

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

PARKTOWN, JOHANNESBURG

10

20 MAY 2019

DAY 96

20

PROCEEDINGS HELD ON 20 MAY 2019

CHAIRPERSON: Good morning Ms Sello, good morning everybody.

ADV MAHLAPE SELLO: Good morning Chair.

CHAIRPERSON: Thank you. Good morning Mr Callard.

MR FRANCIS QUENTIN CALLARD: Good morning Chair.

CHAIRPERSON: Thank you. Are you ready?

ADV MAHLAPE SELLO: We are ready Chair.

CHAIRPERSON: Thank you.

ADV MAHLAPE SELLO: Chair when – when we broke on Friday we had
10 gone up to page 15 paragraph 63. Are you there Mr Callard?

MR FRANCIS QUENTIN CALLARD: I am there.

ADV MAHLAPE SELLO: And we had gone through the upfront payment
of R7.37 billion required for the various locomotives on the basis that
they had to happen in that particular financial year. We move then Mr
Callard to your paragraph 64 and we start at 64 on the increase in the
estimated total cost. Could you take the Chair through your paragraph
64 and following?

MR FRANCIS QUENTIN CALLARD: Thank you. It was on the 15 April
that I was asked by Mr Leher to assist in updated a memorandum from
20 Mr Molefe to the BADC the Board Acquisition and Disposals Committee
on an increase in the estimated total cost for the acquisition of the 100
21 E Locomotives. He gave me a memorandum requesting a
recommendation by BADC to the board for an increase in the estimated
total cost of the 100 locomotives from R3.871 billion to R4.840 billion.
This was an increase of approximately R1 billion or 25%. May I take

you to that memorandum which is on Annexures 18, 18A page 284.

ADV MAHLAPE SELLO: Of...

MR FRANCIS QUENTIN CALLARD: Sorry.

ADV MAHLAPE SELLO: BB4[a].

CHAIRPERSON: Is it the same bundle?

ADV MAHLAPE SELLO: It is the same – the first bundle. Yes Chair same.

CHAIRPERSON: What page?

MR FRANCIS QUENTIN CALLARD: 284.

10 **CHAIRPERSON:** Thank you.

ADV MAHLAPE SELLO: And that is Annexure 18A which starts on 281. You want us to have particular...

CHAIRPERSON: What is the divider? What is the divider number?

ADV MAHLAPE SELLO: It is divider 18 Chair. Under 18 there are 2. There is 18 and there – 18A starting at 281. So at 281 that is where the annexures starts.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: Mr Callard you specifically want us to turn our attention to page 284?

20 **MR FRANCIS QUENTIN CALLARD:** Yes. 284 of the memorandum.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Details a table – table 2 which reflects how the increase is made up.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: It is complimented from table 2 if I

may draw your attention please to 285.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: At paragraph 14 on page 285 where the final amount is given as R4.840 billion or R4 840 million.

ADV MAHLAPE SELLO: So it is the – table 2 indicates for us the increase from 3.8 to 4.8?

MR FRANCIS QUENTIN CALLARD: To table 2 gives us the increase from R3.8 to R4 – it says there R44 million per locomotive but then added to that is we have a – an additional difference which comes out
10 on paragraph 14 of page 285 and the asterisk point there is 10% is added for options, variation orders, special tooling, test equipment, initial spares and capital spares.

ADV MAHLAPE SELLO: So Mr Laher provided you with this memorandum with a request – with a request to update the NPV?

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: In respect of the acquisition of these locomotives, did you?

MR FRANCIS QUENTIN CALLARD: Yes in the middle of page 285 at the – under paragraph 12 he writes:

20 “That the NPV would become a negative XX billion at
the original hurdle rate of 18.56% Francis Callard to
provide updated calculations.”

And that was the work that I did on this memorandum.

CHAIRPERSON: Now on page 285 you have got that XX billion rands – have you got the actual figures now or not really?

MR FRANCIS QUENTIN CALLARD: Mr Chair I did not bring those figures or even put them in my statement as that was just essential work done. My statement was related more to the aspect that I was surprised at the makeup of the figures of table 2 and the final price of R4.4 billion.

CHAIRPERSON: Oh okay no I just saw that at the end of that paragraph that you have read says you will provide updated calculations so I thought at the time of preparing this statement maybe those calculations were not available and that you might be having
10 them now. But you say you do not have them?

MR FRANCIS QUENTIN CALLARD: I provided those calculations. Those showed a change in the nett present value of the project.

CHAIRPERSON: Yes.

MR FRANCIS QUENTIN CALLARD: Which changed because of the increase in price the locomotives the nett present value reduced marginally but it was not such to negate the project.

CHAIRPERSON: Hm okay. And on page 284 you have got that 44 – you said that 44 on table 2 at the end that total is R44 million per locomotive?

20 **MR FRANCIS QUENTIN CALLARD:** Correct.

CHAIRPERSON: And – and you multiply that by...

MR FRANCIS QUENTIN CALLARD: BY 100

CHAIRPERSON: By the number of the locomotives to arrive at the – at the total increased amount.

MR FRANCIS QUENTIN CALLARD: Correct. That is so. Taking the 44

million per locomotive times by 100 locomotives gives us the 4.4 billion.

CHAIRPERSON: Ja.

MR FRANCIS QUENTIN CALLARD: And that 4.4 billion was an 8% gives us the figure of 4.840 at – as the contracted price on page 285.

CHAIRPERSON: Okay thank you.

ADV MAHLAPE SELLO: Thank you. Mr Callard the – your Annexure 18A which is the document we are considering is the memorandum as received by you from Mr Laher?

10 **MR FRANCIS QUENTIN CALLARD:** Correct that is correct.

ADV MAHLAPE SELLO: You indicated your paragraph 66 you express a view that you considered the increase excessive and difficult to justify.

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: Could you explain why that is so?

MR FRANCIS QUENTIN CALLARD: Certainly. On the first line the price per locomotive as per the board's submission of the 31 January 34.34 that...

ADV MAHLAPE SELLO: Please just a second Mr Callard.

20 **CHAIRPERSON:** Ja I think you must just alert us when you move from the annexures to the statement.

ADV MAHLAPE SELLO: Oh apologies Sir I – at his paragraph 66 of the statement. I apologise.

CHAIRPERSON: Ja okay.

ADV MAHLAPE SELLO: It is at page 15, 15. So at – yes. At 66 the

Chair will note that Mr Callard states;

“In my view the increase was excessive and was
difficult to justify.”

And that is the increase that is reflected in the – at page 284 of
Annexure 18A. My question to Mr Callard is why he forms that view?

MR FRANCIS QUENTIN CALLARD: Thank you. I formed that view with
reference to line 2 of table 2 which was the impact of the exchange rate
to contract value. On the table it is indicated as 3.69 million per
locomotive. Given the short period of the time between asking for this
10 quotation to the time of award I believed that impacted exchange rate
to be excessive I could not see an immediate justification for that
increase.

ADV MAHLAPE SELLO: Just – I apologise Mr Callard. Chair if we go
to page 284. The table 2 that Mr Callard referred us to he is dealing
with that – with the items at table 2 to express a view on whether or not
they are excessive under the circumstances or whether to – whether
there is a base – there is a basis to justify that increase. So I will
request the Chair to keep his finger at 284.

CHAIRPERSON: Ja.

20 **MR FRANCIS QUENTIN CALLARD:** Yes.

ADV MAHLAPE SELLO: Which is the table that Mr Callard is dealing
with.

CHAIRPERSON: Thank you.

ADV MAHLAPE SELLO: Mr Callard you have – table 2 indicates a
price per locomotive as per board submission of 21 January 2014 of

34.34 million.

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: You have just spoken to the impact of the exchange rate to contract date resulting in an increase of 3.69 million.

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: Please recap because I unfortunately had to interrupt you to assist the Chair to locate the page – the table.

MR FRANCIS QUENTIN CALLARD: Certainly. On the premise that the imported component of a locomotive of this nature is at the order of
10 40%. If one were to take 40% of the 34.34 million over the relatively short period with the movement of the exchange rate the 3.69 at first glance was excessive and that was certainly what it appeared to me.

ADV MAHLAPE SELLO: Would we be correct then to say that you would have expected an impact of the exchange rate what you are questioning is the value?

MR FRANCIS QUENTIN CALLARD: The quantum the x rate.

ADV MAHLAPE SELLO: The quantum that is reflected there?

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: It is too...

20 **MR FRANCIS QUENTIN CALLARD:** Correct.

ADV MAHLAPE SELLO: It is excessive in your view?

MR FRANCIS QUENTIN CALLARD: My issue was not with the line items.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Per se but more with the impact of

some of the line items.

ADV MAHLAPE SELLO: Understood. The next one is impact of inflation up to contract date. Do you have a view on that? The quantum of 1.26?

MR FRANCIS QUENTIN CALLARD: I have no view on that. It is just perhaps in line might even be conservative.

ADV MAHLAPE SELLO: Anything else on the line items that you would like to draw the Chair's attention to?

MR FRANCIS QUENTIN CALLARD: Certainly and yes thank you. The
10 other line item, additional costs for variations / duties of the 3.47 million that in our original submission was already built in to the 34.34 million. That factor was already included in the 34.34 million when we did the initial business case as being the total delivered price of the locomotive. This was not meant to be an addition in our original business case.

ADV MAHLAPE SELLO: So whereas with line item 1 you may question the quantum insofar as additional cost for variation / duties is concerned you question the line item itself in its entirety that it should not have been part of the calculation to increase from the 34.34
20 million?

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: Is that the correct understanding?

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: Thank you. Any other issue you would like draw the Chair's attention to at table 2?

MR FRANCIS QUENTIN CALLARD: Yes if I may then go to the next line item which is the cost to fix forward escalation.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: At – given on that table at 4.63 million my cursory view is that that was over a two year delivery period of the locomotives bearing in mind it was to be fairly quick delivery over a two year period for CPI at 6% or 7% even that was excessive in relation to the local content the 60% local content of the locomotive of the 34.34. In essence 34.34 60% of that would be around 20 million for
10 example. CPI over 20 million for two years at even at 6% per year would give one a rough figure of 20 million at 6% possibly a 1.2, 10.8 million. Arithmetic but it did not come to 4.63.

ADV MAHLAPE SELLO: Continue please.

MR FRANCIS QUENTIN CALLARD: The further point to that if I may refer to page 285. The asterisk there which gives a ten percent added for options, variation orders, special tooling, test equipment, initial spares and capital spared is a – if not a full duplication it is certainly a partial duplication of the line item on page 2 where additional cost for variations duties it is now reflected again as a 10% added for options,
20 variation orders, duties – so from – it appears to be counted a number of times.

ADV MAHLAPE SELLO: And looking at that table it states that discount negotiated is 4.47 million per locomotive. If one were to discount that discount the total of the additions would bring the purchase price to 4 – to 48, is that so? If we look at the table and we

do not take into consideration the discount negotiated, the actual increase comes to 48 million per locomotive and it reduces to 44 when one takes into consideration the discount negotiated?

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: Is that correct.

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: Interpretation of the table?

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: You proceed in your statement to quote from
10 the Fundudzi Report in respect of this acquisition could – what is the purpose of so doing? Do you do so to indicate that Fundudzi your view or your conclusion is consistent with Fundudzi or what is the purpose of that quotation?

MR FRANCIS QUENTIN CALLARD: Whether my view was consistent with Fundudzi given that my view was prior to that may I say that Fundudzi's view was perhaps consistent with mine perhaps in some more detail and calculation but it comes to the same – the same conclusion.

ADV MAHLAPE SELLO: And for the record Chair the Fundudzi Report
20 was – is part of the bundle on Transnet that has been submitted to you. And Fundudzi did investigate this trans – particular transaction. What then transpired after you had worked out the new NPV?

MR FRANCIS QUENTIN CALLARD: Well sometime later when looking at this memorandum again and I am on item – paragraph 67 of my report that subsequent interrogation of the memorandum from Lehar

raised the following question. That para 5A of the memorandum states:
 “Foreign exchange rates the rand has depreciated by 7.8 for against
 the Japanese Yen. This has impacted the expective price of the
 locomotive as approved by the – this has impacted the expective price
 of the locomotive as per the business case and ultimately the estimated
 total cost ETC is approved by the board by approximately 10.74%.

ADV MAHLAPE SELLO: Hm.

MR FRANCIS QUENTIN CALLARD: I commented that this was most
 unusual as the Japanese Yen would be associated with Mitsui Japanese
 10 Company and not CSR a Chinese company. Furthermore the cash flow
 spreadsheet that was presented that is Annexure 17 and that is page
 256 of the bundle in Annexure 17.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Also reflects a United States dollar
 for CSR. I cannot talk to the anomaly why we would be justifying a
 price of a locomotive in Japanese Yen when in fact it was from China
 based on a USA imported component would be based in US dollars.

CHAIRPERSON: Well was that possibly indicative of failure by
 whoever drafted the report to apply their minds to relevant issues
 20 because that would be relevant?

MR FRANCIS QUENTIN CALLARD: I read it as...

CHAIRPERSON: Or could it be in other words some carelessness or
 could it be that it was something else? Are you able to say or were you
 able to think of why anybody could produce a memorandum that had
 this kind of anomaly?

MR FRANCIS QUENTIN CALLARD: The only reason I can offer Mr Chairman is that given the time from when a memorandum was altered from my original calculations that those altering the memorandum did not either have the time or the base information to do a complete reworking of the memorandum. To implement these changes would be quite extensive, it would take certainly a fair amount of work. They did not have that amount of – they did not have that time available and hence just left it as changing the firm without changing the actual underlying assumptions and calculations within the memorandum.

- 10 **CHAIRPERSON:** Well on the face of it it points to say the least an alarming amount of carelessness because here you are dealing with a transaction that costs billions.

MR FRANCIS QUENTIN CALLARD: Correct.

CHAIRPERSON: And one would have thought that more care would be shown in working anything particularly that has something to do with prices and so on and this kind of mistake on the face of it just seems you know a very high degree of carelessness. How can you miss using the correct currency for something like this when you want to adjust prices?

- 20 **MR FRANCIS QUENTIN CALLARD:** I truly cannot explain it Mr Chair I do not think it is explainable as I put in my statement I believe that Mr Singh with whom I had been submitting these original business cases and Mr Lehar the author of the memorandum.

CHAIRPERSON: Hm.

MR FRANCIS QUENTIN CALLARD: From whom I received it that they

should talk to this anomaly. I cannot explain the anomaly but fully agree with you that it is unexplainable that one would justify a price increase from a locomotive which one is – where the foreign component is contracted in US dollars.

CHAIRPERSON: Hm.

MR FRANCIS QUENTIN CALLARD: To try and explain that based on a movement of Japanese Yen.

CHAIRPERSON: Hm.

MR FRANCIS QUENTIN CALLARD: It makes – I cannot see it making
10 any logical sense whatsoever.

CHAIRPERSON: Hm. And one would have thought that maybe before it was given to you it would have passed a few people at least one of whom should have picked this up? If the first person – if the drafter had made a mistake?

MR FRANCIS QUENTIN CALLARD: As I...

CHAIRPERSON: It is just – it is just strange on the face of it but maybe – maybe there will be an explanation that will show that you know it is not so strange.

MR FRANCIS QUENTIN CALLARD: It would be interesting and
20 informative if such an explanation were to come out Mr Chair.

CHAIRPERSON: Ja. Ja okay thank you.

ADV MAHLAPE SELLO: Okay thank you Chair. Mr Callard the quotation in italics at your paragraph 67 actually derives from page 283 of Annexure 18A under table 1 at A.

MR FRANCIS QUENTIN CALLARD: That is – that is correct I should

have mentioned that.

ADV MAHLAPE SELLO: I ...

CHAIRPERSON: Maybe before we proceed. Now this memorandum that Mr Laher gave you that we are dealing with now.

MR FRANCIS QUENTIN CALLARD: Yes.

CHAIRPERSON: This is now a certain version of the memorandum that you were asked to effect certain changes to that were not of your own?

MR FRANCIS QUENTIN CALLARD: Sorry if I understand Mr Chair you are...

10 **CHAIRPERSON:** Ja is it – is it a certain version of that memorandum? Remember the one you were asked to – in respect of which you were asked to effect changes, you remember that one we talked about?

MR FRANCIS QUENTIN CALLARD: Yes. I did not draft this memorandum.

CHAIRPERSON: Yes.

MR FRANCIS QUENTIN CALLARD: I received...

CHAIRPERSON: Ja so it is a complete different memorandum?

MR FRANCIS QUENTIN CALLARD: It is complete...

CHAIRPERSON: From the one that we talked about?

20 **MR FRANCIS QUENTIN CALLARD:** It is a complete different memorandum.

CHAIRPERSON: Ja.

MR FRANCIS QUENTIN CALLARD: And perhaps for clarity I should have mentioned that this memorandum was addressed – to be addressed to the Board Acquisitions and Development Committee

motivating why the increase in the 100 Class 19 E Locomotives.

CHAIRPERSON: Oh yes, yes, yes. Now I – but – but what is strange is that it seems this different memorandum seems to be also characterised at least in part by similar carelessness to say the least as we saw in terms of the changes that were you asked by Ms Mdletshe to effect on the other memorandum.

MR FRANCIS QUENTIN CALLARD: I would agree with – yes Mr Chairman I would agree.

CHAIRPERSON: You remember you told me

10 **MR FRANCIS QUENTIN CALLARD**: Yes.

CHAIRPERSON: That where they were supposed to say CSR they said GE and so on and so on and there were other things which were part of your concerns that just did not make sense.

MR FRANCIS QUENTIN CALLARD: Correct

CHAIRPERSON: You know now you have another memorandum where a wrong currency is being used in order to justify or seek to justify an increase you know. So it is – the two memorandum and maybe they are not the only ones. Two memoranda seem to be characterised by at least in part similar kind of carelessness.

20 **MR FRANCIS QUENTIN CALLARD**: That is so. If I may summarise Mr Chairman.

CHAIRPERSON: Hm.

MR FRANCIS QUENTIN CALLARD: The memorandum I received from Ms Mdletshe modify – or with the change from Mitsui to CSR had – still had as its original assumptions locomotive costs and calculations

based in Japanese Yen. The motivation for the increase post event because this is now the – I received this on the 15 May and the tenders – the awards have already been made. This increase post event is a memorandum to motivate for the increase but nevertheless still based for Chinese locomotives – locomotives from CSR where the imported component is in dollars the increase is motivated on changes in the Japanese Yen. I cannot explain that anomaly.

