Page 571.

MR MOHAMMED SULEMAN MAHOMEDY: Page 571.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: Chair this document was submitted to the Acquisitions and Disposals Committee as the last page – I think it is page 575 suggests on the 7 February 2017. Chair what is also noteworthy from our perspective is I do not think is to clear but the Acquisitions and Disposals Committee approved this particular submission and the value that was marked in the submission says that it should not exceed R500 million in consulting fees. Now the five year
10 contract for internal audit services was for R500 million. However this particular extension in value or increase in value was not to exceed R500 million. This is a breach of the National Treasury notes that have been in place since some of them 2016 and others from 2008. On two fronts Chair. The suggested extensions under my statement page 30.

CHAIRPERSON: I am sorry I may have – you may have lost me somewhere. The memorandum at page 571 it is addressed to the Transnet Acquisition and Disposals Committee which is a committee of the board. It is signed at the end at 575 by Garry Pita, Group Chief Financial Officer and Phiwe I do not know whether it is Shinga or
20 Selinga Chief Legal Counsel and he or she recommends and Siyabonga Gama signed it – Mr Siyabonga Gama signed it as Chief Executive – as Group Chief Executive. They all recommend what it is in the memorandum. Have you referred to any response from or decision by that committee and did I miss where that is?

MR MOHAMMED SULEMAN MAHOMEDY: Chair on page 576.

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: I think this is unfortunately a very difficult page to read.

CHAIRPERSON: Or maybe before we do that what did you say was sought to be achieved with that memorandum? The purpose which is obviously stated in paragraph 1 there, 571.

ADV PHILLIP MOKOENA SC: Maybe read it Mr Mahomedy. Read the purpose, the contents of the purpose into the record.

MR MOHAMMED SULEMAN MAHOMEDY: Chair this memorandum as
10 you correctly point out is from the Group Chief Executive to the Transnet Acquisitions and Disposals Committee. The purpose of this memorandum is for the Acquisitions and Disposals Committee to recommend that the board approve the appointment of consultants for the cost savings and efficiency proposal for the ISCM which is Supply Chain Management from Nknoni which was approved as a permitted non-audit service by the audit committee.

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: The iron ore and coal revenue enhancement programme proposals for Transnet Commercial
20 from Nkonki Incorporated which was approved as a permitted non-audit service by the audit committee. And then delegate authority to the Group Chief Executive to sign all documentation including the contract documentation.

ADV PHILLIP MOKOENA SC: Yes. Now what the Chair wants to know is whether what was sought in that memorandum was it ultimately

granted or approved?

MR MOHAMMED SULEMAN MAHOMEDY: And before the – before that just confirmation that the cost and savings and efficiency proposal for ISCM which they say is from Nknoki Incorporated refers to the document to which you referred a few minutes ago.

MR MOHAMMED SULEMAN MAHOMEDY: Yes Chair.

CHAIRPERSON: That – so in other words they received this document from Nkonki and then they were now – they were in agreement with it. They were proposing to [indistinct] the Acquisitions and Disposals
10 Committee to say please approve that we do this?

MR MOHAMMED SULEMAN MAHOMEDY: That is correct Chair.

CHAIRPERSON: Okay alright then you can proceed. Then the committee makes a decision?

MR MOHAMMED SULEMAN MAHOMEDY: Yes Chair under the document numbered 576.

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: This is essentially the minutes of the Acquisitions and Disposals Committee meeting number 76 – I think 716/17 FY held on the 13 February 2017 at 10:05 at
20 boardroom 4901.

ADV PHILLIP MOKOENA: Do you have a better copy of that document Mr Mahomedy?

MR MOHAMMED SULEMAN MAHOMEDY: Yes.

ADV PHILLIP MOKOENA: Yes. Will you please also mark - mark as one of those documents that we have to exchange from the files

because there are quite a number of them which are not quite legible. We will through your benefit just to listen you and try to follow what you will be reading in this document. It is difficult to read.

MR MOHAMMED SULEMAN MAHOMEDY: Chair the document is the constitution of the meeting. The members who were present: Mr Stanley Shane, Mr Gama, Ms L C Mabaso and Mr Z A Nagdee. These are the members of the Committee. The Chairman was Mr Shane. In attendance were a number of Transnet Executives and there then we had partial attendance. Under – on the right hand side –

10 I think it is 5.6.4 a member enquired whether the services could be capped within the Committee's authority namely 500 million and sought clarity on the contractual terms for the said services. Management confirmed that the accumulative delegated authority of the Committee for appointment of consultants is 500 million and that the costs could therefore be capped within the approval limit of the Committee. It was further agreed that the Board of Directors would be informed of the decision through the standard practice of tabling the Committee's Resolution Register at the next Committee meeting. Essentially this – this submission was approved by a Board Committee with the delegated
20 authority Chair.

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: It concerned ...

CHAIRPERSON: And – and did the – did the Committee give – approve everything that was asked for by the particular Executives who were ...?

MR MOHAMMED SULEMAN MAHOMEDY: Yes Chair.

CHAIRPERSON: Yes, okay alright. Thank you.

MR MOHAMMED SULEMAN MAHOMEDY: Chair in my opinion I think Transnet's acceptance of Nkonki's unsolicited bid did not comply with National Treasury practice 01/2008 - 2009 as the ...

CHAIRPERSON: But before you say that can you just summarise what the substance is that their proposal was about. What – what did they want to do and why were they making an unsolicited bid?

MR MOHAMMED SULEMAN MAHOMEDY: Chair they asked for three
10 things ...

CHAIRPERSON: *Ja.*

MR MOHAMMED SULEMAN MAHOMEDY: Or they spoke to three things. The first was procurement optimisation. Optimisation of our processes ...

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: Bringing in savings on procurement contracts and assisting Transnet to better its income statement and balance sheet position. The second page was to look at the coal line optimisation and enhancement. What opportunities
20 existed for volume growth and any tariffs possibility with customers? The third was the iron ore line to actually engage again with customers ...

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: To look at what opportunity may have existed ...

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: For iron ore volume growth and if there was a potential for us to look at the tariffs ...

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: Or the customer.

CHAIRPERSON: Hm, okay.