CHAIRPERSON: It is difficult to understand. I mean you referred – you referred us on Friday you referred us to the email that Mr Gama
10 sent to Mr Singh.

MR FRANCIS QUENTIN CALLARD: Yes.

CHAIRPERSON: After receiving your email where you were raising your concerns about the other memorandum.

MR FRANCIS QUENTIN CALLARD: Yes.

CHAIRPERSON: And in that email he in his own words said this is a mess.

MR FRANCIS QUENTIN CALLARD: Yes.

CHAIRPERSON: But we – we know from what you told you us and maybe another witness will come and say there is something you
20 missed that is why you told us this. That – it looks like – it looked like the memorandum went to the Board Acquisitions and Disposals Committee without correcting some of those obvious issues that you had raised. So with that – so one would have thought that maybe after that any further memoranda would really be looked at quite carefully for – to make sure that these kinds of mistakes were not there. But here

we have another one that makes some of the same mistakes that we saw in the other one.

MR FRANCIS QUENTIN CALLARD: They are – they appear – certainly they appear to have been carried through from that original memorandum.

CHAIRPERSON: Hm.

MR FRANCIS QUENTIN CALLARD: They appear to have been carried through here without correction or qualification or explanation.

CHAIRPERSON: Yes.

10 **MR FRANCIS QUENTIN CALLARD:** They certainly appear so.

CHAIRPERSON: As I say maybe somebody will come and say no there is something you people do not understand there is nothing wrong with what these memoranda say. We will wait to hear.

ADV MAHLAPE SELLO: Indeed Chair.

CHAIRPERSON: Ja.

ADV MAHLAPE SELLO: We will. I had indicated Mr Callard that that quotation at your paragraph 67 is extracted from page 283 of that memorandum under the table at paragraph A. Now it – looking at paragraph A I noticed that what you quoted is the first portion of
20 paragraph A. The remainder reads as follows and I quote.

“It should also be considered that during the negotiation process the rand was impacted by the possibility of war in the Ukraine which resulted in Transnet taking the view that the rand should be fixed at current levels and negotiations and

contracting should be speedily concluded.”

You do not deal with this part of that paragraph in your statement. I do not know if you can express a view - firstly whether you can explain what that means and secondly express a view what possible impact the anticipated war in the Ukraine would have on the price of these – these locomotives.

MR FRANCIS QUENTIN CALLARD: Thank you counsel/Chair. I cannot express a view on that. Reading this memorandum was the first one comes across it in none - certainly in none of the discussions which I
10 had had on foreign exchange rates and the like given this was this a factor that we had taken into consideration personally that I can recall. One can – I could only speculate as to why this reason would be put in this document and speculate that the possibility the impact of a war in the Ukraine – I cannot make sense of it but let leave it at that.

ADV MAHLAPE SELLO: Okay.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: Thank you. I thought you might – you might shed light on that.

MR FRANCIS QUENTIN CALLARD: I cannot.

20 **ADV MAHLAPE SELLO:** Seeing as it impacted the foreign exchange increase. So – but at the Chair says perhaps somebody will come available as a witness to explain these issues. You at paragraph 68 indicate that you had expressed concerns about delaying delivery and that we had dealt with on Friday already and you indicate that – that your concerns were realised on 6 June 2014 at paragraph 68.

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: Can you deal with the contents of paragraph 68 ...?

MR FRANCIS QUENTIN CALLARD: Certainly.

ADV MAHLAPE SELLO: And going forward.

MR FRANCIS QUENTIN CALLARD: If I may and recapping that my initial email expressed concerns that Transnet engineering's capacity to deliver. Received this – an email on 6 June 2014 from a colleague. He copied me on a mail that he had sent to his General Manager Capital
10 Projects. May I take you please to Annexure 19 page 290? May I start first please at 289?

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: 289 is just the mail from a colleague to myself and it is – the subject is Class 20E Production Concerns. From my email I mentioned that:

“Production concerns on the class 20E may impact
the class 21E.”

If I may then take you further to page 290 please which is a fairly long exposition of the class 20E production concerns. It is not my intention
20 to go into this in all its detail suffice to say that this page together with the subsequent page 290 deals with these concerns in some detail but I would just like please to take you to one or two items as illustrative of the point.

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: If you could look at the first bullet

point please under paragraph 1. It says:

“Note that the locomotive 20 015 is still on blocks
and this locomotive was scheduled to be handed
over in May for acceptance in June 2014.”

It says:

“Note that locomotive E20 015 that is class E20 015
that is locomotive 15.”

Could I ask you please to turn to page 297 of the - page 297 is a
picture of a locomotive and it is marked – that is locomotive 20015 and
10 we will see that it is still on blocks whereas in blocks it should be far –
should have progressed a lot further. It should already be on its
bogies. It should be on its wheels and it should be almost mobile and
it indicates that this locomotive is way behind in its production. If I
could do a second example.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: The – under sub – under
paragraph 2 there the first bullet says:

“R/TE is scheduled to hand over locomotives 20
016.”

20 If I could take you please to page - picture on 29 – sorry – to handover
locomotive 20 016 and if you could have a look please at the picture on
page 296.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: At the bottom of that picture it
indicates that this is locomotive E20 016. That is locomotive 16 and

looking at the interior of that locomotive it is certainly nowhere near ready for – for handover. A similar story is told if we look at locomotive E20 021 – locomotive 21 which is pictured on page 292. If we turn to page 292 please and that is the interior of the locomotive. This email was sent in May – sorry – in June.

ADV MAHLAPE SELLO: June.

MR FRANCIS QUENTIN CALLARD: In June and it said this locomotive is scheduled for handover for acceptance in July 2014 and the interior of the locomotive is totally empty. It is devoid of equipment, motors
10 and the like and this is – these are illustrative of the delays in the production line.

ADV MAHLAPE SELLO: And – and that conclusion is captured in Mr Harris' email at 289 of a possible three month delay ...

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: At paragraph 3 thereof?

MR FRANCIS QUENTIN CALLARD: That is - supports his conclusion yes.

ADV MAHLAPE SELLO: And you said – you said having received this email and report you then drafted a memorandum concerning these
20 delays?

MR FRANCIS QUENTIN CALLARD: Correct. The memorandum is in Annexure 20.

ADV MAHLAPE SELLO: Yes. You deal with that from your paragraph 69?

MR FRANCIS QUENTIN CALLARD: I will deal with that from paragraph

69 - because of these delays and the collective concerns we had about these delays one of the options was to approach China South Rail to import 100 locomotives directly from China. Recognise the implications on local content and the like but certainly this would bring them in fairly quickly. Recall that the motivation said that they could five locomotives per day. So we should be able to get the 100 locomotives fairly quickly. I drafted the memorandum to this effect in conjunction with various colleagues. I sent this memorandum to General Manager Rita Roper that perhaps that she would forward it to Mr Gama so who
 10 would in turn forward it up the hierarchy that we import 100 locomotives directly but it stopped at Ms Roper. It did not go further. However the purpose of this memorandum was – and tabling it – was just to express our concern at the delay and what the possible mitigating actions were we could take place– we could put in place to overcome those delays.

ADV MAHLAPE SELLO: Okay and you say this – as far as you are aware – this email was not acted upon?

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: This memorandum rather.

MR FRANCIS QUENTIN CALLARD: Email was not acted on.

20 **ADV MAHLAPE SELLO:** And then what transpired thereafter?

MR FRANCIS QUENTIN CALLARD: Nothing insofar as I was involved with in expediting locomotive delivery. What happened thereafter was on – and that deals with – goes to item – paragraph 70 of my statement – that on 24 October I received an email from Niresh Budhai from Transnet Corporate. Budhai's responsibilities – as I understand it -

included providing administrative support to the various approval bodies in the Transnet Group and show that submissions were in the required format and met the required standard and was the liaison for communicating with the Department of Public Enterprise. The essence of this point was that Budhai requested that I review a table of risks and mitigating actions relating to 100 21E locomotives.

ADV MAHLAPE SELLO: If I may just point out for record purposes the spelling of Niresh Budhai - his first name N-I-R-E-S-H, surname B-U-D-H-A-I. Thank you. You may proceed.

10 **MR FRANCIS QUENTIN CALLARD:** Thank you. As per my paragraph 71 I updated the table in consultation with my technical colleagues from Freight Rail and would highlight the risks and the mitigation actions largely mirrored the concerns of my email to Mr Gama and Mr Jiyane in January 2014 and the remedial actions incorporated the specifications of the 20E – 21E locomotives. If I may take you to page 21 – sorry – to Annexure 21?

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: To Annexure 21 page 306 the subject of that email on page 306 reads:

20 “Risk/mitigation plans for the 100 coal line locomotives.”

And at the bottom of that page is a table of the risk and the mitigation actions. The mitigating actions which I put in are in the lighter colour in blue where I amended and added too what was already in the table and particularly under the design risk and the operational readiness

was what I added. Essentially to all intents and purposes as I stated this highlighted the risks already previously pointed out.

ADV MAHLAPE SELLO: Yes.

CHAIRPERSON: What – what would be the implications of the fact that what you were coming up now was based on the concerns you had raised earlier with Mr Gama but which had been ignored? What – what would be the implications of the fact that down the line you are raising – your update is based on the same concerns.

MR FRANCIS QUENTIN CALLARD: Yes.

- 10 **CHAIRPERSON:** Those concerns had previously been ignored. Could they be taken into account in the light of the fact that they had not been taken into account before?

MR FRANCIS QUENTIN CALLARD: No.

CHAIRPERSON: To what extent would taking them into account on their part undo a lot of things that had been – had been done in disregard of your concerns.

- MR FRANCIS QUENTIN CALLARD:** It is my interpretation and I stress that this my personal connecting of the dots. Having sent the mail to Mr Gama and Mr Jiyane in January 2014 having noted that those
20 concerns were not reflected to the Board or BADCO when the transaction was approved the subsequent change in technical specifications that were required. This document that Mr Budhai had asked me to now prepare was a way of now communicating those risks and changes further into the hierarchy of the organisation and wider into the organisation but that is my interpretation of this table and given

Mr Budhai's role at the time in preparing documentation that is how I read it at the time.

CHAIRPERSON: But at a practical level - before we proceed – could they be taking into account without – could they be effected without – without going back to the Board and basically say – you know – here are things that have not been brought to your attention and now we – we did not pay attention to certain concerns that we – had been raised. We realise that that it is coming back to haunt us now. Can you approve that things be done this way or could they be effected without
10 having to go back to the Board or is that something that you would not know?

MR FRANCIS QUENTIN CALLARD: Certainly at the technical level and at the operational level there were actions in place and many actions in place to deal with the *de facto* situation. These locomotives ...

CHAIRPERSON: Yes.

MR FRANCIS QUENTIN CALLARD: Were coming ...

CHAIRPERSON: Yes.

MR FRANCIS QUENTIN CALLARD: We had to deal with them (coughing).

20 **CHAIRPERSON:** Yes.

MR FRANCIS QUENTIN CALLARD: I comment specifically as to how all of this was communicated further higher into the Board. I do not know.

CHAIRPERSON: But you say operationally your understanding is that in effect what had gone wrong could still be rectified if this time

everyone concerned would be act in accordance with what you were putting up or most of the things maybe not all?

MR FRANCIS QUENTIN CALLARD: Most of the things. What – certainly what did happen is I mentioned the – the technical meetings which took place on the 19th to modify the locomotives. Yes the locomotives were modified that they were suitable for the ...

CHAIRPERSON: Hm.

MR FRANCIS QUENTIN CALLARD: Operation on the coal line.

CHAIRPERSON: Hm.

10 **MR FRANCIS QUENTIN CALLARD:** That certainly happened.

CHAIRPERSON: Yes, yes, yes.

MR FRANCIS QUENTIN CALLARD: So the locomotives were ...

CHAIRPERSON: Hm.

MR FRANCIS QUENTIN CALLARD: Modified and brought into service.

CHAIRPERSON: Yes, yes.

MR FRANCIS QUENTIN CALLARD: How all these mitigating actions and the like were communicated to the Board in the management of the process ...

CHAIRPERSON: *Ja.*

20 **MR FRANCIS QUENTIN CALLARD:** I cannot ...

CHAIRPERSON: *Ja.*

MR FRANCIS QUENTIN CALLARD: And that is what I am saying.

CHAIRPERSON: But at a practical level they could be done?

MR FRANCIS QUENTIN CALLARD: At a practical they could be done ...

CHAIRPERSON: *Ja.*

MR FRANCIS QUENTIN CALLARD: And they were done.

CHAIRPERSON: They were done?

MR FRANCIS QUENTIN CALLARD: Yes.

CHAIRPERSON: Okay, thank you.

ADV MAHLAPE SELLO: Okay. So the plans you proposed at Annexure 21 were to mitigate the impact of delay were actually implemented. Is that what you are suggesting?

MR FRANCIS QUENTIN CALLARD: Yes. We - we had to do that. We -
10 we modified the locomotives where drivers were trained appropriately. Those practical things were done.

ADV MAHLAPE SELLO: And did it - did that have any impact on – on the problem of delay of delivery of the locomotives or did that remain unchanged – the delay?

MR FRANCIS QUENTIN CALLARD: It is my understanding that the locomotives were delivered within the – a reasonable time. I would not like to comment on the ...

ADV MAHLAPE SELLO: Okay that is fine.

MR FRANCIS QUENTIN CALLARD: Implications of the delay.

20 **ADV MAHLAPE SELLO:** No we will take that up perhaps with somebody else.

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: You – you then draw conclusions on this entire transaction of the acquisition of 100 locomotives at your paragraph 73?

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: And you express an opinion in about six paragraphs. Would you like to summarise that for the Chair?

MR FRANCIS QUENTIN CALLARD: Yes certainly and as you point out in paragraph 73:

10 “It was my – it is my considered opinion the
decision by group and/or Supply Chain Service to
arbitrarily or unilaterally chain technical
specifications without technical consultation well
not technically proficient themselves was
irresponsible in the extreme. The impact of the
change ...”

73.2:

“The impact of the change from MARS to CSR and
the associated design changes on locomotive
delivery were never discussed with technical or
operations and was equally irresponsible.”

73.3:

20 “The delays caused negated the entire raison d’être
of the project. I believe in ...”

73.4:

“...that the confinement to CSR was flawed in
concept and execution – in my considered opinion.
The motivation to use CSR was based on production
capacity in China and a supplier who at the time of

award had yet to deliver a working locomotive, did not meet the confinement requirements inter alia these include when goods or service had been procured a highly specialised and largely identical executed by that supplier and further almost identical to previous work done.”

And I think we have covered that ...

ADV MAHLAPE SELLO: We did.

MR FRANCIS QUENTIN CALLARD: Previously.

10 **ADV MAHLAPE SELLO:** Yes.

MR FRANCIS QUENTIN CALLARD: 73.5:

“The increase in estimated total cost from 3.871 billion to 4.84 billion for the acquisition of 100 locomotives was unjustified and ...”

73.6:

“...the upfront payments amounting to 60 percent before the first locomotive was delivered were excessive.”

ADV MAHLAPE SELLO: And then that brings you to the conclusion of
20 your testimony insofar as the 100 locomotives are concerned?

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: We move now to a new chapter but not very new as we had previously touched on it – the Market Demand Strategy starting at page 18. You will recall that we previously dealt with this subject and we – we promised the Chair that we will deal with it in more

detail later in the course of your testimony.

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: And just to put things in context that MDS discussion informs the next transaction which is the 1 064 ...

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: Acquisition? If then we could turn to page 18 from paragraph 74? Before you - we deal with the detail – Chair just to indicate Mr Callard has provided Annexures – as the Chair will see at paragraph 75 – Annexure 26 through to Annexure 35. That is – what –
10 nine annexures.

MR FRANCIS QUENTIN CALLARD: *Ja.*

ADV MAHLAPE SELLO: At times they are fairly detailed and complex tables and in the course of preparation we found a way to perhaps make them digestible for some of us who failed to go to engineering school. We will therefore not deal with the annexures in the order they are presented and if you permit Mr Callard to move from annexure in annexure in order to – to draw this complete and concise picture, thank you. We are now dealing with the Market Demand Strategy Mr Callard and you said at 74 that this section outlines the development of the
20 Market Demand Strategy. You may proceed.

MR FRANCIS QUENTIN CALLARD: Thank you. May we first turn please to Annexure 25 and I am dealing with paragraph 75 where the acquisition of 1 064 locomotives was predicated on the MDS which in turn predicated a nearly doubling in general freight volumes from a budgeted 91.2 million tons in 2013/2014 to 180.25 million tons in

2019/2020. If I – we could go to Annexure 25 please and if we could start off on page 315?

ADV MAHLAPE SELLO: We are there.

MR FRANCIS QUENTIN CALLARD: This 315 and 316 are headed “Supporting Documentation”. They are also titled “Seven Year Commodity Growth”. These tables detail fairly extensively by commodity and by business unit the expected growth in those commodities – rail transportable growth of those commodities over the seven year period. If I may take you please first just to the bottom of

10 page 316 ...

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: The last line says:

“Total MDS ...”

And the print is small but in 2013/2014 that is:

“91.712 and it goes through to 180.252.”

Effectively and of some 89 million tons this near doubling in growth. This is a substantial growth over a short period of time for such an organisation.

ADV MAHLAPE SELLO: So what we have at pages 315 and 316 are
20 the anticipated volume or is the anticipated volume growth over a seven year period.

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: My question is was that a factor in amending the original fleet plan to acquire 776 locomotives to now acquire 1 064?

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: You may continue.

MR FRANCIS QUENTIN CALLARD: Thank you. I refer then to paragraph 76. Through April 2013 to September 2013 I highlighted various – I highlighted shortcomings in the compilation of the Market Demand Strategy and this ultimately resulted in the workshop being convened by Mr Pillay on 19 August 2013 to validate the MDS demand and produce a validated traffic demand file. In summary what I set out here was that integrating these increases in detail I felt certain inconsistencies that I could not reconcile and wish to say – and said if
10 this traffic file is inconsistent it affects the volumes you want to convey, it affects the assets we require, it affects our operations and what we have to have in place for operations. We need to have a coherent triangle if I could put it this way of the traffic we wish to convey. These are the assets we have and these are the operational requirements – the operational procedures we need to execute that traffic file. If anyone – if anyone of them is out of synchronism then we have a problem. We either have too much volume or we do not have enough assets or we have too much – too many assets. If we predicate too high a market demand.

20 **ADV MAHLAPE SELLO:** You indicate at paragraph 77 then in summary that you highlighted the inconsistencies – firstly where market tonnages exceeded the capacity of the mine and secondly where inconsistencies where the ratio of coal and steel did not align.

MR FRANCIS QUENTIN CALLARD: Certainly. May I take you through the three inconsistencies in brief?

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: Thank you. Could I first turn in that respect to page 322 please? 322 and that is Annexure 27.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: This was an email to one of my marketing colleagues and effectively it said:

“Please look at the attached presentations. They indicate that

10 has an installed capacity of 8 million tons per annum. I took those presentations out of the annual reports and what was available on the web and this installed capacity excluded the shutdowns which would be potentially be taking place in Arcelor Mittal but the seven year MDS indicates that we will ramp up to over 10 million tons of iron ore to Arcelor Mittal. I think the MDS is overstated but would you check please.”

That was the tonnage going into Arcelor Mittal.

ADV MAHLAPE SELLO: Before you leave 322 just so we understand.

20 You have listed the various plants of Arcelor Mittal?

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: And you have indicated historically what the capacity per plant has been?

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: Should we add up those totals to understand

therefore what the annual capacity of Arcelor Mittal is?

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: That is so.

ADV MAHLAPE SELLO: Thanks. So you say that the seven – the MDS notwithstanding these historical facts indicates a ramp up to over 10 million tons of iron ore?

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: And you question that conclusion?

10 **MR FRANCIS QUENTIN CALLARD:** Yes.

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: We cannot say we are going to give you 10 millions of iron ore when you can only process 8 million tons.

ADV MAHLAPE SELLO: Thank you. You may proceed.

MR FRANCIS QUENTIN CALLARD: May (intervenes)?

ADV MAHLAPE SELLO: We are now dealing with the in – the three inconsistencies you highlight.

MR FRANCIS QUENTIN CALLARD: Yes.

20 **ADV MAHLAPE SELLO:** And you want to demonstrate where and how those inconsistencies arise. Which annexure are you looking for? Perhaps I may help.

MR FRANCIS QUENTIN CALLARD: Sorry – it is one on the ratio of coal to steel.

ADV MAHLAPE SELLO: Will – let us try page 327 and see ...

MR FRANCIS QUENTIN CALLARD: 327?

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Thank you. Page 327, this is again an email to my marketing colleagues but it reads:

“Hi, the ratio of coal to steel in the third and the last four years is out of range. The premise for this statement is that in the making of steel there is a specific ratio historically which the plants use of coal and iron ore to produce steel. They – that
10 range is consistent over all the years. What I ...”

ADV MAHLAPE SELLO: Sorry Mr Callard before you unpack that ...

MR FRANCIS QUENTIN CALLARD: Sorry.

ADV MAHLAPE SELLO: Table.

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: What are the consequences of the ratio of coal to steel being out of range? What would be the consequences?

CHAIRPERSON:

MR FRANCIS QUENTIN CALLARD: Well if the ratio is out of range you either have too much coal and not enough iron ore or you have too
20 much iron ore and not enough coal.

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: So the – the small print – if I may take you to on 327 the small print at the bottom of that says “ratio of coal to iron ore” and in the – it ranges you will see from 13, 14, 53% to 58%, to 45, to 50 to 55 to 54, give or take that those are bounded but

in the last year's those ratios changed from 61 to 61% to 64% to 57 or 67 and the last year is 71%. This would indicate that one of those commodities is out of range, and cannot be a true reflection of what we would be transporting and I just wish to highlight this and say please we need to correct that.

ADV MAHLAPE SELLO: Now if we read that by 2013, by 13/14 you meant the year 2013/2014 which would be the first entry the first column.

MR FRANCIS QUENTIN CALLARD: Correct.

10 **ADV MAHLAPE SELLO:** That ratio stands at 53%.

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: And then it increases and thereafter it drops to 45 to 50, to 55, to 54 in the succeeding years.

MR FRANCIS QUENTIN CALLARD: Yes so the ...(intervention)

ADV MAHLAPE SELLO: Yes?

MR FRANCIS QUENTIN CALLARD: Sorry, the range we're looking at is in the order of 50 odd percent.

ADV MAHLAPE SELLO: Okay so from 2019 the ratio then increases from 61 and next year 64, 67 and 71.

20 **MR FRANCIS QUENTIN CALLARD:** Yes, effectively that says you're bringing in too much coal

ADV MAHLAPE SELLO: And what would be the average correct ratio if I may call it that, what is the proper ratio of coal to iron ore?

MR FRANCIS QUENTIN CALLARD: I believe it should be of the order that we have in those one, two, three, four, five, six years of that order

of the range of 50/55% of that order which they have there. I am not going to be pedantic as to the exact figure but I had no problem with the earlier ranges, it was at the last four years went way out of the bounds of the preceding years.

ADV MAHLAPE SELLO: Now before we leave this table do you know the source of this information, was it obtained from Arcelor Mittal itself or how – where do we get this information from?

MR FRANCIS QUENTIN CALLARD: This source I – the source of this information was the traffic file, the traffic file which makes up the MDS
10 file and this was an interrogation of that particular elements of the MDS file and asking do they produce a credible traffic file that we could use.

ADV MAHLAPE SELLO: Then let me take a step back and find out what is the source of information for the traffic file.

MR FRANCIS QUENTIN CALLARD: The source of information for the traffic file is normally the executive business managers, each one in charge of a particular business unit, like we have agriculture and bulk liquid, coal, export iron or manganese, steel and cement, mineral mining and chrome and intermodal each of those executive managers would be responsible for producing the budgets and the traffic file in
20 their business units for their commodities over the seven year period.

ADV MAHLAPE SELLO: And then lastly the business executives would they reflect, would they calculate their own projections or would they in this instance be in engagement with the client, Arcelor Mittal in this instance, and have obtained those figures, those projections from Arcelor Mittal or would that be their own calculations internally, do you

know?

MR FRANCIS QUENTIN CALLARD: I can't say how they obtained the figures, the fact that I pick up the anomalies in the figures gave cause for concern and this, the workshop which I spoke to was an attempt to get back to engage with the business unit managers to revisit these figures to see if they needed correction, if and where and how they needed correction.

ADV MAHLAPE SELLO: Okay, and that then deals with your concern regarding the ratio of coal to ore.

10 **MR FRANCIS QUENTIN CALLARD:** Yes

ADV MAHLAPE SELLO: You said there were three inconsistencies, what is the second?

MR FRANCIS QUENTIN CALLARD: And the third inconsistency is on – if we may turn to page 329 please which is Annexure 30.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: And this was an example for Exxaro Leeupan Mine. If we were to look at the first line under the light blue heading it says Delmas Siding Exxaro Coal Area destination New Castle and one would read that as being Arcelor Mittal.

20 **ADV MAHLAPE SELLO:** Yes.

MR FRANCIS QUENTIN CALLARD: We have in the one year 1.4million tons, the next year 1.7million tons, then a blank, then a blank and then it jumps to 5million tons for four consecutive years.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: My comment on that to my

colleagues was the jump in five million tons in one year to Newcastle is optimistic, the ROM that is Rate of Mine ...(intervention)

CHAIRPERSON: Was that a comment or a question?

MR FRANCIS QUENTIN CALLARD: Well it was a comment or a question to him saying what is going on because the ROM, the run of mine is – I said the mine can only produce 4.9million tons per annum and not the seven million tons projected as you will see which is at the bottom line of that table, because all this is coming from one mine, and I did some internet research, looked at the annual report, there were no
10 plans to increase them mine capacity which is a fairly major exercise if I may add, and if there were no published plans to increase mine capacity how could we then project conveying more than the mine could actually produce and this was the essence of my comment to my colleagues and these were three of the examples that I sent to my colleagues saying we need to relook at the MDS and ensure that every line item in fact is credible for the track that we are going to convey.

ADV MAHLAPE SELLO: And that is so because that information in part dictates the number of locomotives necessary to acquire?

MR FRANCIS QUENTIN CALLARD: The number of locomotives and the
20 number of wagons.

ADV MAHLAPE SELLO: And the number of wagons.

MR FRANCIS QUENTIN CALLARD: And the number of wagons, but yes locomotives as well.

ADV MAHLAPE SELLO: Now on the two examples we have gone through would we be correct in concluding that both in respect of

Exxaro and Arcelor Mittal the documents project a sharp increase in production from the two clients, would that be a fair summation?

MR FRANCIS QUENTIN CALLARD: They project a sharp increase in the delivery of raw material to the mines, whether they have their capacity to produce that was, but project a sharp increase in delivery. May I comment and take it forward to the production?

ADV MAHLAPE SELLO: Yes absolutely, which would mean a sharp increase in demand of our services as TFR.

MR FRANCIS QUENTIN CALLARD: It would be a logical step to take
10 that forward yes.

ADV MAHLAPE SELLO: You then have included in your – no I will restate, if you change to page 19 continuing on this topic, you state at 78 that a process was developed to derive a validated and executable MDS file?

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: Could you clarify what you mean in that paragraph?

MR FRANCIS QUENTIN CALLARD: Certainly. Because of these concerns we need to, I felt we needed to put in place a process to
20 validate this traffic file, and if I could then take you please to page or to Annexure 30, correction, Annexure 31.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Page 333.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: This was to various colleagues in

setting up a meeting to set up this process to develop a validated traffic file, it is further taken forward in Annexure 31, page 335 where I write to ...(intervention)

ADV MAHLAPE SELLO: I think that's Annexure 32, please check yours.

MR FRANCIS QUENTIN CALLARD: Sorry Annexure 32, apologies, Annexure 32.

ADV MAHLAPE SELLO: Please continue.

MR FRANCIS QUENTIN CALLARD: Page 335, this is a mail to many
10 colleagues at the time and in essence:

“Dear Colleagues,

Thanks for the meeting, some very brief notes.”

All of those items and detail are process to develop a validated traffic file which would have coherency in specifically the wagons and locomotives we need from the customer point of view, from the traffic we convey, our network capability is the – does the supplier have sufficient capability to deliver as we have mentioned in the example of Exxara. Does the supplier have the ability to load the product, irrespective that he can produce the product can it be loaded into the
20 rail wagons in the requisite time. Can the receiver consume that product, can Arcelor Mittal consume that product for example. Can logistics integration or the department function which was dealing with the actual operations, do they have the capacity to deliver on these tons. Could we bring that together, and this meeting detailed how we achieve and what we needed to do to achieve that process.

ADV MAHLAPE SELLO: And this you do because in your view the traffic files on which the MDS is predicated had not been validated, you wanted a process to validate those figures before conclusions drawn at the MDS could be drawn?

MR FRANCIS QUENTIN CALLARD: Yes I was concerned at the – if I use the phrase “the hockey stick effect of the rapid increase” and sought to have greater clarity on how the process was validated and was it in fact a file that we could really trust. This is carried through into Annexure 33 where we – with comment from my colleagues where
10 we now have the detail, their comments to it, we all agree on the process. Annexure ...(intervention)

ADV MAHLAPE SELLO: Now the validation that you called for was it carried out?

MR FRANCIS QUENTIN CALLARD: I would like to revert back to my statement, paragraph 79, that while the MDS was fine tuned and obvious errors were corrected there was no substantive change in the MDS.

ADV MAHLAPE SELLO: Considering the position adopted by the MDS for your recollection was this consistent or that hockey stick effect that
20 you spoke of, was this consistent with the economic outlook generally?

MR FRANCIS QUENTIN CALLARD: No it was not consistent with the economic outlook, and for that if I could refer to Annexure I think it is number ...(intervention)

ADV MAHLAPE SELLO: 26, correct.

MR FRANCIS QUENTIN CALLARD: 26 was a report, if I could call it

that, developed by a commercial colleague, it came to me under the heading “economic assumptions to support the seven year MDS” this is at the middle of page 318, it came from my commercial market research and insights, one of my colleagues there.

ADV MAHLAPE SELLO: And just for the record what's the date of that?

MR FRANCIS QUENTIN CALLARD: The date of that report is the 9th of April 2013, the date of the email is 9 April 2013.

ADV MAHLAPE SELLO: And was this during the time the MDS was
10 being developed?

MR FRANCIS QUENTIN CALLARD: The MDS had been developed before and the MDS was a rolling plan so it was updated each year.

ADV MAHLAPE SELLO: Alright.

MR FRANCIS QUENTIN CALLARD: But this was specifically at the time when we were putting the MDS into the 1064 locomotive business case, so it was highly relevant that this in fact supported the – we were looking for the information to support the MDS in the locomotive business case.

ADV MAHLAPE SELLO: Yes.

20 **MR FRANCIS QUENTIN CALLARD:** But if we turn to page 320 while we have this doubling of market demand predicated in the MDS page 320 the economic assumptions to support the seven year MDS do not correlate with this significant doubling of demand and a reading of page 320 in the downgrading of global forecast SAGDB growth has come down, global trade is forecast to shrink, commodity prices are under

pressure, S A Mining Production index which is a key component of the materials we transport fell by and has fallen, exchange rate forecast, the weaker rand will support exports and to some extent commodity exports but will raise the price of imports, this did not correlate with the optimism if I may put it that way of the doubling of volumes in the MDS.

ADV MAHLAPE SELLO: Now in your supplementary statement you introduce a further document marked 26A, Chair I am handing over your supplementary statement, we were updating it with the other supplementary statement, I will speak to you later.

10 **CHAIRPERSON:** Thank you.

ADV MAHLAPE SELLO: So Chair you now have your BB4C it's in two parts, it's the first supplementary statement and the second which we are introducing this morning, and the second relates to the corrections that have been effected to the statement of Mr Callard.

CHAIRPERSON: Thank you.

ADV MAHLAPE SELLO: The Annexure 26A I refer to as in Section 2 of BB4A, the supplementary statement and according to your statement, supplementary statement to be precise ...(intervention)

MR FRANCIS QUENTIN CALLARD: It is page 15 I believe.

20 **ADV MAHLAPE SELLO:** At paragraph 9 you – of the supplementary statement you state:

“I introduce a document from Anoj Singh dated April 2013 to the National Treasury reflecting projected flat economic growth as Annexure 26A.”

Now if we go to 26A of the supplementary and that will be at page 14 of

the supplementary.

MR FRANCIS QUENTIN CALLARD: Yes page 14.

ADV MAHLAPE SELLO: Would you like then to talk us through this document?

MR FRANCIS QUENTIN CALLARD: Certainly, page 15 of the supplementary is an email from Mr Anoj Singh to National Treasury and it says:

“Good afternoon,

10 Kindly receive attached correspondence from Anoj Singh’s office.

Kind regards”

The date is 12 April 2013. This is around the same time as I received that early email from Commercial Marketing Research, the key points though if we turn over to page – the following page which supplementary 16 and Mr Singh writes effectively that:

20 “Transnet has not yet announced its revised 13/14 corporate plan but I will provide you with the salient features of the 13/14 corporate plan to enable you to articulate these on National Treasury’s Roadshow in the weeks ahead. Salient features of the 2013 corporate plan.”

I quote specifically from the third bullet:

“The CP reading the corporate plan takes into account the prevailing economic slow-down and related reduction in overall commodity demand.”

The next bullet:

“Slower economic growth both locally and internationally impacting negatively on rail and port commodities. Overall volumes over the seven years remains stable but at a slower growth trajectory initially.”

Sorry the last point:

“The MDS is still achievable by adopting revenue diversification strategies, cross-production initiatives as well capital investment portfolio optimisation programs.”

But the overall tenure of this letter is that it supports and is consistent
10 with the economic forecast that was provided by Commercial Marketing Research and indicates that it does not support in my mind the optimism of the (indistinct) MDS plan.

ADV MAHLAPE SELLO: So then our take out from these documents is the MDS projected a sharp increase in demand.

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: Over the seven year period.

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: The economic projections as provided, over that seven year period as provided by Market Research within Transnet
20 and by the Chief Financial Officer advising Treasury both anticipated the converse, instead of an increase in demand there will be at best, the demand will stay stable, at worst it will decrease.

MR FRANCIS QUENTIN CALLARD: It could have allowed for a marginal moderate growth on the trajectory which we were currently at, but certainly it did not support the hockey stick growth that the MDS

predicated.

ADV MAHLAPE SELLO: But nonetheless the MDS carried through and based on the MDS the calculation was that a further 1064 locomotives are required by freight over the period of seven years?

MR FRANCIS QUENTIN CALLARD: I put that in my belief in paragraph 80 that the pressure to achieve the MDS targets and the significant consequences of changing the MDS made any attempt to question the MDS unlikely to succeed. And yes the 1064 was predicated on the MDS.

10 **ADV MAHLAPE SELLO:** We then get to the section where you now deal specifically with the 1064 locomotives. You start at page 19 paragraph 81, you indicate to the Chair that you will deal with this under four specific headings.

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: If you could take us through that part of your testimony.

MR FRANCIS QUENTIN CALLARD: Thank you Counsel. Certainly Chair and I would quote from paragraph 81 that in this section I will outline the development of the 1064 business case and the role of
20 McKinsey further go to show, 81.2, that hedging and escalation were included in the business case, para 81.3 that the accelerated locomotive delivery was in my opinion ill-considered, and four that the advance payments had a negative impact on Transnet finances.

Para 82 the process to evaluate the 1064 locomotive bids is a section in its own right.

ADV MAHLAPE SELLO: Okay, let's deal with the first of your topics, which is the development of the 1064 business case.

MR FRANCIS QUENTIN CALLARD: Okay, if I may you through that then from paragraph 83, that the first 1064 business case, locomotive business case was developed from the work on the market demand strategy and the locomotive fleet plan which I previously outlined in paragraph 21 and 22. Again predicated on the market demand strategy and the near doubling of general freight volumes over a seven year period and the replacement of aged locomotives that were beyond their economic life.

10

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: The business case developed in Annexure 36, was presented to Transnet Freight Rail Investment Committee on the 9th of March 2012, with an ETC of 38146million or 38.1billion.

ADV MAHLAPE SELLO: And ETC meaning estimated total cost.

MR FRANCIS QUENTIN CALLARD: Estimated total cost.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: I don't know if one wishes to turn to Annexure 36 it merely just confirms that point.

20

ADV MAHLAPE SELLO: I'm sure we accept that.

MR FRANCIS QUENTIN CALLARD: We can pass on that, thank you. On the 9th of March 2012 Mr ...(intervention)

ADV MAHLAPE SELLO: 19th I think.