MR MOHAMMED SULEMAN MAHOMEDY: So those were the three key issues.

CHAIRPERSON: Yes and they were approved?

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

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: The interesting thing about that is that from the contracts that we have not seen around or have – I have not discussed around Regiments and McKinsey – they were given similar contracts before that on coal enhancement. McKinsey was given a confinement on that - I think it was in 2014 - I am not sure and Regiments – McKinsey were given a contract for the iron ore tariff review as well. So it seemed to be a duplication in very quick succession, but that is the context to which ...

20 **ADV PHILLIP MOKOENA:** But despite it being a duplication – I mean – these services are those which would ordinarily have to go out on open tender. Am I correct?

MR MOHAMMED SULEMAN MAHOMEDY: Yes Chair because there are – there are service providers who can provide this service outside of Nkonki.

ADV PHILLIP MOKOENA: Yes.

CHAIRPERSON: What is the policy or at the time what was Transnet's policy on unsolicited bids? Was there a policy that would say something like if Transnet receives an unsolicited bid this is what should follow or was there – was there nothing specific?

MR MOHAMMED SULEMAN MAHOMEDY: Chair in terms of National Treasury Practice Note 11/2008 – 2009 which Transnet subscribed to the criteria for consideration of an unsolicited proposal is very clear. It says:

10 “Institutions are not obliged to consider an
unsolicited proposal but may consider such a
proposal only if it meets the following requirement –
only if it meets. A, a comprehensive and relevant
project feasibility study has established a clear
business case. B, the product or service involves
an innovative design. C, the product or service
involves an innovative approach to project
development and management or D, the product or
service presents a new and cost effective method of
20 service delivery.”

Those are the specifics of the National Treasury Note on unsolicited bids. Amongst other things there is a – it talks about a lot of detail in terms of what should be provided etcetera.

CHAIRPERSON: But when it says an unsolicited – an unsolicited bid maybe considered under the circumstances which you have set out –

which it sets out. What is your understanding of what that means? Does it mean if you consider that this is something you need as an SOE you can then take it and conclude the contract with the person who sends the unsolicited bid or does it mean that if you believe that you need this kind of service or product you should then follow the tender processes or in other words those exceptions that it seems to set out are they to say if anyone of these is present you can conclude a contract without going through procurement or tender – open tender – or does it mean if you need it you must still go through the tender process or procurement processes?

MR MOHAMMED SULEMAN MAHOMEDY: Chair the first principle here will be to assess whether the unsolicited bid provided a solution that was not ordinarily available in the market.

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: In this particular instance I do not believe that to be the case – in my view.

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: It was for optimisation of a process.

20 **CHAIRPERSON:** Hm.

MR MOHAMMED SULEMAN MAHOMEDY: There are a number of institutes out there and institutions out there that would be able to have helped us ...

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: If we had put out a proper

open tender.

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: This was again not just a confinement. This was piggybacking off a contract that was already in existence ...

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: And going in through a technicality of saying it is other services but so significantly that we were possibly going to double the value of that contract ...

10 **CHAIRPERSON:** Hm.

MR MOHAMMED SULEMAN MAHOMEDY: Without any process.

CHAIRPERSON: Hm. So is – is your answer that having National Treasury – to which you have referred ...

MR MOHAMMED SULEMAN MAHOMEDY: Was noted.

CHAIRPERSON: Would permit or would not permit Transnet to conclude a contract which it considers it needs - for a service that it considers it needs from a service provider who provides an unsolicited bid or would the position on your understanding be that if the SOE such as Transnet – an SOE such as Transnet believes that it needs this kind
20 of service then it would generally speaking have to put it out to tender unless the - it is a situation which under the procurement prescripts it will be permitted to not go through an open tender?

MR MOHAMMED SULEMAN MAHOMEDY: Chair in terms of the policy from National Treasury it goes further to say after a lengthy discussion:

“If the accounting officer or accounting authority

decides to consider the unsolicited bid he or she
must send a registered letter ...”

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: “...to the address
referred to in paragraph 2.2a confirming the
decision ...”

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: “...to consider the
unsolicited proposal.”

10 **CHAIRPERSON:** Okay, okay.

MR MOHAMMED SULEMAN MAHOMEDY: It was not a decision that
was for Transnet as far as I understand it. It had to have gone through
a process of review.

CHAIRPERSON: Huh-uh. So where it says - refers to consider it
seems to maybe this what one will say might be different from the
understanding - I may have heard earlier on. It seems to – to make a
distinction that you – you – if you are – if you are going to consider it.
I means you are going to consider it without an open tender.

MR MOHAMMED SULEMAN MAHOMEDY: No Chair.

20 **CHAIRPERSON:** There are certain circumstances which must be
present before you can do that but if you are not prepared to consider
it that might mean you want to put the whole thing out to tender and
they might have to bid like everybody else and it would be considered
later if they are successful or somebody else’s one maybe considered
later?

MR MOHAMMED SULEMAN MAHOMEDY: Chair in terms of – again –
in terms of this document from National Treasury it is clear. It says:

“If the unsolicited ...”

Further down the document.

“If the unsolicited proposal is concluded then the
institution must prepare and issue bid documents
...”

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: “...the process to
10 be followed when procuring a service provider.”

It goes on to say:

“Preparation of an RFQ or a Request for
Qualification to test the market for the existence of
other private entities capable of product or service.

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: “Preparation of a
draft contract etcetera.”

So ...

CHAIRPERSON: Okay.

20 **MR MOHAMMED SULEMAN MAHOMEDY:** It is not - it is not giving a
blanket authority.

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: You say consider it.

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: Yes you considered it then

give the work out.

CHAIRPERSON: Okay.

MR MOHAMMED SULEMAN MAHOMEDY: It follows some process.

CHAIRPERSON: Okay.

ADV PHILLIP MOKOENA: And all of those issues were not adhered to by – when –when this – this bid was – you know - approved or accepted by Transnet?

MR MOHAMMED SULEMAN MAHOMEDY: Not to our knowledge.

ADV PHILLIP MOKOENA: Yes.

10 **MR MOHAMMED SULEMAN MAHOMEDY:** No.

ADV PHILLIP MOKOENA: But the other compelling reasons which you wanted to bring to the attention of the Chair for instance at the time when this unsolicited bid was submitted Nkonki had an already existing contract of 500 million. So this one was in addition to that one?

MR MOHAMMED SULEMAN MAHOMEDY: It was on top of that yes.

ADV PHILLIP MOKOENA: So meaning that it – it took the value note to 1 billion – to one ...

MR MOHAMMED SULEMAN MAHOMEDY: To 1 billion. Had we ...

ADV PHILLIP MOKOENA: Had ...

20 **MR MOHAMMED SULEMAN MAHOMEDY:** Had we allowed it to continue.

ADV PHILLIP MOKOENA: Yes and now you conclude on the last sub paragraph 5.11.3.2. You can take the Chair through that last paragraph.

MR MOHAMMED SULEMAN MAHOMEDY: Chair before that I also want

to provide clarity that we did not spend this money.

ADV PHILLIP MOKOENA: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: In around the time that this was identified by ourselves in June/July 2018 all of this – by name and all of the issues were also being raised through the media. Transnet had paid R26.1 million for these related services with a further R60 million that is – that was outstanding and remains outstanding as we dispute this amount.

ADV PHILLIP MOKOENA: Yes.

- 10 **MR MOHAMMED SULEMAN MAHOMEDY:** My apologies for that. I think under 5.11.32 what we are saying is the 100 percent increase in the value of Nkonki's contract is also a contravention of Treasury Practice Note 3/2016 and 2017 dated 19 April 2016 that limits the variation of contracts and this is a deviation. A variation of the contract to a maximum of 15 percent or 15 million. When we go and do the calculations based on what was included in this memorandum and the approval of being under 500 million – the under 500 million is not necessarily a definitive sum but if you do the calculations based this had to have been submitted to National Treasury for their review and
- 20 their input. It had not gone to National Treasury. It took the Acquisitions and Disposals Committee approval as being final.

ADV PHILLIP MOKOENA: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: That was not the case.

ADV PHILLIP MOKOENA: Yes. Now we can proceed to deal with T-Systems from paragraph 5.12.

MR MOHAMMED SULEMAN MAHOMEDY: Chair there is a number of issues around T-Systems that have been made public. However in my testimony I do not – I do not deal with the details around that save to say that in my role as the General Manager of Finance at Transnet Group Capital between September 2016 and 15 May 2018 we identified that the division was paying for approximately 2 200 computers when the division only employed about 1 100 people. It is a process that we undertook to identify, track these computers. We found that 450 computers were ordered in July 2015. That were never utilised by
10 Transnet. It seems to have gone missing. We could not find these computers. They did not ...

CHAIRPERSON: Had they been delivered?

MR MOHAMMED SULEMAN MAHOMEDY: They had been delivered to Transnet Offices and then had been moved to unknown locations. It came into the business. They were not even preloaded with the Transnet software because the Transnet software has got tracking software which is loaded on. We could not track these computers. The reason we put this on the table is that all these computers were leased through T-Systems – through the T-Systems contract which was sub
20 contracted to entities like Zestilor and later to InnoVent Rental and Asset Management Solutions. Both Zestilor and InnoVent had ownership linked to Mr Salim Essa an associate of the Guptas at the time and a major shareholder of Trillian Capital Partners as well.

ADV PHILLIP MOKOENA: Yes.

CHAIRPERSON: So how many computers all together were delivered

and were paid for – delivered but had disappeared?

MR MOHAMMED SULEMAN MAHOMEDY: We believe it was more than 1 000 Chair.

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: In one division.

CHAIRPERSON: I mean how much would that have been in terms of what that division lost?

MR MOHAMMED SULEMAN MAHOMEDY: Chair it ran into a few million Rand a year because these computers were all leased. So you
10 were paying for computers that did not exist and you would continue paying for them until you reached a settlement with the entity to settle these computers because there were leases that just continued into (intervenes).

CHAIRPERSON: The leases would have been for how long? Would they have been all more or less for the same duration or you do no – you would not know?

MR MOHAMMED SULEMAN MAHOMEDY: Chair they would have – ordinarily three to four year life ...

CHAIRPERSON: Hm.

20 **MR MOHAMMED SULEMAN MAHOMEDY:** The lease but it only cancelled when you had returned the computer physically ...

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: And then it would terminate.

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: So in some cases the 450

were computers that we identified in July 2015 but there were other older computers that were never returned that had gone missing that were being paid for until about the middle – I think – the middle or towards the latter of 2017 when we finally settled the matter and paid the difference and we stopped the payment from recurring.

CHAIRPERSON: Has – has that issue been determined by an investigation as to whether it is – this might just be just sheer theft which might not be connected with anything or Transnet up to now has not determined exactly what happened?

10 **MR MOHAMMED SULEMAN MAHOMEDY:** Chair we were unable to determine exactly what transpired because we had the – the confirmation of the delivery and then it just got cold.

CHAIRPERSON: But there would have been people under whose custody each – each computer was brought. If they – when they were delivered if they were supposed to be housed in one place there would have somebody who would have been responsible to make sure that they were safely kept there and if they were delivered to – they were given to employees they would be – they should have been records of which computer was given to which employee and that employee would
20 have had to confirm whether the computer ever reached him or her and what happened to the computer or was there no paperwork or no paper – paper trail?

MR MOHAMMED SULEMAN MAHOMEDY: Chair there was an investigation done. A number of employees or a few employees were suspended.

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: Subsequently some resigned.

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: We also had identified individuals who were involved in theft of computers. We are not able to establish whether it was entirely all of these computers or some of these were definitely related to that case. The individuals – individual was found guilty and was – was sentenced accordingly at the time.

10 **CHAIRPERSON:** Yes that is something. As I mean 1 000 – more or less 1 000 – computers get delivered and they just disappeared and nobody at Transnet knows exactly what happened.

MR MOHAMMED SULEMAN MAHOMEDY: It is ...

CHAIRPERSON: It is very strange.

MR MOHAMMED SULEMAN MAHOMEDY: A challenge.

CHAIRPERSON: Ja.

ADV PHILLIP MOKOENA: We ...

20 **CHAIRPERSON:** Well it – it must talk to – it must talk to certain weak systems within Transnet. I mean that is not one computer disappearing. It is – it is ...