MR FRANCIS QUENTIN CALLARD: Sorry 19th of March thank you, Mr

Gama requested an update version to the Capital Investment Committee.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Further detail is given in Annexure 37. At that capital investment meeting of the 21st of May 2012 it was decided *inter alia* that an external party should review the 1064 business case and provide a risk assessment. A timetable was outlined at that same meeting which envisaged the contracts being signed in January 2013, that is set out in Annexure 38.

10 **ADV MAHLAPE SELLO:** Yes.

MR FRANCIS QUENTIN CALLARD: Not much happened, it was followed by a hiatus in the locomotive procurement as freight rail developed an overall wagon fleet and infrastructure plan to complement the locomotive fleet plan and this is set out in Annexure 39. The important point beyond this was now the interaction with McKinsey.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Which started I believe on the 1st of March 2013, I do not believe that I saw a formal clarification of their role but understood they were engaged to lead the further development
20 of the 1064 business case.

ADV MAHLAPE SELLO: Before you proceed, at this point what was the status of the 1064 business case, was it complete, was it approved and in response that you if you may then indicate what role McKinsey was intending to play specifically in respect to that business case to your understanding.

MR FRANCIS QUENTIN CALLARD: In terms of my personal involvement that is – I have given my personal involvement what happened in between it is my understanding that the business case in fact was approved, it was – ja PFMA approval was sought for the business case and tenders were invited and in fact bids were opened during 2012, I was not part of that process.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: I was part of the process and involved with Department of Public Enterprises in Wagon Business case
10 and the overall approval of the wagon infrastructure and locomotive fleet plans *per se* but I have not detailed that in here.

ADV MAHLAPE SELLO: So on the 1st of March 2013 the RFP was issued and bids had already been called for? Is that what you are stating or you don't have a recollection was to that?

MR FRANCIS QUENTIN CALLARD: May I just go back to, may I just refer to an item.

ADV MAHLAPE SELLO: You might not have, I am trying to understand what the role of McKinsey was intended to be at this juncture, are you able to shed light on that?

20 **MR FRANCIS QUENTIN CALLARD:** Okay, alright, the role of McKinsey because the business case, the absolute business case had not been approved by the board, the role of McKinsey now was to take the work which we have done and transform that into a business case that could be approved by the Board.

ADV MAHLAPE SELLO: Okay, please proceed with your

understanding.

MR FRANCIS QUENTIN CALLARD: Thank you, so on the 1st of March – I believe the interaction with McKinsey on the 1064 business case started 1 March 2013. I state here I do not believe I saw a formal clarification of their role but understood they were engaged to lead the further development of the 1064 business case, and a freight rail locomotive team was formed under an executive to lead that team. The key point is – core point of this or the key point is in paragraph 89, that the core team of Messrs Pregasa Pillay, Johan Bouwer and myself had
10 a sometimes strained relationship with McKinsey. Annexures, and I refer to Annexures 40 and 41 in this regard ...(intervention)

ADV MAHLAPE SELLO: And – and those annexures point to advise given to McKinsey as regards railways and how railways operate.

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: Annexure 40 which is page 359 from my colleague in finance to Mr Mohammed Mahomed, Vuyo Kahla and others the whole of that page details concerns on their interaction with McKinsey and the strained relationship we were having.

20 **ADV MAHLAPE SELLO:** And what is the main take out of that document? What was the main concern regarding interactions with McKinsey? I note if I may at page 359.

MR FRANCIS QUENTIN CALLARD: 1, 2, 3, 4, 5. If I may refer you to paragraph 5 of 359, paragraph 5 of the email.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: The McKinsey team is and I quote:

“McKinsey team is focussing on two specific questions relating to the MDS volumes as well as the TFR road to rail strategy. These two questions are not the drivers of the need for locomotives and were agreed to with the board and DPE in the Transnet corporate plans interactions and should not be the backbone of explaining the need for more locomotives. I refer you to the next paragraph. The
10 McKinsey team are refusing to take direction on the case and seem to be a collating of data team. The TFR team will gladly be the conduit that cannot take responsibility for a case if it is an import – if its inputs are ignored and no case is presented for review. Your intervention is required.”

ADV MAHLAPE SELLO: Before you proceed. You just read us paragraph 5 and 6.

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: Please have regard to paragraph 4 that would
20 appear to have some level of relevance.

MR FRANCIS QUENTIN CALLARD: Certainly it highlights that and thank you for pointing it out. I quote from there paragraph 4.

“I am concerned that the McKinsey team is not focussing on their mandate to validate assumptions in the original business case and enhance the case specifically focussing on the queries raised by

TEFRIC, CAPEC and DPE.

ADV MAHLAPE SELLO: So that we can accept that to mean that their main – their mandate was to validate the assumptions?

MR FRANCIS QUENTIN CALLARD: That...

ADV MAHLAPE SELLO: And that they were failing to do at that point?

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: And instead they were concentrating on other issues?

MR FRANCIS QUENTIN CALLARD: Yes.

10 **ADV MAHLAPE SELLO:** You may proceed.

MR FRANCIS QUENTIN CALLARD: I followed this up with an email which is in Annexure 40 or a draft email in Annexure 41. Annexure 41 page 361. I subsequently discovered that though drafted I had not sent this email but the sentiments remain the same.

ADV MAHLAPE SELLO: If that is the case so Annexure 41 was never sent to the intended recipients?

MR FRANCIS QUENTIN CALLARD: No I – it was in my – left in my outbox.

20 **ADV MAHLAPE SELLO:** So the view expressed there are unknown to the intended recipients?

MR FRANCIS QUENTIN CALLARD: The views expressed are unknown to the intended recipients but they remain where I follow on my colleague's email and say:

“I am also very concerned”

I quote. The second paragraph.

“McKinsey chose to restructure and rewrite the business case and as Johan has indicated to date it has been a restatement of what already exists.”

My interaction and I read the second paragraph.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD:

“My interaction to date has largely been informing them about locomotives, railway operations and railway operating parameters including the difference
10 between GTK and NTK and what is a class 1 railroad.”

ADV MAHLAPE SELLO: And what is the difference between a GTK and NTK for our own identification?

MR FRANCIS QUENTIN CALLARD: One is gross tonne kilometres and nett tonne kilometres for interpretation nett tonne kilometres are the income producing kilometres or a railroad for the traffic who actually convey. Gross tonne kilometres is the actual tonnes that move over the railway track including the weight of the locomotives and wagons.

ADV MAHLAPE SELLO: And the view was that they were conflating
20 the two concepts?

MR FRANCIS QUENTIN CALLARD: Not conflating did not know.

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: That is what I am interpreting here. If I may just read – the email is clear in so much.

ADV MAHLAPE SELLO: Yes it is clear. So – but then the point you

make at Annexures 40 – Annexure 41 is that although you never did get to send it erroneously you still hold the view that you expressed in that annexure?

MR FRANCIS QUENTIN CALLARD: Absolutely.

ADV MAHLAPE SELLO: Thank you. We move on then to your paragraph 19 where you attach emails to reflect a change in the original business case concept as introduced by McKinsey.

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: And you deal with that at you paragraph 90 if
10 you could take us from there.

MR FRANCIS QUENTIN CALLARD: I deal with that in paragraph 90 and that is page 42 or Annexure 42.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Which – and the starts off at page

ADV MAHLAPE SELLO: 364?

MR FRANCIS QUENTIN CALLARD: 364.

ADV MAHLAPE SELLO: It starts at 363 overleaf it is the actual – the actual emails.

MR FRANCIS QUENTIN CALLARD: Yes. The original business case
20 predicated delivery from completing by 2019 McKinsey changed this back to or changed this on their own accord to 2020 and this email of 364 really says to them you are not authorised to change this business case unilaterally on your own score please bring it back to the original timelines of the business case.

ADV MAHLAPE SELLO: So the business case ran until 2019.05.20

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: That is a seven year.

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: Period and McKinsey had changed that to run to 2020.

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: Did you get an understanding of what was the cause of that changing if I can by McKinsey? What informed them to change their end date to 2020 as opposed 2019?

10 **MR FRANCIS QUENTIN CALLARD:** I cannot recall that we were – I cannot recall what informed them to change it.

ADV MAHLAPE SELLO: And the point you make here is that you and I – by you I mean plural took issue with that change and requested a reversion to 2019?

MR FRANCIS QUENTIN CALLARD: Yes. When you say you took issue may I read that as you plural took ...

ADV MAHLAPE SELLO: Absolutely I am saying you plural yes at the team.

MR FRANCIS QUENTIN CALLARD: You plural took issue with that and
20 Mr Gama also took issue with that – with that change if I reflect correctly.

ADV MAHLAPE SELLO: Yes and so – was that reversion effected?

MR FRANCIS QUENTIN CALLARD: Yes. May I refer you on that score to page 365 please.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: And the middle of page 369 – 365 and I quote from the email. This was a mail from Pragasen Pillay to McKinsey I quote:

“Nasiem please note we have had a discussion with Mr Gama the CE of TFR and the following was the outcome.

1. TFR cannot accept the budgeted amount for the 1064 be escalated due to delivery time shifting two years beyond their SVM MDS timeline. Note the effect on time value of money by noting the effective time value of money by the extended proposed delivery.
2. The 1064 is purchased to support and delivery on the agreed MDS volumes. The question is, what is the value of receiving 152 locos beyond 2018/2019 to the MDS.
3. This assessment by McKinsey was to insist in speeding up the process of approval so that the delivery supports the volume ramp up. In this case it seems not to do this.”

So yes collective you.

20 **ADV MAHLAPE SELLO:** Okay. And you express a view that in getting McKinsey to understand and to revert to the 2019 was a rather fraught process and the engagement was less than cordial at time but you won the day?

MR FRANCIS QUENTIN CALLARD: It was. Given this following virtually immediately on this and on our – my paragraph 91 that on

Friday the 12 April we were asked to turn this business case around for the locomotive steering committee meeting and the Transnet board meeting by Sunday evening. We were working late and under pressure at McKinsey's office and they were just not understanding what we had to achieve. I vented and via my frustration which my colleagues captured in Annexure 43. One may read Annexure 43.

"Humorous as this might be in hindsight it was
deadly serious at the time."

And if I may just quote one sentence from page 369?

10 "Sorry Francis cannot repeat your anger on mail."

ADV MAHLAPE SELLO: That bad?

MR FRANCIS QUENTIN CALLARD: It was that bad.

ADV MAHLAPE SELLO: Okay. You then turn to Annexure 44 which is – it that – can I call it an – the updated case – business case following McKinsey's contribution?

MR FRANCIS QUENTIN CALLARD: Yes. And as I quote:

"That illustrating this frustration was that on the 16
April we received a version of the business case for
updating."

20 And this was Annexure 44 and may I take you please to Annexure 44 because the first and the fifth pages are relevant. Annexure 44.

ADV MAHLAPE SELLO: It will start at page 370.

MR FRANCIS QUENTIN CALLARD: 370 is then – could I ask you please to turn to page 371.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Which was the front page and here it says the date of submission this is the one of the 16 April. If we could turn through to page 372 please.

ADV MAHLAPE SELLO: We at 372.

MR FRANCIS QUENTIN CALLARD: 372 and this is the purpose of the business case. May I take you through to the first bullet please?

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: This is now the prime purpose of the business case to purchase 1064 locomotives. It states here:

10 “This business case provides the rationale to invest
in profitable etcetera. The new locomotive purchase
will create 28 000 new and indirect jobs and 50
billion in economic impact through local supply
development.”

What follows there underlined is my comment to this saying that these are totally – these are secondary objectives. The primary objective is to enable TFR to deliver 170 million tonnes on MDS by 2018/19. McKinsey in essence what I am saying here McKinsey seem to have lost the plot in what we were trying to achieve. We wanted to provide a
20 business case for locomotives that was the prime rationale of the business case.

ADV MAHLAPE SELLO: And now if we can just understand that. Did you – by you I mean Transnet team working on the business case have any data to support that the business case would create 28 000 new direct and indirect jobs?

MR FRANCIS QUENTIN CALLARD: It is not reflected in my testimony but Mr Garry Pita and I had extensive discussions on this one. I disagreed with his interpretation of 28 000 jobs. The basis which I used for that disagreement was that there was a body of knowledge at the moment which said that to create one full time job required 100 000 US dollars investment in a capital industry. I could not correlate that body of knowledge with the investment we sought in the locomotives to these jobs. The equations did not hold for me. So we had extensive debate on that but he won.

- 10 **ADV MAHLAPE SELLO:** And secondly it states that this acquisition will introduce 50 billion in economic impact through local supply development. My question is the total – the estimated total cost of this transaction was 38 billion.

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: I do not know if it is my difficulty how do I reconcile that to – with 50 billion economic impact through local supply development?

MR FRANCIS QUENTIN CALLARD: I cannot explain that.

ADV MAHLAPE SELLO: With your assistance?

- 20 **MR FRANCIS QUENTIN CALLARD:** I cannot explain. I do not know how they arrived at that figure. It was not part of the locomotive business case. I cannot explain how they arrived at a figure that an investment of 38 billion into locomotives would have that multiplier effect of 50 billion in the local economy.

ADV MAHLAPE SELLO: Where – at the very least 40% of them will be

assembled in China?

MR FRANCIS QUENTIN CALLARD: Or 40% would be foreign content yes.

ADV MAHLAPE SELLO: Yes okay.

MR FRANCIS QUENTIN CALLARD: Approximately – between the electrics and the diesel.

ADV MAHLAPE SELLO: Yes. Now if we may then continue – if you may continue with your testimony. We are now at page 93 – a paragraph 93 my apologies.

10 **MR FRANCIS QUENTIN CALLARD:** Paragraph 93.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Yes. My colleagues and I extensively revised the document and we returned it on the evening of the 16 April 2014 copying Mr Gama and Mr Singh in our reply. Annexure 45 just indicates that trace of emails.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Following on that on the afternoon of April – the 17 April 2013 my colleagues Mr Pragasen Pillay, Johan Bouwer and I sat with Mr Singh and McKinsey to review our previous
20 inputs on a page by page basis.

ADV MAHLAPE SELLO: Hm.

MR FRANCIS QUENTIN CALLARD: This was – we were turning page by page going through the modifications. We had made modifications to McKinsey had made what were they – what would we accept of their, what was accepted by ours. All our inputs were accepted. All were

accepted and we could agree on those we left out. We could not agree with the Mr Singh on the inclusion of the TE and for TE please read Transnet Engineering section setting out the role of TE - we had a different view. My colleagues and I had a different view to that of Mr Singh and we left that for Mr Singh and Mr Gama to resolve.

ADV MAHLAPE SELLO: Before you proceed let us just discuss there – the Transnet Engineering issue. The original business case did it contemplate a role to be played by TE in this transaction? Was there provision for TE in the business case?

10 **MR FRANCIS QUENTIN CALLARD:** Without reference to the original business case?

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: My recollection and without validating this through the research of the business cases but the role – the position adopted certainly by – that we adopted was that we should be neutral on the role of TE that we should not be prescriptive on the role of Transnet Engineering. If a supplier or an original equipment manufacturer wishes to use Transnet Engineering that should be of their own volition. The reason we adopted that was that

20 position was that if we were to specify to a supplier that they had to use Transnet Engineering as a sub-contractor and in the event that something went wrong a locomotive was delayed or there were delays for example caused by that sub-contractor we would have the – we would be suing or seeking redress from the original equipment manufacturer who in turn would be seeking redress from Transnet from

an operating division of Transnet and creating a vicious cycle. How do we sue a contractor where they in turn giving a counter claim to one of our operating divisions for delaying them? That was why we were of the view that we should be silent and neutral on the role of TE. As I said there were different views at the time.

ADV MAHLAPE SELLO: Now you say you could not reach agreement with Mr Singh on this what was his view at the time? What view did he express as regards TE, the role of TE?

MR FRANCIS QUENTIN CALLARD: It is not recorded and please these
10 were discussions.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: It is my recollection that he favoured a role or positing a role for TE however it was defined.

ADV MAHLAPE SELLO: Did he advance any reasons for that to your recollection?

MR FRANCIS QUENTIN CALLARD: I cannot recollect.

ADV MAHLAPE SELLO: Now when you say the decision was that this issue be left for “Singh and Gama to resolve” is that to the CFO and the CEO to resolve?

20 **MR FRANCIS QUENTIN CALLARD:** Correct.

ADV MAHLAPE SELLO: And to amend the business case based on whatever decision they arrive at?

MR FRANCIS QUENTIN CALLARD: Correct, correct.

ADV MAHLAPE SELLO: Okay. At –

CHAIRPERSON: Thank you.

ADV MAHLAPE SELLO: Thank you Chair. You conclude then from paragraphs 95 to 97 that the business case was now as you state full in the hands of Group and at 97 that it was discussed at the Locomotive Steering Committee meeting of the 18 April.

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: Was that your final – your last engagement with the business case as it is?

MR FRANCIS QUENTIN CALLARD: That was our last engagement with the business case on the 18 April yes.

10 **ADV MAHLAPE SELLO:** And as at the 18 April that business case anticipated an ETC of 38.9 if my memory serves me well but 38 billion?

MR FRANCIS QUENTIN CALLARD: 38- Yes.

ADV MAHLAPE SELLO: It was still at 38 billion?

MR FRANCIS QUENTIN CALLARD: It was still at 38.6 if I...

ADV MAHLAPE SELLO: 38.6 thank you. 38.6 billion. You then after then introduce a topic hedging and escalation and you had stated at your paragraph 81.2 that you will show that hedging and escalation were included in the business case?

MR FRANCIS QUENTIN CALLARD: Yes.

20 **ADV MAHLAPE SELLO:** We deal with that from page 90 – ag from paragraph 98. If you could take us through that part of your testimony?

MR FRANCIS QUENTIN CALLARD: Certainly. And I would repeat my paragraph 98 that one of the contentious issues that has arisen it has been in the [indistinct] for some time as to whether the 1064 business case and by extension the financial model included hedging and

escalation.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: And certainly I will show that hedging and escalation were included in the development of the business case and the financial model but this was misrepresented in the final business case. This has been covered in the MNS Report and the Fundudzi Report but I will just give some additional supplementary detail to that finding.

ADV MAHLAPE SELLO: Yes.

- 10 **MR FRANCIS QUENTIN CALLARD:** Per paragraph 100 I was shocked rigid when interviewed by Werksmens Attorneys as part of their investigation into the procurement of the 1064 locomotives. Their first matter was to show me a 25 April 2013 version of the business case stating that the 38 – 38.6 billion excluded the potential effects from hedging, forex, escalation and other price escalations, interrogate me if I knew anything about it.

ADV MAHLAPE SELLO: Please hold there. Chair it is part of the supplementary statement effecting the corrections. That date of 23 April reads 2014 and I think it should read 13.