ADV PHILLIP MOKOENA: 1 000.

CHAIRPERSON: It is a lot of computers. How can they just disappear and nobody knows who took them, when they took them and where did – where did they go. It must talk to weak systems within – within Transnet.

MR MOHAMMED SULEMAN MAHOMEDY: Chair I think that is a - that is a key thing we looked at was as to whether this was an intentional weakening of the system, whether it was something that happened and I think the jury is still out but there was definitely some involvement of different individuals to weaken the system so that things like this would be – go – would go undetected for periods of time.

CHAIRPERSON: I mean because even those who weaken the system it should be possible to determine them. It should be possible to determine who did – who was responsible for that and because
10 certainly with that kind of thing that should be of such great concern that immediately Transnet should be - immediately Transnet discovers this kind of thing. They should be wanting to see what do we put in place to make sure that tomorrow – we do not wake up one morning and find that Transnet has – does not have a single computer throughout the country.

MR MOHAMMED SULEMAN MAHOMEDY: Chair I think at that time – this goes back to 2016 – there was a considerable change in the management of that division.

CHAIRPERSON: Hm.

20 **MR MOHAMMED SULEMAN MAHOMEDY:** There were a number of Executives who were moved, a number who were suspended and an entire new management team was taken into that division. That is when this was discovered. It would have gone undetected had there not been a significant change ...

CHAIRPERSON: Hm.

MR MOHAMMED SULEMAN MAHOMEDY: Reshuffle in management.

CHAIRPERSON: Is – is there a report sitting somewhere which was compiled by whoever was asked to investigate the circumstances under which those computers were – were or disappeared and so on? Is - is there a report somewhere?

MR MOHAMMED SULEMAN MAHOMEDY: Yes Chair there should be a report somewhere.

CHAIRPERSON: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: We will try to locate that
10 report because this matter was reported to the Forensic Team to look at.

CHAIRPERSON: It is – it is horrifying.

ADV PHILLIP MOKOENA: Yes.

CHAIRPERSON: It is horrifying and it is taxpayers' money.

ADV PHILLIP MOKOENA: It is Chair.

CHAIRPERSON: Yes thank you.

ADV PHILLIP MOKOENA: The next topic that you are dealing with
Mr Mahomedy is the Neotel matter from 5.13. Mr Volmink did testify on
this issue at length. You can give – you know – the summary and the
20 highlights of what you want to convey to the Chair as corroborating
obviously what Mr Volmink has testified on.

MR MOHAMMED SULEMAN MAHOMEDY: Chair I think under the folder
41 commencing on page 595 this was what we believed to be an
original memorandum that is dated 30 October 2013 under banner 41
page 595. This is a memorandum at the time from Mr Garry Pita who

was the Group Supply Chain Officer, Ms Hansika Motwani who was the Chief Information Officer, myself at that time acting as the Chief Financial Officer in Mr Singh's absence to Ms Sharla Pillay who was the Acting Group Chief Executive in Mr Molefe's absence. As I said it is dated 30 October 2013 under the title:

“RFP Number GSM13040722 for Provision of Network Services Request for Approval to Approve the Process, Award Contract and Issue a Letter of Intent Inviting Neotel to Further Invest Negotiations as the Preferred Bidder of this RFP”.

The purpose of this submission is to request the Group Chief Executive to approve the procurement process an award of business to Neotel (Pty) Ltd, sign the letter of intent for the preferred bidder, sign letters of regret for the four unsuccessful bidders, sign the letter to extend the current Neotel contract.

ADV PHILLIP MOKOENA: And who was the Acting Group Chief Executive at the time?

MR MOHAMMED SULEMAN MAHOMEDY: The Acting Group Chief Executive was Ms Sharla Pillay.

20 **ADV PHILLIP MOKOENA:** If I may refer to page 598.

MR MOHAMMED SULEMAN MAHOMEDY: Yes.

ADV PHILLIP MOKOENA: At paragraph or on that page who are the individuals who signed that document?

MR MOHAMMED SULEMAN MAHOMEDY: There is a PP for Macdonald Maluleke who is the Commodity Manager. Mandla Dube the

Category Manager, Mr Fanie Van Der Walt who was Executive Manager of Group Strategic Sourcing, Mr Gerrie Van Der Westhuizen the Executive Manager in the office of the CIO, Mr Peter Volmink. This is a PP on his behalf who is the Executive Manager of Governance and Compliance, Mr Yusuf Laher Executive Manager EIMS Service Delivery, Mr Garry Pita the Group Chief Supply Chain Officer, Ms Hansika Motwani the Chief Information Officer, myself as the Acting Group Chief Financial Officer and finally approved by Ms Sharla Pillay who is the Acting Group Chief Executive Officer.

- 10 **ADV PHILLIP MOKOENA:** So all the necessary signatures of the relevant authorities were appended on that document?

MR MOHAMMED SULEMAN MAHOMEDY: Yes Chair.

ADV PHILLIP MOKOENA: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: Even though some of us were acting with full delegated authority.

ADV PHILLIP MOKOENA: Yes. Yes, proceed.

MR MOHAMMED SULEMAN MAHOMEDY: Chair this was as I said to approve the procurement process and award business to Neotel. I move to folder number 42 under the document ...

- 20 **ADV PHILLIP MOKOENA:** Page 600.

MR MOHAMMED SULEMAN MAHOMEDY: Page 600. Chair this is a memorandum from Mr Brian Molefe the Group Chief Executive at the time to Mr Anoj Singh, Ms Hansika Motwani and Mr Garry Pita the Group Supply – Chief Supply Chain Officer at that time dated 20 November 2013.

“RFP number GSM13040722 for Provision of Network Services. Request for the Approval to Approve the Process Award Contract and Issue a Letter of Intent.”

This document as its purpose states:

10 “To inform the Group Chief Financial Officer, the Group Chief Information Officer and the Group Chief Supply Chain Officer of my decisions to award the above mentioned business to T-Systems South Africa in terms of your requesting in your memorandum dated 31 October 2013.”

Chair the document goes on to explain a few things but under page 603 – under page 603 in the approval it notes the following under item number 26.

“Based on the explanations given above I request the Group Chief Financial Officer, the Group CIO and the Group Supply Chain Officer to note my decisions to award business to T-Systems in terms of Section 25 of the PPM ...”

20 The Procurement Procedure Manual

“...and that I am overriding the recommendation made in the Tier Report.”

Which is the Evaluation Report of Procurement.

ADV PHILLIP MOKOENA: Yes.

MR MOHAMMED SULEMAN MAHOMEDY: Essentially Chair this

memorandum on 20 November discarded the memorandum of 31 October replacing Neotel with T-Systems. Then Chair under MSM or under folder 43 page 607 there is a further memorandum dated 5 December 2014 which is addressed from Mr Anoj Singh, Mr Garry Pita and Ms Hansika Motwani to Mr Brian Molefe.

10 “The purpose of this submission is to request the Group Chief Executive to approve the award of network services to Neotel, for a period of five years with effect December 14 to November 2019, signed the MSA, the Master Services Agreement for the provision of network services between Transnet and Neotel, sign a letter informing Neotel that Transnet will not evoke its right and step in as per Clause 51 15 should the Vodacom purchase of Neotel be approved. Sign the letter informing Neotel that Transnet will withhold R79million until the financial guarantee is finished, etcetera.”

ADV PHILLIP MOKOENA SC: Yes. And you make some key observations from paragraph 5.30.6 on page 32 of your statement, can you take the Chair through your observations?

20 **MR MOHAMED SULEMAN MAHOMEDY:** Chair what is important is that as we pointed out the first memorandum which had gone through a proper process had all of the relevant supporting documents in place, was approved by the then Group Chief Executive Ms Charla Pillay on the 31st of October.

On the 20th of November 2013 Mr Molefe rescinds that entire process and makes a unilateral decision to award the entire contract to

T-Systems and then a year later or more than a year later
...(intervention)

CHAIRPERSON: By that time – I’m sorry – by the time Mr Brian Molefe did that had Neotel been told of the decision, do you know?

MR MOHAMED SULEMAN MAHOMEDY: Chair all the documents that we have, the documents were signed, I’m not sure if they were sent.

CHAIRPERSON: Okay, okay.

MR MOHAMED SULEMAN MAHOMEDY: And then suddenly a year later Neotel is then appointed, so there’s a decision to appoint Neotel
10 through the correct procurement process, then suddenly it’s T-Systems and then a full year later finally Neotel is appointed. They key observation Chair is under the folder 43 on page 608, and that talks to the fact that the transition cost moved from 175million to 225million and in terms of what is provided there does not seem to be an adequate explanation as to why the transition cost moved by approximately a clean R50million.

That’s the first observation, and the second observation and the second observation was that in the first memorandum the suggestion was a three year with a two year option and this
20 memorandum was effectively now being given for a five year contract option.

Those are the key issues on the Neotel process.

ADV PHILLIP MOKOENA SC: Yes.

CHAIRPERSON: You obviously have had a chance to examine Mr Brian Molefe’s reasons for going against the decision that had been taken

which you had supported by way of the memorandum to which you refer. Are you able to say something about the two sides of reasons, on the one hand the reasons with which you associated yourself for saying Neotel must be awarded and the reasons that Mr Brian Molefe gave for overriding the position?

MR MOHAMED SULEMAN MAHOMEDY: Chair I think in reviewing the document one finds that there's a fairly technical discussion around who is the final authority when there's a dispute. As far as we were concerned on the 31st of October 2013 there was no dispute, the cross-
 10 function evaluation team had reviewed all of the relevant submissions and they had provided to us a detailed report that proposed that Neotel was the preferred bidder.

Now in the submission from Mr Molefe he talks about concentration risk as Transnet is Neotel's largest client, counterparty risk etcetera. These risks existed with Neotel in the past so I'm not sure and from my perspective there's a number of other issues on the CCTV cameras and various ports were not operational etcetera. There may have been some discomfort, but that would have had to have been addressed through the relevant procurement channels.

20 **CHAIRPERSON:** Am I right to say that assuming that Mr Brian Molefe did have the power to make that decision am I right to say you are not in a position to say that the reasons he gave when weighed against those that are contained in the memo with which you associated yourself were such that one just couldn't understand the decision, now I'm not talking about whether he had the power or not but just deciding

to give the contract to T-Systems as opposed to Neotel?

MR MOHAMED SULEMAN MAHOMEDY: Chair what is not necessarily sitting well from an understanding perspective is why as the Chief Executive he prepared the memorandum himself, why it's not supported by the supply chain office to agree, concur with his assessment, the governance team or legal representative to agree with the principles that were espoused in that document, that's the first thing.

The second thing in hindsight obviously Chair one is not clear as to why we then went back to the original decision with an additional
10 R50million (indistinct).

CHAIRPERSON: I know we have – I have heard evidence from other Transnet witnesses ...(intervention)

ADV PHILLIP MOKOENA SC: Mr Volmink Chair.

CHAIRPERSON: Is that where there was a court judgment?

ADV PHILLIP MOKOENA SC: Yes Mr Volmink gave quite detailed analysis of the (indistinct) and he went back and even told us his reasons.

CHAIRPERSON: Yes there was senior counsel's opinion and so on.

ADV PHILLIP MOKOENA SC: Yes.

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

ADV PHILLIP MOKOENA SC: You conclude that portion of your statement with paragraph 5.13.7 and 5.13.8, if you can simply read them into the record, we will then deal with the next topic.

MR MOHAMED SULEMAN MAHOMEDY: It has also been reported widely that Neotel made, allegedly made various payments to Homix, a

known Gupta company. The pattern is discernible in the manner in which the estimated total cost of the 1064 locomotive transaction was increased. There seems to be a pattern in my view.

ADV PHILLIP MOKOENA SC: Yes, now you then deal with what you term a culture of intimidation and investigations, you can summarise that for us.

MR MOHAMED SULEMAN MAHOMEDY: Chair in 2016 in September there was an investigation that was lodged in Transnet to determine whether individuals were implicated or involved in the leaking of
10 Transnet documentation. I had informed the investigators on numerous occasions that the work that Trillian did or they work that they – my apologies the invoices that were presented by Trillian there was no work performed as I testified to earlier on, and that these invoices were authorised by Mr Pita and Mr Thomas and they could not be for *bona fide* services. This was presented in the first interview which was in the middle of September 2016 to a group of investigators from both the firm of attorneys, Werksmans, as well PWC.