- 20 **MR FRANCIS QUENTIN CALLARD:** It should read 13 yes.

CHAIRPERSON: Okay.

ADV MAHLAPE SELLO: Thank you Chair. Please continue.

MR FRANCIS QUENTIN CALLARD: And I replied that I was the of the firm conviction that the business case included forex hedging, forex escalation and other pricing escalation subsequently interrogated by

records. What follows is from an interrogation of my records.

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: In April 2013 McKinsey finalised their own financial models. One of the core inputs was from a series of emails from around 10 April to 12 April 2013. My apologies. Recipients initially were McKinsey and the core team but later Mr Gama and Singh and this is email annexure 42.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Pertinent points if we may just turn
10 up that email please which is – it starts at page 364.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: The key points from that email are that price and forex estimates were sourced from expert interviews. Base locomotive prices were set at 2013/14 where US dollars 2.6 million for diesel and US dollars 3.5 million for electric locomotives.

ADV MAHLAPE SELLO: Please Mr Callard.

MR FRANCIS QUENTIN CALLARD: Sorry.

ADV MAHLAPE SELLO: I apologise. You have taken us to page 364.

MR FRANCIS QUENTIN CALLARD: Sorry, sorry. Yes and I am reading
20 from the – my statement.

ADV MAHLAPE SELLO: Okay you went back to your statement?

MR FRANCIS QUENTIN CALLARD: I went back to my statement.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: Alright. You are reading from 1021 to 1025.

MR FRANCIS QUENTIN CALLARD: May I still read from my statement?

ADV MAHLAPE SELLO: Absolutely.

MR FRANCIS QUENTIN CALLARD: On 102.3 the contract signing fee was assumed to be 250 million for diesels and 300 million for electric locomotives.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: May I at this point just correct something which I believe I mis-stated on Friday afternoon where I said
10 the contract signing fee might be 3 million for electric locomotives if I said 3 million.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Which I believe I did I should actually have stated that as being 300 million per the figure which we have here.

ADV MAHLAPE SELLO: And just so that we know then where you are correcting is that when you were at para – page 61 – paragraph 61?

MR FRANCIS QUENTIN CALLARD: Paragraph 61.

ADV MAHLAPE SELLO: The last sentence reading the upfront
20 payment per the 1064 business case for electric locomotives was a setup fee of 300 million.

MR FRANCIS QUENTIN CALLARD: Yes I believe I – in my

ADV MAHLAPE SELLO: Testimony, oral testimony.

MR FRANCIS QUENTIN CALLARD: Testimony.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: I said 3 million.

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: It should have read 300 million.

ADV MAHLAPE SELLO: We shall correct the transcript accordingly.

MR FRANCIS QUENTIN CALLARD: Thank you.

ADV MAHLAPE SELLO: Thank you. We are now at 102.4.

MR FRANCIS QUENTIN CALLARD: Yes. The hedging costs were assumed to be 8% of the locomotive cash flow and on 102.5 McKinsey and the individual from McKinsey or McKinsey instructs their personnel to put these assumptions into the financial model. I was partying to vetting the financial and this was done and the ETC included hedging and escalation. All of these statements can be traced formally or in that Annexure 42.

ADV MAHLAPE SELLO: Please take us to 42 so that we can identify their respective areas where they are.

MR FRANCIS QUENTIN CALLARD: Certainly.

ADV MAHLAPE SELLO: Thank you.

MR FRANCIS QUENTIN CALLARD: And starting with your 102.1

MR FRANCIS QUENTIN CALLARD: Sorry ja. May I turn you please to page 366.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: And approximately a third of the way down the page the email reads? JD Francis I am reading there from the second paragraph quote:

“Our USD costs of 2.6 million per diesel and 3.5

million electric were derived from working with a Mr David Potter he was the expert view. We have escalated these prices on projected US inflation and converted back to ZAR based on the forward rate from the Transnet Treasury. Let us know if you have any feedback there?”

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: That was the point I was making that

10 **ADV MAHLAPE SELLO:** At 102.

MR FRANCIS QUENTIN CALLARD: Hedging and – on the base price. On the table below that right at the bottom we have a table and at the bottom of that table it says: FX Futures and US inflation indicating that those are incorporated in the table.

ADV MAHLAPE SELLO: Hm.

MR FRANCIS QUENTIN CALLARD: That table is headed Here is the price forex estimates used 13th 14th prices sourced from expert interviews.

ADV MAHLAPE SELLO: And that – it is from that table we see the
20 USD locomotive price for diesel at 2.6 and for electric at 3.5?

MR FRANCIS QUENTIN CALLARD: .5 correct.

ADV MAHLAPE SELLO: Which is what you state at your 102.2.

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: Thank you.

MR FRANCIS QUENTIN CALLARD: If I may turn over then to page

367.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Just below that second table of locomotive capital costs and I read quote:

“Locomotive capital cash flow schedule assumes a contract signing fee of ZAR 250 million and ZAR 300 million for diesels and electrics respectively.”

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: If I may go to the – just below the
10 next table please?

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Hedging costs. We have the table. The statement.

“Hedging costs are assumed to be 8% of loco cash flows.”

ADV MAHLAPE SELLO: Okay. Now you saying all this information was – it is part of the email chain that both Mr Gama and Mr Anoj Singh became party to?

MR FRANCIS QUENTIN CALLARD: Yes.

20 **ADV MAHLAPE SELLO:** And that we find at page 364.

MR FRANCIS QUENTIN CALLARD: Page 364, yes.

ADV MAHLAPE SELLO: So is it your - is it your case then that it cannot be contended by anyone that the business case did not include forex and hedging ...

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: Based on this annexure?

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: Okay. You may proceed. We are now at your paragraph 103.

MR FRANCIS QUENTIN CALLARD: Yes. On 18 April McKinsey distributed a PowerPoint presentation which was dated 2012/04/18 “Procurement 1 064 Locomotives for General Freight Business Final PowerPoint.”

ADV MAHLAPE SELLO: Yes.

10 **MR FRANCIS QUENTIN CALLARD:** Now turn over to 103 – in my paragraph 103.1 I extract slide 12 of that presentation.

ADV MAHLAPE SELLO: Huh-uh.

MR FRANCIS QUENTIN CALLARD: And slide 12 of that presentation clearly indicates that:

“Escalation and hedging were included in the estimated total cost.”

I would take you to the point – to the item in that slide the first, second, third, fourth one down forex.

20 “Current forward exchange that they are USD exchange rate at an average R11,00/\$ over the acquisition period.”

ADV MAHLAPE SELLO: And this is a McKinsey slide?

MR FRANCIS QUENTIN CALLARD: This is a McKinsey slide.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Now you go to the last block there

which is called tariffs.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Sorry – correction. The one – price – the one above it please – price which reads:

“US\$2.6 million, 25.2 million for diesel and US\$3.5 million/R339 million for electric assuming 50 percent localisation and 2 percent localisation. RSA component escalated within inflation. US\$ component escalated with US inflation and converted back to ZAR based on forward exchange rate.”

This is in total agreement with what has been set out in the emails.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: However slide 27 of the final presentation.

ADV MAHLAPE SELLO: By the final presentation it is the same presentation as the slide you just referred to at 101?

MR FRANCIS QUENTIN CALLARD: Same presentation.

ADV MAHLAPE SELLO: At 103.1?

20 **MR FRANCIS QUENTIN CALLARD:** The same slide.

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: Or sorry same presentation but the final slide.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: However had been changed from a

previous version what the addition of and I quote:

“Excluding the potential effects from forex hedging,
forex escalation and other price escalations.”

ADV MAHLAPE SELLO: And you are reading in the second box of that slide.

MR FRANCIS QUENTIN CALLARD: BADC recommends the following to the Board of Directors for approval.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: “The acquisition of 1 064
10 locomotives for the general freight business. Two,
ETC for the acquisition is estimated at 3.86 billion –
sorry - 38.6 billion as per the corporate plan
excluding potential effects from forex hedging, forex
escalation and other pricing escalation.”

And that is slide 27 does not coincide with slide 12. It is not going to be in slide 12.

ADV MAHLAPE SELLO: In the same presentation then McKinsey suggests that the 38.6 billion include forex and hedging?

MR FRANCIS QUENTIN CALLARD: Yes.

20 **ADV MAHLAPE SELLO:** That would be their slide 12 but in the same presentation at slide 27 they suggest that:

“ETC for the opposition is estimated at 38.6 billion
as per the corporate plan excluding potential
effects from forex hedging, forex escalation and
other price escalations.”?

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: All this in one presentation?

MR FRANCIS QUENTIN CALLARD: All this in one presentation.

ADV MAHLAPE SELLO: Okay. If we may then proceed to ...

MR FRANCIS QUENTIN CALLARD: 104.

ADV MAHLAPE SELLO: 104.

MR FRANCIS QUENTIN CALLARD: Also on 18 February McKinsey emails Mr Singh the business case 2012/04/18 “1 064 Locomotive Business Case_Final PDF”.

10 **ADV MAHLAPE SELLO:** Hm.

MR FRANCIS QUENTIN CALLARD: This is in Annexure 48.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: *Inter alia* the comments and I quote from that:

“Final version for BADC...”

That is Board Acquisitions and Disposals Committee.

“...with updated numbers (now 2.7 billion versus NBV versus 0.3 billion previously including item 1 ...”

20 **ADV MAHLAPE SELLO:** Hm.

MR FRANCIS QUENTIN CALLARD: “New forex curve based on Treasury’s input.”

ADV MAHLAPE SELLO: Huh-uh.

MR FRANCIS QUENTIN CALLARD: “Adjusted fleet estimates to add up to 1 064 as per JD’s input today. Three,

updating CO2 savings based on only diesel changed back – changed from today's back of the envelop to – of 13 million to 5 million bottom up accounting for updated fleet plan."

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: "Item 4, updated TCO - Total Cost of Ownership – as a result of the forex change. Item 5, new funding and forex hedging section received from Danie this evening."

10 **ADV MAHLAPE SELLO:** And this is from McKinsey?

MR FRANCIS QUENTIN CALLARD: McKinsey to Mr Singh.

ADV MAHLAPE SELLO: And it confirms that forex and hedging are part of the business plan?

MR FRANCIS QUENTIN CALLARD: Per that outline.

ADV MAHLAPE SELLO: Yes.

20 **MR FRANCIS QUENTIN CALLARD:** On 105 – paragraph 105 – Mr Singh was the Acting Chair of the 1 064 locomotives steering committee meeting held on the morning of 18 April. The draft minutes included the Acting Chairman highlighted *inter alia* the following. The minutes are included as Annexures 49 and 49A and these are extracts from those minutes.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: For simple reference. 105.1:

"GCE - the Group Chief Executive - has confirmed that he has worked through the document sent to

him on 17 April 2013 and he is satisfied with the document.”

ADV MAHLAPE SELLO: While we are on that before you move and what document would that be he is referring to - the one of 17 April 2013?

MR FRANCIS QUENTIN CALLARD: He is referring to the business case held before. May we just then turn to 49 and 49A?

ADV MAHLAPE SELLO: Okay. Just a minute. Your 49 starts at 383?

MR FRANCIS QUENTIN CALLARD: 49 starts at 383.

10 **ADV MAHLAPE SELLO:** And 49A starts at 386 and the document at 386 is minutes of the Locomotive Steering Committee?

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: So that is the document that GCE confirms he has considered and he is satisfied with that?

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: Yes you may proceed.

MR FRANCIS QUENTIN CALLARD: Going onto 105.2:

“The difference between the documents submitted on 17 April and 18 April 2013 include inter alia ...”

20 **ADV MAHLAPE SELLO:** Yes.

CHAIRPERSON:

MR FRANCIS QUENTIN CALLARD: Reading from 105.3 i:

“Significant amendments – the forex rates included in the model previously were high. The forex rates have now been amended downwards which creates

an NBV on the business case at (indistinct) rate of
2.7 billion.”

ADV MAHLAPE SELLO: Hm.

MR FRANCIS QUENTIN CALLARD: “Accordingly the 0.3
billion NBV at (indistinct) rate in the previous
versions of the document has been amended to
R2.7 billion. Consequently the business case is
now more than robust.”

ADV MAHLAPE SELLO: Yes.

10 **MR FRANCIS QUENTIN CALLARD:** Clearly indicating forex is in the
business case.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: As an aside the – paragraph 105.4:

“The MNS Report Volume 1 records that the minutes
of 18 April 2013 pleased at 2014 is dealt with in the
supplementary and it is actually 2013 ...”

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: “...of the Locomotives

20 Steering Committee was signed on – in
September 2014.”

Going to paragraph 106 - the resolution of the meeting however states
notwithstanding what we have in the meeting the resolution of the
meeting however states:

“The Steering Committee resolved that it
recommends that the Group Executive Committee

approves the acquisition of 1 064 locomotives for the general freight business. Estimated total costs of the acquisition of 38.6 billion per the corporate plan (excluding the potential effects from forex hedging, forex escalation, other price escalations and borrowing costs).”

ADV MAHLAPE SELLO: If we – if we then could turn to – to the actual document what you quote at page – paragraph 106.1 appears at page 388 at item 3.1.2. Is that correct?

10 **MR FRANCIS QUENTIN CALLARD:** 388 the document I am quoting from. That is correct.

ADV MAHLAPE SELLO: That is correct. Now – then you contrasted two documents. This minute and the document of 18 April 2013 from McKinsey.

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: The McKinsey document confirms that forex and hedging were included in the original business case.

MR FRANCIS QUENTIN CALLARD: Correct.

20 **ADV MAHLAPE SELLO:** This minute however reflects at 3.12 that the 38.6 billion ETC does not include forex and hedging at 388 that quotation you give at your paragraph 106. At three - sorry - 312 – my – my mistake.

MR FRANCIS QUENTIN CALLARD: I was ...

ADV MAHLAPE SELLO: 312 not 3.12. I misread that. I apologise.

MR FRANCIS QUENTIN CALLARD: Three ...

ADV MAHLAPE SELLO: The resolution at page 388 at item 312 is inconsistent with the very document provided by McKinsey of 18 April indicating that hedging – forex and hedging were included in the business case?

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: Now if we take it date wise it would appear that the McKinsey document comes a day after the meeting. The meeting is for 17 April. My apologies. They are both 18 April.

MR FRANCIS QUENTIN CALLARD: They are both 18 April.

10 **ADV MAHLAPE SELLO:** Ja, they are both 18 April.

MR FRANCIS QUENTIN CALLARD: They are both 18 April.

ADV MAHLAPE SELLO: Then perhaps – then – then it is a bit confusing. Please bear with me. Go to your paragraph 105.

MR FRANCIS QUENTIN CALLARD: 105.

ADV MAHLAPE SELLO: At 105.1 you record there that the GC – and I quote:

“The GCE has confirmed that he has worked through the document sent to him on 17 April 2013 and he is satisfied with that document.”

20 You indicated earlier that the document referred to is the minute. It cannot be because the meeting only takes place ...

MR FRANCIS QUENTIN CALLARD: That document ...

ADV MAHLAPE SELLO: On the 18th. So let us correct that. What is the document referred to that the GCE confirms he considered ...

MR FRANCIS QUENTIN CALLARD: With ...

ADV MAHLAPE SELLO: And he is satisfied there with.

MR FRANCIS QUENTIN CALLARD: The revised business case.

ADV MAHLAPE SELLO: The revised business case, thank you. The GCE being Mr Gama is that the – who is the GCE?

MR FRANCIS QUENTIN CALLARD: No that was Mr Molefe – Group Chief Executive.

CHAIRPERSON: Are we dealing here once again with official that is quite strange where when you expect people to know simply at a factual level that this is the position but you have documents being produced
10 that says something different?

MR FRANCIS QUENTIN CALLARD: That is so. That is correct Mr Chair.

CHAIRPERSON: Yes, yes.

ADV MAHLAPE SELLO: So then we can conclude that – that Steering – the Locomotive Steering Committees resolution is factually incorrect at 3.1.2 at page 388. That the 38.6 billion ETC excludes potential effects from forex hedging for escalation and other price escalations. I is not supported by any document thus far put before us and put to the GCE and to Mr Gama?

20 **MR FRANCIS QUENTIN CALLARD:** It is not supported by what was submitted previously. It is not supported by the discussion in the business case itself. The conclusion – the resolution is incorrect.

ADV MAHLAPE SELLO: And if anything the business case demonstrates the direct opposite?

MR FRANCIS QUENTIN CALLARD: Correct.

DV MAHLAPE SELLO: That the hedging and forex is included in ...

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: In that 38.6 billion?

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: Thank you Chair. I – it is drawn to my attention that it is tea time.

CHAIRPERSON: Thank you. We will take the short adjournment and resume at half past 11.

ADV MAHLAPE SELLO: Thank you.

10 **CHAIRPERSON:** We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: You may proceed.

ADV MAHLAPE SELLO: Yes Chair, we may, are you ready Mr Callard? You deal then Mr Callard from your paragraph 107 with the contradiction between the minute and the documents.

MR FRANCIS QUENTIN CALLARD: Yes.

20 **ADV MAHLAPE SELLO:** And you make an important interpretation at paragraph 109.

MR FRANCIS QUENTIN CALLARD: Yes, I received an email from McKinsey dated the 24th of April, this is Annexure 50.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Which is page 390, it comes from McKinsey, it's addressed to amongst others myself, Pragasen Pillay

and it reads:

“J D Francis, congratulations on the BADC approval, hopefully the Board meeting goes as well.”

I interpret in this email that – which was dated the 24th of April – that McKinsey were party to the presentation to BADC on the 23rd of April and BADC requested a few minor updates which are outlined in this Annexure 50. The updates themselves are not (indistinct) to the issue but on paragraph 110 on the 29th of April 2013 Naresh Budai circulates the locomotive business case 2013-04-29 1064 15h00 locomotive
10 business case no Annexure for review and comment. This business case has been updated as per the input from BADC on the 29th of April Annexures 51 and 51(a) and the purpose still reads,

“Accordingly it is recommended – sorry may I repeat, the purpose as set out on page 4 still reads, accordingly it is recommended that the 1064 locomotives business case be approved at a cost of 386billion excluding borrowing costs”,

On the 30th of April, this is now the following day Budai emails the file 2013-04-30 09h00 locomotive business case no Annexure PDF, may I take to the sub-paragraph, the cover page is dated 25 April 2013
20 it indicates it is the final version to the Board of Directors and the purpose per page 4 reads,

“Accordingly it is recommended that the 1064 locomotives business case be approved with estimated total costs at the acquisition of 38.6billion as per the corporate plan (excluding the potential threats from Forex hedging, Forex escalations

and other price escalations)". A significant Change.