A number of testimony around the Trillian invoices were presented to that particular, those particular firms. We were subjected
20 to voice analysis tests, handwriting analysis and many hours of forensic interrogation. This commenced as I said in the middle of September 2016 and continued up to the beginning of April 2017.

At that time Transnet had announced a voluntary separation program for management and I then made an application to take that up as working at Transnet at the time became unbearable with the

Executives that had originally or at the time that were there. At some point towards the middle of April 2017 I was called to a meeting with Mr Pita, who advised me that the Werksmans/PWC teams reported only to the Board, the forensic team had found no conclusive evidence that I was involved in any wrongdoing and that my VSP application was not going to be approved as Transnet needed the skills and experience.

I am not aware if – I'm not aware why my VSP was rejected as I did not receive any further correspondence on that matter.

CHAIRPERSON: But didn't you just say they said they needed your
10 experience and skills?

MR MOHAMED SULEMAN MAHOMEDY: Yes Chair that was verbal communication.

CHAIRPERSON: Oh you did not get it in writing.

MR MOHAMED SULEMAN MAHOMEDY: I didn't receive any written feedback.

CHAIRPERSON: In writing okay.

MR MOHAMED SULEMAN MAHOMEDY: Yes Chair.

ADV PHILLIP MOKOENA SC: And now from paragraph 7 you are dealing with the remedial action, can I propose that we skip that topic
20 and we will conclude with it and we will move on to deal with item eight which is now your personal declarations. Just summarise for us what you're stating under that heading?

MR MOHAMED SULEMAN MAHOMEDY: Thank you. I think during my time at Transnet and my career over many years I have worked extensively with many service providers including McKinsey,

Regiments, PWC and the like, amongst others, I would have been invited to many conferences, benchmarking visits locally as well as globally that were arranged to buy these entities. All of the related costs would have been paid for by Transnet at the time.

I also have developed many relationships, both personal and professional with key individuals at these firms, including but not necessarily limited to Mr Parbhoo, Prakash Parbhoo, Mr Cannalac Miharan, Mr David Fine, Dr Andrew Shaw. Some of these relationships will endure to this day. There are certain specific entities and
10 individuals that have crossed paths with me or I crossed paths with them over the years that I think requires special mention. Cutting Edge and Mr Althaf Emmamally. Amongst my first jobs in the Corporate Sector I worked at Eskom from 2001 to 2004, August and the then Chief Financial Officer of the Transmission Division, whom I worked under was Mr Althaf Emmamally. My appointment at Eskom went through normal recruitment processes with me responding to an advert in the Sunday Times.

On leaving Eskom in 2004, August, I joined SpoorNet, what was then called SpoorNet. This time I was approached by Mr
20 Emmamally and appointed by Executive Authority under the leadership of the then Chief Executive of SpoorNet, Ms Dollie Mogatle, who was also at Eskom in my tenure.

In mid-2006 I resigned from my position at SpoorNet after being approached by Mr Johan Grimbeeck, director and shareholder of the Cutting Edge Group. I was offered a position of managing the

finance division with the key focus of creating a consultancy and developing finance business intelligent software.

As Divisional Directors we were given a minimum shareholding in the group entity of 2%. This was relinquished in April 2008. In April 2008 after differences with the shareholders and the directors, including Mr Emmamally I had a mutual separation agreement with Cutting Edge as part of –with Cutting Edge, and as part of this process Cutting Edge Finance was transferred to me as it was the division that was developed by the finance team and myself, and I was given 100%
 10 of the shareholding of this company. Mr Emmamally has been named in articles in the media as having links to the Gupta Family.

Since 2008 I have had limited interactions with Mr Emmamally and Cutting Edge Commerce. I am aware that Transnet through a confident, sorry, my apologies, through a confinement process appointed Cutting Edge around April 2014 to provide a solution for systems analytical tool and capabilities that will enable or that will provide key procurement matrix and analysis. Neither myself nor my department at the time, DCIA, was involved in the appointment of Cutting Edge. During the course of their appointment at Transnet I had
 20 no dealings with Cutting Edge when they executed their mandate.

Cutting Edge Finance, which is a company that I own, has been dormant since late 2009 and has done no work for an State Owned Entity post 2009.

Under 8.6 on page 36 Mr Mohamed Bobat, Mr Bobat has been named in the media as being one of the advisors that was

controversially appointed to advise the then Minister of Finance, Mr Des van Rooyen. I purchased land in a gated complex in October 2003, with no understanding of who the other homeowners are or were. This is a freehold property and not a sectional title development and is used as my primary residence. After I built my house I subsequently learned that Mr Bobat also owned a freehold property in the same gated complex, and he resides at this property as well. I was appointed as the Chairman of the Homeowners Association and still am the Chairman. Mr Bobat was also appointed to the Association as a

10 director and we remained co-directors on the Board of the Homeowners Association. I have no contact with Mr Bobat outside of these meetings and correspondences as related to the Homeowners Association.

I must also indicate that Mr Bobat also worked for Regiments when Regiments rendered services to Transnet between 2013 and 2015. Mr Bobat was one of the Regiments personnel that were assigned to this project. I had no direct role or influence in the appointment of Regiments for these assignments.

ADV PHILLIP MOKOENA SC: And Mr Anoj Singh?

MR MOHAMED SULEMAN MAHOMEDY: Mr Anoj Singh subsequent

20 to passing my BComm degree in 1995 I enrolled at the then University of Durban Westville for the post-graduate accounting program in 1996. Mr Singh at the time was also enrolled for this program and accordingly we were classmates for that year. When I joined Spoornet in 2004 Mr Singh was the manager responsible for financial reporting at the time at Spoornet. Our interactions were professional and as frequent as our

jobs would have required. In December 2012 Mr Singh approached me to offer me a role as the General Manager of Group Capital. I accepted the role and joined the Group Finance Team officially in February 2013.

During the period of 2013 until 2015 before Mr Singh moved to Eskom I reported to him directly, effectively Mr Anoj Singh was my direct line manager. During the this period in my opinion we had a cordial and professional relationship.

Mr Pita was a colleague during the time that Mr Anoj Singh was the CFO. He was appointed by the then Minister of Public
10 Enterprises, Ms Lynne Brown, as the Acting Group Chief Financial Officer Transnet effective 1st August 2015 and subsequently confirmed as the Group CFO in 2016. For the ensuing 13 months I reported directly to Mr Pita until my appointment as the GM Finance of Transnet Group Capital on the 1st of September 2016, a position I applied for and was interviewed by amongst others Mr Pita.

ADV PHILLIP MOKOENA SC: Yes, and those are the declarations that you sought to make before the Chair?

MR MOHAMED SULEMAN MAHOMEDY: Yes.

ADV PHILLIP MOKOENA SC: Yes. May I now refer you back to page
20 34 of the statement and now deal with the remedial action.

MR MOHAMED SULEMAN MAHOMEDY: In the recent months together with the Board and Executive Management I think there has been a lot of introspection around what has transpired at Transnet and what needs to be done to avoid this from ever happening again in Transnet or in our country.

There have been breaches of corporate governance, there have been manipulations of certain processes and policies within Transnet and right up front Transnet, together with the Board has begun looking at and making immediate improvements to the procurement processes and controls, bringing in Treasury, Risk Management and Oversight embedding the financial and capital controls that should exist in a business that used to be there as well by the way, an immediate action that has already been implemented is to amend the delegation of authority to not allow individuals the authority to sign off on procurement transactions, on capital investment decisions, where it's possible.

The oversight process and assurance processes have been improved significantly with the Board taking on a very, very diligent perspective as it comes to things around Treasury, Finance, Procurement and Investment decisions.

Transnet has also embarked on a program to recover funds and as we stated and testified earlier on Chair we have recovered the R618million from China South Rail, the R86million we will continue to pursue that. We are pursuing legal opinion in terms of understanding whether ...(intervention)

ADV PHILLIP MOKOENA SC: Legal processes?

MR MOHAMED SULEMAN MAHOMEDY: Legal processes and legal opinion to set aside the interest rate swap transactions that are costing us in our view approximately R400million per annum in addition to the interest, floating interest rate. We have commenced a renegotiation

process with the original equipment manufacturers to align all requirements in the short, medium and long term and we are also in the process of talking to certain service providers where there are certain allegations around those service providers to reach an agreement on some sort of settlement to recover some of these monies back to Transnet.

ADV PHILLIP MOKOENA SC: Yes.

MR MOHAMED SULEMAN MAHOMEDY: I think the one key thing Chair that is necessary to mention as well is that Transnet is a significant
 10 entity in the lives of South Africans, in the lives of the business community, but at the same time there are a number of people in the 55 000 strong Transnet community that remain committed to this business, and they are good people, they are passionate people, they are people who have literally given their lives, they are people in Transnet that will be here for more than forty years, working in one entity, committed to this country, so together with these people we will ensure that we take Transnet to the next level and make sure that as South Africans we deliver on the mandate that we have from the country.

ADV PHILLIP MOKOENA SC: Yes and finally you have made a
 20 request that you wanted to read the contents of your conclusion and with the indulgence from the Chair can I then refer you to page 38 and read for us from paragraph 9.1, that is now under your – under the heading conclusion.

MR MOHAMED SULEMAN MAHOMEDY: Chair in my opinion, I think all of this is my opinion subsequent to all the observations and reviews

that we've conducted in the last few months. I believe Transnet was successfully manipulated to benefit a few individuals and entities through the following *modus operandi*. A focus on significant procurement transactions for goods and services which required willing participants internally and externally. Through supply and development requirements from Transnet local consulting houses were inserted by executives to identify opportunities and design schemes to siphon funds out of the company. The design and use of complex financial instruments that hid flows to beneficiaries and created annuity losses
10 for State entities, and internal governance structures were deliberately weakened, overlooked and not utilised effectively.

Much has been written about the recent events in State Owned Entities and how these entities were repurposed for the benefit of a few, almost all with either limited access to information or a view only into a single transaction.

Over the last few months in my current role I have come to realise how legitimate projects or initiatives were directed in a particular way to achieve the agenda of the corrupt. In my humble opinion the process of manipulation and repurposing of Transnet was
20 facilitated by parallel approval processes by individuals rather than selected committees, which was facilitated by what I call the duality in the delegation of authority framework. Management overriding certain key decisions with no upward reporting and oversight, Board approvals without submissions serving at the Executive Committees accountable for the transaction. Board processes overturning management

decisions and the Board involved in procurement decision making.

The complexity of terms and transactions most in the financial instruments environment and isolating transactions from management to avoid obtaining an integrated view of State Capture.

ADV PHILLIP MOKOENA SC: Yes. Mr Chair that concludes my questions for Mr Mahomedy.

CHAIRPERSON: Thank you very much. Thank you very much Mr Mahomedy for your evidence, thank you for having come forward and it may well be that you will come back at some stage and I have no doubt
10 you will come if you are asked to come.

MR MOHAMED SULEMAN MAHOMEDY: Yes Chair.

CHAIRPERSON: I think that – we can leave it at that for now, if there are any further questions you will be approached, but thank you very much for coming to give evidence.

MR MOHAMED SULEMAN MAHOMEDY: Thank you Commissioner, thank you Chairman for the opportunity.

CHAIRPERSON: Thank you, you are excused.

ADV PHILLIP MOKOENA SC: Mr Chair at some point we will uplift your exhibits in order to ensure that you replace those eligible documents
20 and also to make sure that we provide those other necessary documents that you requested.

CHAIRPERSON: Yes, I think there were also, I don't know whether these two documents that were handed up this afternoon cover all the documents that were referred to which we didn't have in the bundle but which it would be desirable to have ...(intervention)

ADV PHILLIP MOKOENA SC: We will look at our notes and make sure that you cover those, one of the aspects that you requested was the composition of the Treasury Department and how it was ...(intervention)

CHAIRPERSON: Oh yes, yes.

ADV PHILLIP MOKOENA SC: We also need proper copies in due course to be available. To the extent necessary other witnesses of Transnet might actually even testify on those documents.