ADV MAHLAPE SELLO: So then your Annexure 51(a) is the BADC approval of the business case or is the business case approved by BADC?

MR FRANCIS QUENTIN CALLARD: 51(a) is as I received it from the – Mr Budai.

ADV MAHLAPE SELLO: Budai, yes and as at the 29th April 2013 the document reflects that the 38.6billion excludes borrowing costs.

MR FRANCIS QUENTIN CALLARD: Correct.

10 **ADV MAHLAPE SELLO:** Now was that factually correct?

MR FRANCIS QUENTIN CALLARD: That was factually correct, that was factually correct.

ADV MAHLAPE SELLO: Okay then the same document at page – at Annexure 52 addressed to the Board of Transnet.

MR FRANCIS QUENTIN CALLARD: Final version.

ADV MAHLAPE SELLO: The final version of the business case.

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: Now indicates at 381 – 398 last line that the 38.8billion as per the corporate plan excludes the potential effects from
20 Forex Hedging, Forex escalations and other price escalations.

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: That is distinctly different from the first.

MR FRANCIS QUENTIN CALLARD: Distinctly different.

ADV MAHLAPE SELLO: Do you – are you able to shed light on the explanation regarding this change?

MR FRANCIS QUENTIN CALLARD: The only explanation – the mechanism for the change.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Not why the change but the mechanism for the change was that the META data for this file which we are dealing with under Annexure 52, the changed one.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Indicates that it was last modified on the machine of Yusuf Mohammed from the office of the Group Chief
10 Financial Officer, Transnet on 30 April 2013, please note 2014 there should read 2013, I've addressed that in the supplementary at 10h31 the total editing time was four minutes and I include this as Annexure 53.

ADV MAHLAPE SELLO: Okay so you're suggesting that to understand this change from the one business case that indicated that 38.6billion only excluded borrowing costs to the document now reading that it excludes Forex and hedging to that – for an explanation of that change we should turn to Mr Yusuf Mohammed?

MR FRANCIS QUENTIN CALLARD: Correct.

20 **ADV MAHLAPE SELLO:** The Group Chief Financial Officer of Transnet at the time?

MR FRANCIS QUENTIN CALLARD: No office of the Group Chief Financial Officer.

ADV MAHLAPE SELLO: Office of?

MR FRANCIS QUENTIN CALLARD: Ja.

ADV MAHLAPE SELLO: So what actual position did he hold?

MR FRANCIS QUENTIN CALLARD: I cannot say, I cannot give you his exact title at the time except that he was in the office of the Group Chief Financial Officer.

ADV MAHLAPE SELLO: Okay we will do so.

CHAIRPERSON: These continuing, glaring, maybe omissions or inconsistencies basically where the factual position – the true factual position is not given but a wrong position is given and to the BADC or to the Board one is tempted to think that maybe it was not negligence or it could not have been negligence for somebody who may have seen 10 certain documents who may have known different documents or certain documents that stated the true position and so on and so on. It may be something that you are not able to say anything about but having looked at some of this correspondence and the sequence of the memoranda and documents and knowing them to pass through certain people who have to read them and apply their mind to them are you able to say whether they couldn't have been – the wrong position couldn't have been stated due to negligence if somebody had read all the documents that they can or should be expected to have read in the light 20 of their role in the whole thing?

MR FRANCIS QUENTIN CALLARD: If I may reply Mr Chair, on my paragraph 114 addresses that.

CHAIRPERSON: Yes.

MR FRANCIS QUENTIN CALLARD: Given the extensive communication and response to hedging and Forex issues in the

formative stage of the final business case, together with the partial editing of the PowerPoint presentation and the business case, it's my considered opinion that the altering of the final business case and PowerPoint presentation with a phase excluding potential effects Forex hedging, Forex escalation and other price escalations was a deliberate misrepresentation, this cannot have been an accident.

CHAIRPERON: Yes, yes, I think that addresses my question quite pertinently ja.

MR FRANCIS QUENTIN CALLARD: What this does mean is when
 10 one excludes Forex hedging and Forex escalation from what is given to be an estimated total cost, it allows for increases to that estimated total cost which are undefined in the business case.

CHAIRPERSON: And to the extent that this was done deliberately or may have been done deliberately, logic says that somebody must have wanted to increase the amounts that would be paid by Transnet, for whatever reasons?

MR FRANCIS QUENTIN CALLARD: It is a reasonable explanation of what happened here, if I may connect another dot, that we are aware of the final price paid for the locomotives with or without the variations
 20 from 49odd billion to the 54- we'll deal with the exact figures later but it may be purely coincidental that a 50billion figure was mentioned in one of the upfront statements by McKinsey in the initial part of the business case, the connection may be highly speculative I grant you that, but it is there.

CHAIRPERSON: Thank you.

ADV MAHLAPE SELLO: And – so we should understand from your evidence that the estimated total cost, regard being had to the fact that the locomotives would be imported and therefore paid for in foreign exchange, would have to – the business case for that would have to include the hedging and the Forex, in order for the business case to be complete?

MR FRANCIS QUENTIN CALLARD: May I do a slightly different scenario please?

ADV MAHLAPE SELLO: Absolutely.

10 **MR FRANCIS QUENTIN CALLARD:** Elements of a locomotive are imported, there are imported components and there are local components, the ratio of imported local components – of local to foreign amounts of a locomotive are specified by the Department of Trade and Industries and there are different percentages for diesel and electric locomotives. The imported amount – the imported components or what is deemed the imported foreign content, that would be subject to the Forex hedging, the local component would be subject to local escalation.

ADV MAHLAPE SELLO: So then the amount specified in the
20 business case is important insofar as the imported components are concerned because it indicates whether that is a cost – an actual cost to Transnet or whether the 38.6billion or a percentage thereof still has to include the Forex and the hedging.

MR FRANCIS QUENTIN CALLARD: It was our common practice that when we presented a business case we presented a business case with

an estimated total cost. That is the total amount that the organisation had to prepare for as a cash outlay over a given period of time. It was to the best of my knowledge and recollection in all the business cases – I cannot recollect having prepared a business case that would have been accepted without giving the approving authority an indication of what is the total cost of the transaction because without that, the approving authority, at whatever level is uncertain as to what the final amount is going to be and as such it may or may not be – it may or it may be outside of their delegated authority, that is why I specifying a

10 total and estimated total cost with all the unknowns into the future was a essential element of a business case.

ADV MAHLAPE SELLO: So in approving, as per the business case approved by the Board, an ETC of 38.6billion as specifically stated, excluding the potential effect from Forex hedging, Forex – and Forex escalation, the Board understood that the cost of that Forex hedging and Forex escalation are still to be added to the 38.6billion?

MR FRANCIS QUENTIN CALLARD: Unfortunately I cannot state as to the Board understood.

ADV MAHLAPE SELLO: Or to have understood from that statement.

20 **MR FRANCIS QUENTIN CALLARD:** What they should have – they should have understood from that statement, yes, they should have understood from that statement.

ADV MAHLAPE SELLO: Okay and therefore anticipated a return, of let's say the Executive to now seek approval for escalation and hedging.

MR FRANCIS QUENTIN CALLARD: I'm hesitant to place myself in the mind of the Board.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: But as a reasoned approving official presented with an unknown estimated total amount and I don't know whether the final figure is going to be inside or outside of my delegated authority, I would, in the mind of a reasonable approving official, I should have returned the business case and said please give me what is your estimated total cost so that I can budget correctly for
10 the cash flow for the organisation over the years of this project and not leave it open-ended but I stress that is how I believe it should have been approached.

ADV MAHLAPE SELLO: I accept that, thank you.

CHAIERPERSON: Which goes to simply saying, in the case of the Board which might be different, maybe if it was a lower body in the case of the Board how can you approve anything when you don't know what the cost will be, that's...(intervention).

MR FRANCIS QUENTIN CALLARD: That is the nub of it whether it was the Board, whether it was BADC or any lower approving authority
20 the principle that I believe is addressed here, is how can I approve something when I do not know what is the final estimated cost, however correct or incorrect those assumptions may be, give me a final cost that I know that this is within my limits of authority and I can then address the final estimated cost. Here if I'm presenting something with such an open-ended aspect as Forex hedging, Forex escalation and other price

escalations, I would not know what I am approving, is my interpretation.

CHAIRPERSON: Was the Board the highest approving authority in respect of any projects or were there circumstances where the approving authority in terms of projects, were there circumstances where, if the project was beyond a certain amount it had to go to the Minister responsible or not?

MR FRANCIS QUENTIN CALLARD: That is correct, the Board was the second highest approving authority, the ultimate approving authority was the Minister. The Board had defined limits in terms of its
10 delegation of authority and these were updated through various times but the Board had an upper limit as to its delegation of authority.

CHAIRPERSON: Would it have been possible for the Board, in the context of what we are talking about, would it have been possible for them take a view that, having regard of the cost that they've been told and having regard to what they were being told was excluded, there is no way it could have been – the total cost could have gone beyond their delegation of authority?

MR FRANCIS QUENTIN CALLARD: This...(intervention).

CHAIRPERSON: Let me make an example just to make sure that you
20 understand what I'm talking about. If I must approve that you must fly to Durban I might not know how much your ticket is going to cost, exactly but I've got some idea that it's not going to be more than R20 000.00 and if my authority for whatever you are going to Durban about or whatever the project is, such that, that price, even though I'm not told but from what I know that there's no way it's going to be more

than R20 000.00 that, that would still be within my authority, I might adopt a certain attitude but it may be different if there's a risk that it could actually put it beyond my authority then I must – I may have to really insist. So you do understand the context of the question?

MR FRANCIS QUENTIN CALLARD: Yes indeed and the example you quote is absolutely correct. At a level of 38.6billion it was, however, outside of the Board's authority and it would have had to go to the shareholder, irrespective of the Forex escalation or not, it would have gone to the Minister shareholder.

10 **CHARPERSON:** It was already out of their...(intervention).

MR FRANCIS QUENTIN CALLARD: Already out of their authority to approve yes.

CHAIRPERSON: Okay, okay.

ADV MAHLAPE SELLO: Then maybe we might as well deal with that point now that it's raised, are you aware whether or not the Minister's approval was obtained for the 38.6billion?

MR FRANCIS QUENTIN CALLARD: Yes the Minister's approval was obtained.

20 **ADV MAHLAPE SELLO:** And the Minister's approval was in respect of which – what ETC to your recollection, we probably will get there later?

MR FRANCIS QUENTIN CALLARD: I believe I have that as a – that item as a particular Annexure in here because I'm dealing with it under another...(intervention).

ADV MAHLAPE SELLO: Okay we will park that question we will

come back to it Ms Molefe will find us the Annexure. We may continue then...(intervention).

CHAIRPERSON: So – sorry, so then I believe that so even with the Board then concern about approval being given without knowing, you know, the exact total cost or at least a reasonable estimate, it would be – it would raise two issues, one is no-one should approve any project without knowing what it would cost you know.

MR FRANCIS QUENTIN CALLARD: Yes.

CHAIRPERSON: But also then you come to the issue of delegation.
10 If your authority is limited then it's all the more reason why you should know what the costs will be because you need it for that purpose as well. So it seems to me it's two factors, you know, but they all lead to the same thing.

MR FRANCIS QUENTIN CALLARD: It's my understanding Mr Chair that in the interest of time, bearing in mind that the April 2013 which we are dealing with now is already a year beyond the time when the initial business case was delayed, the decision was taken by the Board, whatever authority, to issue the request for proposals before obtaining the Ministers approval that the request for proposals – and it was
20 indicated to the tenders – tenderers that this would be subject to Ministerial approval being obtained which it was subsequently and I – that was obtained on the PMFA approval was obtained on the 3rd of September 2013, I have that as item 157.4 of my notes that we had the Ministerial approval to proceed with that. That outline of events is set out on – slightly later in my testimony.

CHAIRPERSON: And who was the Minister responsible at the time, do you know?

MR FRANCIS QUENTIN CALLARD: It was Minister Gigaba.

CHAIRPERSON: Okay.

ADV MAHLAPE SELLO: Thank you Chair, on that question the Annexure you were looking for without dwelling on it, is it Annexure 82 at your page 637, that would be in your second volume.

CHAIRPERSON: Second volume being?

ADV MAHLAPE SELLO: Of BB4(b), thank you Chair.

10 **CHAIRPERSON:** Yes BB4(b) what divider?

ADV MAHLAPE SELLO: I invited him to Annexure 82 at page 637 to check whether that's the approval – the Ministerial approval he was seeking.

MR FRANCIS QUENTIN CALLARD: Yes page 637 of the Bundle the approval is given in the last paragraph on that page.

ADV MAHLAPE SELLO: Am I misreading the document or is the document silent on the actual price?

MR FRANCIS QUENTIN CALLARD: I also read that the document is silent on the actual amount.

20 **ADV MAHLAPE SELLO:** Okay and following on what – the discussion you just had with the Chair, the approval to be sought by Transnet would be where the costs exceed the Board's threshold.

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: So we can assume from that letter that – the approval was sought precisely because it exceeded the threshold?

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: To your knowledge and experience what is the proper approach, does the Minister approve the actual ETC or just approves that the Board may exceed the stipulated threshold, what normally happens?

MR FRANCIS QUENTIN CALLARD: I can't talk with authority on what had previously happened in terms of other approval letters from the Minister, I can't talk.

ADV MAHLAPE SELLO: Okay if you've got no knowledge or
10 experience on that we will probably get an answer somewhere else.

CHAIRPERSON: But in regard to this particular one that should be gathered from the request to the Minister if we've got it read with the response isn't it?

ADV MAHLAPE SELLO: That we will locate in the MNS reports it's not part of Mr Callard's papers.

CHAIRPERSON: Okay.

MR FRANCIS QUENTIN CALLARD: Correct though I have seen it, I did not include it here because it was not the point I wished to make in this one but the document is available.

20 **CHAIRPERSON:** Okay.

ADV MAHLAPE SELLO: Yes Chair. Okay then Mr Callard we move on to the – your next topic on the 1064 and that starts on page 28 and is the accelerated locomotive delivery, (indistinct) to your paragraph 116.

MR FRANCIS QUENTIN CALLARD: Thank you, as background to

this the business case posited a delivery over seven years ending in 2018/2019. It is known that, that delivery was – the contracted delivery was for a far faster rate of delivery of locomotives. If I may take you through to paragraph 116, this accelerated locomotive delivery which was the accelerated delivery contracted for the 1064 locomotives did not, in my opinion, make operational or commercial sense and it was, in my opinion, ill-considered as it was contrary to the operational advice we provided from TFR, it was beyond Transnet Engineering's scope to deliver this accelerated delivery and it was contrary to the procurement strategy of the business case.

ADV MAHLAPE SELLO: Yes, just to place things in context a delivery was scheduled to be over a 7 year period, the accelerated delivery reduced that delivery period from 7 to?

MR FRANCIS QUENTIN CALLARD: 7 to some 3 to 4 years I won't talk to the rate but it was at a rate of 480 locos per year that was – we will come to 300 to 480 locos per year whereas the business case, and I will talk to that posited delivery, if I can remember correctly of 230 locomotives per year.

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: The – if I may just go back to – for a moment please to paragraph 115, just to place in context that I used the Transnet Board approved version with all the issues beforehand is – I use it as a point of reference and this is Annexure 54 in the case and I will refer to it just as the final business case of the 1064 business plan, it is – when I make reference to it and that is what

I will be doing in future.

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: I say that as introduction to paragraph 117 because the 1064 business plan, which we've just referred to, Annexure 54 discusses delivery and the key point of that delivery are that the delivery was to be posited or is posited over 7 years ending 2018/2019 at a maximum rate of 230 locomotives per month, page 48 of that business plan, that would be on page...(intervention).

10 **ADV MAHLAPE SELLO:** 449 perhaps?

MR FRANCIS QUENTIN CALLARD: 449 cor – and that is on page 449 paragraph 7.2 of 449.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: The – this on page – sorry that was 448 where we posited the delivery – no 449. Planning and delivery. 448 page 48.

ADV MAHLAPE SELLO: I think your page reference is still not correct. We will find the correct page for you.

MR FRANCIS QUENTIN CALLARD: My page reference is not correct I
20 apologise.

ADV MAHLAPE SELLO: We will find the correct one but let us continue with...

MR FRANCIS QUENTIN CALLARD: Right.

ADV MAHLAPE SELLO: With the essence of your testimony in this regard.

MR FRANCIS QUENTIN CALLARD: Page 449 however of my reference for paragraph 117.2 delivery risks and whether the positive time frames are achievable is clearly set out in 449 and that comes under paragraph 7.2 planning, delivery and risk.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: And then highlighting the significant locomotive shortfall that Freight Rail would experience against the business plan and assumptions and the associated loss of tonnes and revenue are also set out there under the delivery schedule
10 sensitivity we highlight those issues.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: That is really background though to what happened later in early February 2014 paragraph 118 when was requested by Mr Singh what would be our response to an aggressive delivery schedule for the 1064 locomotives?

ADV MAHLAPE SELLO: Hm.

MR FRANCIS QUENTIN CALLARD: Messrs Pillay, Roper and I and with other technical input we prepared a report titled TFR preliminary view on expediting 1064 locomotives. This may be found on page 21
20 Annexure 56.

ADV MAHLAPE SELLO: Annexure 56 is – starts from 520 I do not understand your 21?

MR FRANCIS QUENTIN CALLARD: It is 520.

ADV MAHLAPE SELLO: 520.

MR FRANCIS QUENTIN CALLARD: 521.

ADV MAHLAPE SELLO: Yes. And while we do that could you quickly indicate whose Pillay – is that a Ms Pillay?

MR FRANCIS QUENTIN CALLARD: That is Mr Pragasen Pillay.

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: If – in the documentation he will often be abbreviated as JD.

ADV MAHLAPE SELLO: JD. And Roper?

MR FRANCIS QUENTIN CALLARD: That is Ms Rita Roper who was the general manager Capital programme.

10 **ADV MAHLAPE SELLO:** Thank you. You may proceed.

MR FRANCIS QUENTIN CALLARD: You will see that we are – the names appear at the bottom – on the bottom of page 521.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: As signatories to this report.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Compilers of this report. Essentially we were asked to address what would be our view on the accelerated delivery of 300 locomotives per year? Without going through the details of the report which is quite expensive – extensive.