CHAIRPERSON: Yes, there was also the issue of the composition of the Board or the acquisitions and disposals at a certain time.

10 **ADV PHILLIP MOKOENA SC:** We have made notes of those, they will be properly placed before you.

CHAIRPERSON: Okay no thank you and then these two actual documents will be punched and placed in the right place in the bundle.

ADV PHILLIP MOKOENA SC: Yes we (indistinct) Chair and we thought Mr Pretorius saying something Chair.

CHAIRPERSON: Yes, Mr Pretorius, do you have something that you want to say?

ADV PAUL JOSEPH PRETORIUS SC: Chair you are aware of the need to place before the Commission an affidavit, I see it's four o'clock,
20 perhaps ...(intervention)

CHAIRPERSON: Yes no we can ...(intervention)

ADV PAUL JOSEPH PRETORIUS SC: You want to do it now?

CHAIRPERSON: ...deal with it quickly ja.

ADV PAUL JOSEPH PRETORIUS SC: It's the affidavit of Zwelini Mkhize, it will be EXHIBIT C3, and if I may read it onto the record, it's

not long.

CHAIRPERSON: Ja please do so. It relates to the evidence of Mr Jonas that Jonas gave evidence that I think on the 16th of January 2016 he had a meeting with Dr Zwelini Mkhize.

ADV PAUL JOSEPH PRETORIUS SC: The evidence is quoted in the affidavit, so it will become clear what the context of the affidavit is.

CHAIRPERSON: Yes, no, no I just want to make sure that – because it comes out of the blue, he had given evidence that he had met – that is Mr Jonas had given evidence that he had met on the 16th of January
10 with Dr Zwelini Mkhize and in that meeting he had disclosed to Dr Mkhize what had happened according to his version when he met Mr Ajay Gupta or another Gupta brother at the residence of the Guptas on the day that he indicated he was there, so this is an affidavit from Dr Mkhize to deal with whether he confirms that or not.

Okay, you can read it.

ADV PAUL JOSEPH PRETORIUS SC: Yes, that was partially confirmed in the affidavit Chair, it reads:

20 “I, Zwelini Lawrence Mkhize state under oath and state that I am the Minister of Cooperative Governance and Traditional Affairs, having been appointed by the President, His Excellency Cyril Ramaphosa on 27 February 2018. I was the Treasurer General of the African National Congress for the period 2012 until December 2017. I have been requested by the Commission to provide a statement regarding an allegation made by Mr Mcebisi Jonas insofar as they relate to my

knowledge which specifically relates to paragraph 46 of Mr Jonas' statement. The said paragraph states the following:

10 'Subsequently in January 2016 I had a meeting with Dr Zwelini Mkhize in Johannesburg, the then ANC Treasurer General, about another matter. During the course of the meeting he said he had heard a rumour about the Guptas offering me an inducement to take up the position of Finance Minister and he asked whether this was true. I told him what had occurred and I mentioned the role played by Fana Hlongwane and Mr Duduzane Zuma in facilitating the said meeting. Dr Mkhize indicated that he was shocked and advised that he noted my concerns regarding the matter including in respect of the role of Mr Duduzane Zuma.'

That's the quote from the statement of Mr Jonas. The statement of Mr Mkhize continues:

20 "Having read the above paragraph to Mr Jonas' statement I hereby confirm the contents in its entirety. According to my recollection it was on the following week that I met the then Secretary General of the ANC Mr Gwede Mantashe at Lthuli House as he was also a fulltime official of the ANC with me. I shared with him what Mr Jonas had told me. He also indicated that he was aware of the allegation. The matter was then discussed by senior officials and thereafter by the National Executive Committee. A resolution was subsequently taken that given the seriousness of the allegations of State Capture

that were being made any ANC member who had more knowledge about having been approached by the Guptas in a similar manner to Mr Jonas or who was in any way affected by this must come forward and provide information to the Secretary General. My understanding was that this was meant to avoid these allegations only being discussed informally and behind the scenes with no resolution but rather to deal with them through a formal process and appropriate channels.”

And that statement was sworn to and commissioned on oath.

10 **CHAIRPERSON**: Thank you, I think a copy thereof should be sent to the persons that Mr Jonas in his evidence says were present at the meeting and so that they know that there is an affidavit that is to this effect,

ADV PAUL JOSEPH PRETORIUS SC: Yes.

CHAIRPERSON: What they can or can't do with it, it is a decision that they will take but they should know that there is an affidavit to that effect. At this stage there might be no need to call Dr Mkhizi for purposes of that aspect, but if their reaction is such that they feel that he should be called then we will hear what they have to say.

20 At this stage the idea is that this is a conversation between two persons, no one else seems to have been present who can say, who can dispute what they say they said, but if they have any of the implicated persons wants something to be done about it then their request can be considered then on the merits.

ADV PAUL JOSEPH PRETORIUS SC: Okay Chair, we will do so.

CHAIRPERSON: Ja, okay thank you. Tomorrow should we start earlier than normal, are we likely to finish that, tomorrow's witness in one day or not, or unlikely.

ADV PAUL JOSEPH PRETORIUS SC: Chair the next witness, Mr Callard, will take several days, possibly more than two days but time has been set aside for it. I haven't consulted with the evidence leader, Ms Sello, about it so I am not really in a position to answer.

CHAIRPERSON: Well yesterday we had discussed the possibility that he could start his evidence today, and I was subsequently told that
10 there was difficulty with that because the preparations for him to give evidence had not been finalised, so I think it should be possible to start early tomorrow, so ...(intervention)

ADV PAUL JOSEPH PRETORIUS SC: Yes, there was another reason why he wasn't available Chair and that is at the time in another enquiry where he is at present giving evidence, so it's been difficult to arrange times.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: But he is available tomorrow, and Ms Sello is not really objecting to an early start, she is comfortable
20 with an early start I am informed.

CHAIRPERSON: Yes, okay let's start at half past nine then tomorrow.

ADV PAUL JOSEPH PRETORIUS SC: As you please Chair.

CHAIRPERSON: Yes, we will adjourn then for the day and tomorrow we

INQUIRY ADJOURNS TO 17 MAY 2019