20 **ADV MAHLAPE SELLO:** Yes.

MR FRANCIS QUENTIN CALLARD: Extensive I would highlight the pertinent comments which were. As a strategy we would have to fast park old locomotives with a caveat on the organisational recognition of the technical nature of this work. Parking and locomotive is not parking it in an underground parking garage and leaving it for a couple

of years. There are actions which have to be performed to park a locomotive to ensure that after six months' time or a years' time it is either usable for service or if one is not going to use it for service in the future what one does with that locomotive? It is not just abandoning a locomotive. We needed to ensure and I am on – read – I am back on page – on paragraph 118.2 my paragraph page 29. We needed to ensure that the market was there to support the additional tonnages given that the original business case ramp up was there to – was largely matched to the tonnage if we were accelerated the locomotives was the market available? Could we adjust the wagon plan accordingly? In 118.4 the linkage to major projects. Several major projects were affected here and it would have to be an adjustment in the capital cash flow to fast track certain projects to achieve the aggressive tonnages per the time lines stipulated. And that would particularly address customers, lines to those customers, loading and offloading capabilities. It is not just bring more locomotives it has to be matched to the market, to the wagons, to the total infrastructure component. And those major projects would have to be accelerated. The delivery and we make – made quite a point that our T – the

10 Transnet Engineering's delivery promise for an aggressive start-up was April 2015 maybe – for an aggressive start-up that is to start production.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: It was Freight Rail's view this could be between three months to over a year later depending on

whether it was diesel or electric locomotives and a known or an unknown supplier. I make the point there that when one is setting up a production line for a supplier with whom one is familiar a lot of ground is already covered. If it is an unknown supplier it is a lot more complicated. The critical point was that TE start-up of the local manufacturer of previous contracts had not been visibly managed as a project and under a dedicated and accountable programme manager according to a [indistinct] visible and a communicated project plan. This was the cause of the delays experienced and we have highlighted

10 those and the delays associated with the 95 locomotives. And in effect this was building on those delays which we knew about. Commissioning. It commissioning a locomotive one requires staff with certain expertise and the ability to commission and we do not have that many staff that could deal with that many locomotives coming in in such a short period of time. There was insufficient skilled staff. In operations we did not have sufficient train drivers. It takes between two to three years to train a train driver. They just were not readily available to deal with this number of locomotives and we would need to review our crew requirements with an aggressive intake in the 2014/15

20 financial year. The maintenance interventions of the current locomotives would have to be adjusted and or curtailed. We also put forward the control of locomotives be moved to logistics integration to consolidate to control introduce proactive planning tech monitoring and develop an enforced key performance indicators. And lastly we highlighted all the risks in the business plan around this rapid delivery

of locomotives. Long story short we sent this report to Mr Gama, Singh and Ms Roper on the 12 February 2014.

ADV MAHLAPE SELLO: And the gist of that memorandum is acceleration is not advisable?

MR FRANCIS QUENTIN CALLARD: A sound reading would say tread very carefully before accelerating these locomotives.

ADV MAHLAPE SELLO: Thank you. You may continue.

MR FRANCIS QUENTIN CALLARD: Perhaps tread carefully is not the right phrase but we highlighted the risks as we could to warn off this
10 accelerated delivery.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: I perhaps summarised this best on the 26 February and I am ready paragraph 120.

“When responding to Mr Singh on various scenarios I explicitly stated this was in an email that we Freight Rail could not absorb more than 300 locomotives per year due to marketing and commissioning constraints.”

And that is in Annexure 57 which is on page 534.

20 **ADV MAHLAPE SELLO:** Yes.

MR FRANCIS QUENTIN CALLARD: May I just take from there? There were three scenarios. 40 locomotives per month versus the original plan. 48 locomotives per month versus the 300 per year and 300 per year versus the original. Also factored in delivery to production. The last point.

“Please note NB we cannot absorb more than the 300 per year due to market and commissioning constraints per the earlier note.”

ADV MAHLAPE SELLO: And the acceleration would have increased that, the number of locomotives for you to absorb from 300 to?

MR FRANCIS QUENTIN CALLARD: This was around the – potentially around the 300 mark.

ADV MAHLAPE SELLO: And that was still above what the business plan had originally planned?

MR FRANCIS QUENTIN CALLARD: Yes. I went – go back to the point
10 that the business plan had posited per paragraph 117.1 a maximum rate of 230 locomotives per month.

ADV MAHLAPE SELLO: Okay. Please continue.

MR FRANCIS QUENTIN CALLARD: From paragraph 122 the above notwithstanding Pillay and I were requested to present a view updated for aggressive delivery of 480 peak per year. We did – redid this report. It followed the same format as the previous report but it was more detailed in the links to major projects. Most of the projects had to be completed within two years with a caveat that not all the projects were fully funded. This added emphasis to the risks and delivery and
20 commissioning sections. If I may just outline that? Recognising that increasing the rate of locomotives to 480 per month would require additional cash flow. We were already well aware of the constraint budgets and the budget limitations. So moving money to procuring the locomotives would take capital away from the capital projects which were required to support the locomotives particularly in terms of the

infrastructure and the like.

ADV MAHLAPE SELLO: Just perhaps you might – I should find out from you. When you and by you I mean plural you the team was requested to consider accelerating delivery what was the reason advanced for the need for acceleration? If one ever was.

MR FRANCIS QUENTIN CALLARD: We were given a reason post event.

ADV MAHLAPE SELLO: At the time it was not stated what – why they need to accelerate – a reason?

10 **MR FRANCIS QUENTIN CALLARD:** I have nothing in writing as to why we needed to accelerate.

ADV MAHLAPE SELLO: But to – the person who requested you consider acceleration whether in writing or verbally was a reason given you?

MR FRANCIS QUENTIN CALLARD: The nature of the reason given to us was that accelerating the locomotives would save forex costs into the future.

ADV MAHLAPE SELLO: Okay. And was it demonstrated how that could be achieved?

20 **MR FRANCIS QUENTIN CALLARD:** It was left at a statement it was not demonstrated how it could be achieved.

ADV MAHLAPE SELLO: Thank you. You may proceed.

MR FRANCIS QUENTIN CALLARD: Not that I am aware of. So we prepared this report and I am at the bottom of paragraph 122 and we sent it to Mr Gama for input on the 6 March for onward transmission to

Mr Singh.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Per paragraph 23 Mr Gama responded on the 10 March 2014 please that is a correction there, allocating specific responsibilities to various projects. We outlined all the work which had to be done and he allocated responsibilities to those projects. He stressed that we had under emphasised the Transnet Engineering and should update the report before sending it to the Group Chief Financial Officer.

10 **ADV MAHLAPE SELLO:** Hm.

MR FRANCIS QUENTIN CALLARD: We updated the report and on the 11 March I sent it to inter alia Mr Gama and Mr Singh with a covering note that the very aggressive delivery poses an overall risk as it requires very tight simultaneous coordination of markets, customer capacity, material supply, developing infrastructure capacity and wagons. And this is Annexure 58 page 536.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: That is the – the detail of the report and without dwelling on the report in detail just on page 536 the
20 index details the items which we cover in detail.

ADV MAHLAPE SELLO: And before you leave that point you introduce through your supplementary affidavit – statement at paragraph 10 thereof page 3 Annexure 58. – 58A and you say it is an email dated 11 March 2014 from yourself to Siyabonga Gama and Anoj Singh. This is the covering note referred to in paragraph 124 of my statement.

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: So that email is the covering note to when you sent the document which is Annexure 58?

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: Thank you.

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: Yes you may proceed.

MR FRANCIS QUENTIN CALLARD: The upshot of this report was an extensive workshop on the 27 May 2014 and an allocation and deallocation of tasks and responsibilities to address the de facto situation. I state de facto situation because now on the 27 May contracts had already been signed and accelerated delivery was now au fait accompli.

ADV MAHLAPE SELLO: So the – we know from records that the 1064 contract was signed on the 17 March 2014?

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: On which timeline were the contracts signed to your knowledge? Was it on an acceleration basis or on the original seven year?

20 **MR FRANCIS QUENTIN CALLARD:** No it was on the accelerated basis.

ADV MAHLAPE SELLO: So that was a contracted position already?

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: The...

ADV MAHLAPE SELLO: And then therefore – sorry at 125 you hold the

workshop that is what you mean – you hold the workshop after the contract is concluded and therefore?

MR FRANCIS QUENTIN CALLARD: The contract had been concluded we have this delivery staring us now in the face, how are we going to deal with it? We hold this workshop to address the de facto situation how we are going to manage these locomotives?

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: And Annexure 59 on page 554.

ADV MAHLAPE SELLO: Yes.

- 10 **MR FRANCIS QUENTIN CALLARD:** Is my email to multiple colleagues addressing a meeting we had on the 27 May and if I turn to page – if we may turn to page 555 please without going through the detail. It sets out what we have to do and the variety of tasks that have to be performed and the individuals assigned to those tasks to address the situation.

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: I take it further that by July the 2014 strategy and business planning had taken over coordinating all the responses and actions emanating from this 27 May workshop.

- 20 Loosely they used the framework of the report. Strategy and business planning preceded to use the responses and actions as the basis of the first iteration for the 2015/16 business plan and that is indicated in Annexure 60 page 558.

ADV MAHLAPE SELLO: Okay. And we accept annexure is there.

MR FRANCIS QUENTIN CALLARD: The annexure is there and it is

from strategy and page 559 says it is from the strategy and business planning and it practically mirrors where we were.

ADV MAHLAPE SELLO: Yes. So – and what happened to this report after it was concluded?

MR FRANCIS QUENTIN CALLARD: Well on the – I go to the – paragraph 127 that on the 10 July strategy and business planning had shared and I have addressed that in my supplementary we are ready to share that is in fact had shared a presentation on the accelerated locomotive delivery plan with Mr Gama per Annexure 61.

10 **ADV MAHLAPE SELLO:** Yes.

MR FRANCIS QUENTIN CALLARD: Where they say they had shared it.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: On the 16 July for the presentation by strategy and business planning to the Transnet Group EXCO I sent the following concluding slide.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: This presentation to Mr Gama was updated with minor amendments but I sent the following concluding slide. There was an addition by Mr Pillay that did not make it to the
20 slide but I would like to quote that.

“In order to ensure there is a reliable system it is required that rail network makes the required investment in line with how the locomotives are deployed into the TFR system.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Did not make it to the pack.

ADV MAHLAPE SELLO: So the report draws certain conclusions and makes recommendations?

MR FRANCIS QUENTIN CALLARD: Right. The concluding slide to this pack that I drafted was conclusion. Between the three scenarios there was no significant financial difference between the three scenarios. The three scenarios gearing and debt interest breach Governance in all cases. The prospect of delays in locomotive delivery has not been addressed however real. Volumes for the accelerated delivery of 480 locomotives per annum are at risk. Capital and OPEX that is
10 Operational Expenditure related to the 1064 and 160 locomotives can be phased but not negated.

ADV MAHLAPE SELLO: Hm.

MR FRANCIS QUENTIN CALLARD: I added the recommendation that the locomotive delivery be rephrased – be rephrased to between 250 and 300 locomotives per annum with 400 being the upper limit. The shareholder and treasury be approached to approve the short term breach in cash, interest, cover and gearing. The concluding slide to that presentation.

ADV MAHLAPE SELLO: And these recommendations were shared with
20 Mr Gama then?

MR FRANCIS QUENTIN CALLARD: I cannot say that they were shared with Mr Gama but they made their way into the final report into the presentation.

ADV MAHLAPE SELLO: The presentation was made to whom?

MR FRANCIS QUENTIN CALLARD: The presentation I believe was

then made to EXCO I say I believe I gave it to strategy and business planning. They took it forward. I cannot say how they took it forward.

ADV MAHLAPE SELLO: And who in particular in strategy and business planning?

MR FRANCIS QUENTIN CALLARD: Well the executive manager in strategy and business planning at that moment – at that time was Ms Sandra Gertenbach.

ADV MAHLAPE SELLO: Ms?

MR FRANCIS QUENTIN CALLARD: Sandra Gertenbach her details are
10 per 61 I take you to Annexure 61.

CHAIRPERSON: Here is 61 the annexure.

MR FRANCIS QUENTIN CALLARD: Page 562. She was Executive Manager in the office of the Chief Engineer, Chief Executive Strategy and business planning.

ADV MAHLAPE SELLO: Okay. Now as we [indistinct] the two recommendations you make do you know whether the re-phasing you recommend was carried out?

MR FRANCIS QUENTIN CALLARD: No. No the re-phasing – there was no re-phasing.

20 **ADV MAHLAPE SELLO:** So the expectation was still to deliver – to take delivery of 480 locomotives per annum?

MR FRANCIS QUENTIN CALLARD: That is correct and in fact that ties in with my paragraph – with paragraph 129.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: The pressures on the accelerated

delivery programme were intense.

ADV MAHLAPE SELLO: Hm.

MR FRANCIS QUENTIN CALLARD: On the 30 October 2014 I received the following sms from Mr Gama. I do not quote:

“I do not change my mind daily. You and JD agreed to 480 max a few months ago make it work.”

I do not recall the exact circumstances that gave rise to the sms but it was symptomatic of the pressure at the time. It is possible and I stress it is possible that it was related to the recommendations above.

10 **ADV MAHLAPE SELLO:** Now that sms indicates that you and JD and I take it that is Mr Pillay as you indicated?

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: Had previously agreed that you can absorb 480 max a few months ago, did you ever?

MR FRANCIS QUENTIN CALLARD: That would be a reading of the sms.

ADV MAHLAPE SELLO: Yes.

20 **MR FRANCIS QUENTIN CALLARD:** We did not agree to 480 a few months ago. Ala because that would be in direct contradiction to my email to Mr Singh which I referred to where I said we cannot absorb more than 300 per month.

ADV MAHLAPE SELLO: And which is – you referred us to earlier as Annexure – at 534.

MR FRANCIS QUENTIN CALLARD: At .

ADV MAHLAPE SELLO: At page 534.

MR FRANCIS QUENTIN CALLARD: As Annexure 534.

ADV MAHLAPE SELLO: And your position has always been that you can – you can absorb maximum up to 300?

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: So you – your position is that you never made that agreement with Mr Gama?

MR FRANCIS QUENTIN CALLARD: We did not make that agreement.

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: The – and the fact that we may –
10 we prepared a report on the aggressive delivery highlighting all the risks and actions to be taken if we were to go to 480 did not say that we agreed with 480. It pointed out extensive organisational risks and impacts. We said if you want to do this this is what has to happen but we did not agree to it.

ADV MAHLAPE SELLO: Okay.

CHAIRPERSON: So in other words you made your position quite clear but to the extent that you may have been under instruction to do what somebody higher up you know thought should be done you would play your role as long as your position was known?

20 **MR FRANCIS QUENTIN CALLARD:** That is the way it works.

ADV MAHLAPE SELLO: Ja. Okay.

ADV MAHLAPE SELLO: Thank you Chair. Mr Callard from paragraph 130 you then move to a slightly different topic. Transnet Engineering preparedness.

MR FRANCIS QUENTIN CALLARD: Correct. This is a – another

matter on this one as to why – yes. From one paragraph 130 Transnet Engineering was I believe ill equipped to handle the accelerated locomotive delivery. In February 2014 Mr Pillay and I accompanied Mr Singh and others to meetings with Price Waterhouse Cooper referred to here in the documents as PWC to discuss Transnet Engineering's preparedness to manufacture/assemble locomotives. It is my correct recollection that we full appraised them of our concerns based on Transnet Engineering's late delivery of the 95 20 E locomotives. The time it took to get the GE that is the General Electric assembly line up
 10 and running this was for the diesel locomotives and in our view the structural and cultural deficiencies in Transnet Engineering to rapidly transform into a world class manufacturing and assembly facility. PWC had prepared – or prepared a report that is extensive and detailed. It highlights significant risks in TE's capability.

ADV MAHLAPE SELLO: Before you go past that point. There is something you need to point out to the Chair on this paragraph 132 that is significant and in particular I am referring to what you state in your supplementary statement at paragraph 11 of your supplementary statement Mr Callard.

20 **MR FRANCIS QUENTIN CALLARD:** Yes. Paragraph – I refer there in paragraph 132 to Annexure 62A. It is but one slide setting out the risk of attempting to compress the delivery schedules.

ADV MAHLAPE SELLO: Before you get there. Let us deal with your first statement. You say PWC prepared a report that is extensive and detailed.

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: Also highlights significant risk and TE capability. I am pointing you to your paragraph 11 in your supplementary statement where you seek to introduce a document which is not currently or is not part of your original statement.

MR FRANCIS QUENTIN CALLARD: Correct, correct. And that document is on page 21 of the supplementary.

ADV MAHLAPE SELLO: And you indicate at your paragraph 11 that this is the PW slide you refer to?

10 **MR FRANCIS QUENTIN CALLARD:** This is the PW slide I refer to yes.

ADV MAHLAPE SELLO: And Annexure 62A is not that PW slide?

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: Okay. So Chair if you could – the Chair could just scribble at 132 that that slide that Mr Callard refers to at 132 is included through his supplementary statement paragraph 11 to be marked 62B. Thank you Chair.

CHAIRPERSON: Thank you.

ADV MAHLAPE SELLO: Then you may proceed.

20 **MR FRANCIS QUENTIN CALLARD:** Thank you. And if I may then just add that Annexure 62A belongs to paragraph 138 because it refers to a Transnet Freight Rail risk in the ramp up.

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: I – come again that all these concerns of one in Transnet Engineering preparedness are also expressed in the reports on the preliminary view of expediting the 1064

locomotives and which was Annexure 56 and the report updated for the aggressive delivery of the 480 peak per year. We highlighted these risks in that report.

ADV MAHLAPE SELLO: So do we understand then from what you are saying that you highlighted the risks pertaining to Transnet Engineering preparedness and PWC drew similar conclusions that there is significant risk ...

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: As per Annexure 62B?

10 **MR FRANCIS QUENTIN CALLARD:** Yes.

ADV MAHLAPE SELLO: And both these were shared with senior executives within Transnet?

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: Thank you. You may proceed.

MR FRANCIS QUENTIN CALLARD: Right. In paragraph I mention there that the detailed concerns of a technical colleague and his team as set out in the email of 6 June 2014.

ADV MAHLAPE SELLO: Ja.

20 **MR FRANCIS QUENTIN CALLARD:** We have already alluded to those emails and the photographs. I highlight that they give expression to this concern.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: I (intervenes).

ADV MAHLAPE SELLO: Now to your – to your knowledge was here – no – was there ever – I will repost that. Was there ever a response – a

formal response to your report highlighting these risks?

MR FRANCIS QUENTIN CALLARD: No, not that I am aware of.

ADV MAHLAPE SELLO: Is it your ...

MR FRANCIS QUENTIN CALLARD: I have no trace of it.

ADV MAHLAPE SELLO: Is it your understanding that although – that these risks were in fact brought to the attention of the senior executives within Transnet?

MR FRANCIS QUENTIN CALLARD: The reports were brought to the attention – both reports and I have mentioned that they were emailed to
10 Mr Gama and Mr Singh. Ms Rita Roper was a co compiler of the first report. The second report was also specifically addressed to Ms Nomfuyo Galeni who was the Chief Financial Officer of Transnet Freight Rail. She – sorry we are dealing now with the Aggressive Delivery Report?

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Yes. She undertook certain actions and compiled certain meetings which gave rise to it being taken into strategy and planning. She initiated those first series of meetings as an upshot of the report.

20 **ADV MAHLAPE SELLO:** Yes. Were these risks shared with the Board at any point? Do you know?

MR FRANCIS QUENTIN CALLARD: I cannot say definitively. From what I have read of Board minutes they do not appear to have been. I cannot say definitively.

ADV MAHLAPE SELLO: Okay. Thank you. I interrupted you when you

were dealing with your 135. If you may take it up from there.

MR FRANCIS QUENTIN CALLARD: Sure. My 135 is a comment that:

“It is regrettably common cause that many of the
1 064 locomotive deliveries are running late. The
media report from the Chairman of the Transnet
Board on 4 December 2018 reported to Parliament
that only 497 of the 1 064 locomotives had been
delivered so far. When in terms of the delivery
schedule all of them should have been delivered by
now.”

10

ADV MAHLAPE SELLO: So by now meaning by the date on which the
Chair appeared before ...

MR FRANCIS QUENTIN CALLARD: By the date of 4 December 2018.

ADV MAHLAPE SELLO: Now in any given year was the target of 480
locomotives per annum ever met?

MR FRANCIS QUENTIN CALLARD: I did not track it specifically but I
would be extremely surprised if it was ever met. I would say with a
high degree of confidence it was not met.

20

ADV MAHLAPE SELLO: Now in your - to your knowledge and in your
experience when then the delivery is accelerated does that have any
impact and if so what kind of impact on the rate of payment for the
deliveries?

MR FRANCIS QUENTIN CALLARD: Well accelerated delivery
accelerates the rate of payment.

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: Insofar as we have seen and will see in apart from the down payment the balance of the payment is then spread across the locomotives. So the higher the rate of delivery the locomotives the greater the cash flow in any particular year.

ADV MAHLAPE SELLO: You – you get into your – to the next topic of procurement strategy. If you – you do not have to read that part. I am sure you can summarise what is under that heading.

MR FRANCIS QUENTIN CALLARD: I – I would summarise 136 through to 139 as follows: that the business plan highlighted the need to adjust
10 the rate of delivery in line with risk as it materialised. Risks being either an acceleration of the market or a slowdown in the market growth and that we needed to be able to adjust the locomotive delivery accordingly. The upshot of the accelerated locomotive delivery contract was that it negated all the protection we sought in the business case for being able to adjust the rate of delivery of the locomotive either by extending it if the market did not materialise as we have seen or by accelerating it should the market have really grown further. That mechanism which we saw in the business case was not taken forward and in fact entirely negated by the rapid acceleration
20 procurement strategy that was followed.

ADV MAHLAPE SELLO: Okay. Then I think that takes us to advance – the issue of advance payments at – starting at your paragraph 141.

MR FRANCIS QUENTIN CALLARD: *Ja* and it was my ...

CHAIRPERSON: Well at paragraph 140 is that not quite important – that conclusion?

ADV MAHLAPE SELLO: We can place it on records please ...

CHAIRPERSON: Hm.

ADV MAHLAPE SELLO: What you state at 140 please consider that and ...

MR FRANCIS QUENTIN CALLARD: 140 yes. It is my conclusion – I conclude that:

10 “It was a pity that the worst case volume shortfall
identified in the business case is exactly what
freight rail experienced that the market - in essence
– that the market did not materialise as were
deposited in the MDS with its doubling of freight.
Further this occurred without the benefit of a
flexible procurement and contracting strategy that
allowed locomotive purchasers to be accelerated or
throttled back without undue penalties.”

ADV MAHLAPE SELLO: Thank you Chair. We turn then to the
question of advance payments and you deal with that from your
paragraph 141.

20 **MR FRANCIS QUENTIN CALLARD:** Sure. Again I open this with a –
with a conclusion:

“That it is my considered opinion that the
contracted payment schedules negatively and non-
necessarily impacted Transnet. The 1 064 business
case deposit upfront payments on signing the
contracts of 250 million for the diesel and 350

million for the electric locomotives.”

And we have dealt with that.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: “These upfront payments were incorporated into the financial models. The table below on 144 is extracted from 10 December 2013 report of the Cross Functional Evaluation Team.”

That was Annexure 83 ...

10 **ADV MAHLAPE SELLO:** Yes.

MR FRANCIS QUENTIN CALLARD: And it may be found on page 659 of the bundle.

ADV MAHLAPE SELLO: And that is where you say the table comes from?

MR FRANCIS QUENTIN CALLARD: That is where that table comes from.

ADV MAHLAPE SELLO: But for the moment you confine yourself to the contents of the table (intervenes)?

MR FRANCIS QUENTIN CALLARD: For the moment I confine myself to
20 the contents of the table.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: The contents of the table – we will see that that deposits that bidder one which is Bombardier had a total payment before acceptance of 24 percent.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Bidder two which was CSR of 1.62 percent.

ADV MAHLAPE SELLO: Huh-uh.

MR FRANCIS QUENTIN CALLARD: Bidder three – and I recall that one offhand – 24 percent. Bidder five, 1.62 percent, bidder seven which was Mitsui was 1.62 percent.

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: In essence I use this to illustrate that the position taken in the business case of upfront payments of 300
10 million for electric locomotives were not out of line. That they could be expected.

CHAIRPERSON: In that column or table you said Mitsui was which?

MR FRANCIS QUENTIN CALLARD: Bidder seven.

CHAIRPERSON: Bidder seven.

MR FRANCIS QUENTIN CALLARD: Yes.

CHAIRPERSON: Okay, thank you.

ADV MAHLAPE SELLO: So then let us deal with bidder two – CSR. As at the bid stage CSR had offered to accept an upfront payment of 1.62 of the total price?

20 **MR FRANCIS QUENTIN CALLARD:** Correct.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: That was at the end of the document, yes.

ADV MAHLAPE SELLO: Okay. Then what happens after these are received?

MR FRANCIS QUENTIN CALLARD: Now that was for the electric locomotives.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Table one on paragraph 145 – the following table is the same extract but from the diesel locomotives. It may be found on page 699 but it is extracted here. That bidder one which was CNR, bidder two which was CSR.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Bidder three was EMD which I –
10 Electro Motive Division ...

ADV MAHLAPE SELLO: Huh-uh.

MR FRANCIS QUENTIN CALLARD: Short for EM – abbreviated to EMD and bidder four was General Electric – GE.

ADV MAHLAPE SELLO: Ja.

MR FRANCIS QUENTIN CALLARD: We will see that CNR was 1.08 percent. CSR – 1.43 percent, bidder three was asking for 25 percent and bidder four – 10 percent.

ADV MAHLAPE SELLO: Okay. So insofar as CNR and CSR – at least – are concerned they were – they both proposed payment of – below 2
20 percent.

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: And I make the point on per 1.46 that the above table showed the deposit or APG payments in the order of one to 2 percent on (indistinct).

ADV MAHLAPE SELLO: So - and what in reality then happened?

MR FRANCIS QUENTIN CALLARD: In reality what happened the table below is compiled from Annexure 17. Now Annexure 17 was a – a file which I received from – may I just turn to Annexure 17. This – on page 275. The file was – it was a spreadsheet of copies of cash flow finals on 17 March when the ...

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Payments were finally contracted. I give extracts of that and this table is compiled from that spreadsheet.

10 **ADV MAHLAPE SELLO:** Okay. Work us through the table so we understand please.

MR FRANCIS QUENTIN CALLARD: The essence of this is that this was the payment guarantees and payments to be made over the nature of the contract. If I make take us to Bombadier. We had a payment now of 9 percent, a design review of 9 percent and a payment after 6 months of 8 percent giving a total advance payment before and I stress that this is before a locomotive is delivered of 27 percent. This is an increase of 3 percent from what they put forward in their original bid document referring to the table on page ...

20 **ADV MAHLAPE SELLO:** 34.

MR FRANCIS QUENTIN CALLARD: 34.

ADV MAHLAPE SELLO: They had originally proposed 24 percent.

MR FRANCIS QUENTIN CALLARD: And it went up to 27 percent.

ADV MAHLAPE SELLO: And their contracted position is 27 percent?

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: Or would ...

CHAIRPERSON: Does ...?

ADV MAHLAPE SELLO: Be contracted position.

CHAIRPERSON: Does the table at 35 remind who the other bidders were that you could not remember earlier or not really?

MR FRANCIS QUENTIN CALLARD: Well table 35 was the – table 35 - the first one was Bombadier – bidder one was Bombadier. Bidder two was CSR.

CHAIRPERSON: Huh-uh.

10 **MR FRANCIS QUENTIN CALLARD:** Bidder seven was Mitsui and the detail is here – bidders three and five were between Siemens and Alstom. I will reflect that in a moment. Bidder three was Alstom and bidder five was Siemens.

CHAIRPERSON: Thank you.

ADV MAHLAPE SELLO: Yes. Now you – you had just taken us through Bombadier.

MR FRANCIS QUENTIN CALLARD: I had taken us through – thank you. If we look at CSR the total advance payment is now 30 percent before delivery of a locomotive whereas in the bid documents it was
20 1.62 percent.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: For General Electric it remains the same 10 percent to 10 percent comparing the table at the top of page 35 with the table on – against one – paragraph 147 10 percent remains 10 percent. For CNR whereas in the bid documents it was 1.08 percent

it now increases after the negotiation at award stage to 15 percent.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: I am ignoring the CSR 100 and the GE 60. They are not part of the 1 064. They were just – I make the point then on paragraph (intervenes).

ADV MAHLAPE SELLO: Sorry, please explain why you are exploring the others.

MR FRANCIS QUENTIN CALLARD: We have already dealt with the CSR 100 ...

10 **ADV MAHLAPE SELLO:** Okay.

MR FRANCIS QUENTIN CALLARD: Locomotives ...

ADV MAHLAPE SELLO: And that is what the final two columns relate to?

MR FRANCIS QUENTIN CALLARD: That is what the final two columns relate to.

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: Please proceed.

20 **MR FRANCIS QUENTIN CALLARD:** The conclusion I make from this is paragraph 148 but from the above table the advanced payments before a locomotive is delivered for three bidders increased from their initials bids. This was a slight increase from a high base and CSR having the highest increase by CNR. I have deleted the words in my supplementary. I have changed ...

ADV MAHLAPE SELLO: And ...

MR FRANCIS QUENTIN CALLARD: If you look for three bidders and I have deleted GE remained the same.

ADV MAHLAPE SELLO: Now what we have at that table at paragraph 147 this was the position post negotiation or ...?

MR FRANCIS QUENTIN CALLARD: This is the post negotiation position and I make the point in paragraph 149. The increases beg the question as to how the final negotiations were conducted.

ADV MAHLAPE SELLO: So we have no understanding of how notwithstanding the fact that CSR offers to accept 1.62 percent of the
10 final price in advance payment how that jumped to 30. Do we have an – any understanding of how that came about?

MR FRANCIS QUENTIN CALLARD: No.

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: Others may have (intervenes).

ADV MAHLAPE SELLO: No, no you.

MR FRANCIS QUENTIN CALLARD: I do not.

ADV MAHLAPE SELLO: Thank you. You may then continue overleaf.

MR FRANCIS QUENTIN CALLARD: I have already dealt with item 50 and the ...

20 **ADV MAHLAPE SELLO:** Yes.

MR FRANCIS QUENTIN CALLARD: GE upfront payments. Under 151 as previously mentioned a consequence of the agreed advance payments was that on contract initiation of 17 March 2014 Transnet had to pay an upfront advance payment of 7.37 billion before 1 April 2014. This was so that the payments would be reflected in the 2013/2014

financial year.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: One of the consequences of the payment schedule was that Transnet had to increase its foreign borrowings.

ADV MAHLAPE SELLO: Hm.

MR FRANCIS QUENTIN CALLARD: And I refer you here please to Annexure 63 and 64 and these are on pages 569 to 573. 569 – if I may give it in context – highlights a series of emails that I – between myself
10 and other individuals which just say that the Group had to apply to the Department of Public Enterprise for an increase in the following funding limit. Could I please assist with my interpretation of ...?

ADV MAHLAPE SELLO: Your - if I may just say – your 569 you have taken us to Annexure 63.

MR FRANCIS QUENTIN CALLARD: 569 Annexure 63.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: And I am reading from the middle of the email. I address it to various parties and I say:

20 “Hi all, Group have applied to DPE for an increase in the following funding limit. They have come back with additional questions and they relate around to the 1 064 and the like.”

The point which I want to make is that the slides which – the work which I returned to the – to Group around this it can be found on page 574 and 575.

ADV MAHLAPE SELLO: That is your Annexure 64?

MR FRANCIS QUENTIN CALLARD: That is Annexure 64.

ADV MAHLAPE SELLO: We are at 575.

MR FRANCIS QUENTIN CALLARD: May we just do 574 at the moment please?

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: The first one and you will see there under total where the required funding for the 2014/2015 corporate plan is given at R15.1 billion as required funding.

10 **ADV MAHLAPE SELLO:** Yes.

MR FRANCIS QUENTIN CALLARD: I am not addressing the source of the funding how it is made up. Just the quantum.

ADV MAHLAPE SELLO: Huh-uh.

MR FRANCIS QUENTIN CALLARD: If we may turn over please and this slide addresses revised funding requirements and the left hand column is the budget for 2014/2015 Rand million and it talks to a funding requirement of 15.073. It is normal that one has a rounding and that ...

ADV MAHLAPE SELLO: Of course.

MR FRANCIS QUENTIN CALLARD: 15.1 to 15.073.

20 **ADV MAHLAPE SELLO:** Yes.

MR FRANCIS QUENTIN CALLARD: What they then do is they deduct the foreign funding requirement occasioned by the 1 064 locomotives on the initial cash flows we had put forward. They then add back to that the current locomotives cash flows occasioned by the accelerated delivery.

ADV MAHLAPE SELLO: Huh-uh.

MR FRANCIS QUENTIN CALLARD: We will see that the funding requirement increases by six – a figure to the order of R6 billion in the 2014/2015 financial year.

ADV MAHLAPE SELLO: Huh-uh and – and that 6 billion we – we achieve by deducting from the total of 21 billion the funding requirement in the third line of your table? That is the adjustment?

MR FRANCIS QUENTIN CALLARD: May I go back? It is perhaps slightly differently.

10 **ADV MAHLAPE SELLO:** Okay.

MR FRANCIS QUENTIN CALLARD: We have the funding requirement of 15 billion. That is the third line left hand column.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: We remove the cash flow as occasioned by the 1 064 against the earliest ...

ADV MAHLAPE SELLO: Huh-uh.

MR FRANCIS QUENTIN CALLARD: Cash flows which drops the funding requirement to 13.755 billion.

ADV MAHLAPE SELLO: Yes.

20 **MR FRANCIS QUENTIN CALLARD:** We then add back the funding requirement of the revised cash flows given the accelerated delivery and if we add those figures of being 482 412 261 320 ...

ADV MAHLAPE SELLO: Huh-uh.

MR FRANCIS QUENTIN CALLARD: If we add that back to the 13.755 which is the funding requirement of 21.125 billion. Comparing that with

the initial 15 billion gives us the increase of 6 billion ...

ADV MAHLAPE SELLO: Thank you.

MR FRANCIS QUENTIN CALLARD: Because of the increased accelerated delivery increased funding requirement of the organisation.

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: As we work through the remaining columns we will see there are also significant increases in funding requirements based on these cash flows.

ADV MAHLAPE SELLO: Thank you.

10 **MR FRANCIS QUENTIN CALLARD:** I do qualify that while my response might not have been definitive because like any set things may have to be tweaked I was not the final arbiter but I believe this illustrates the quantum of the increases that were in effect.

ADV MAHLAPE SELLO: You – we then turn to the evaluation process ...

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: Of the 1 064 locomotives.

MR FRANCIS QUENTIN CALLARD: Yes.

20 **ADV MAHLAPE SELLO:** Which you deal with from – from your paragraph 153?

MR FRANCIS QENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: And you suggest that you are going to deal with this in two phases?

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: The first being the bid process – the receipt

of the bids up to and including selecting the final suppliers?

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: Okay. The second phase deals with the negotiations with selected suppliers?

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: Okay. Let us turn first then to your first phase which you begin to talk to from your paragraph 154 at page 37?

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: Yes. You express a view at 154 that you
10 believe that the process ...

MR FRANCIS QUENTIN CALLARD: I quote.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: "I believe that the 1 064
evaluation process was flawed. It – it was more
than administratively flawed. It was flawed. The
MNS Report into the 1 064 Locomotives Volume 1 –
14 August 2018 in the Executive Summary
concludes that the results of all of the above
(except the price increases) renders he
20 procurement of the 1 064 locomotives the subject
susceptible to judicial review for failure to adhere
to the applicable legal framework."

ADV MAHLAPE SELLO: I see.

MR FRANCIS QUENTIN CALLARD: I will complement the above
finding with detail not covered in the MNS Report. I will draw – in this

section I will draw on material to which I have had access through my work with MNS and material made available through the Zondo Commission and documents in the public domain.

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: I will cover the following to support my contingency that the evaluation process was flawed. I again I delete the word “administratively”.

ADV MAHLAPE SELLO: Huh-uh.

MR FRANCIS QUENTIN CALLARD: “The first is prescribing
10 the role of TE as a subcontractor when it is not
supported by documentation. Secondly, using the
prescription of TE as a mechanism to adjust the
price for evaluation. Thirdly, inconsistently
applying the prescription of TE – Transnet
Engineering – across the bidders and finally it is
more as a conclusion than a contention but as a
consequence of the above the BAFO – Best And
Final Offer - prices to the 1 064 Locomotive
Steering Committee were not a reflection of the real
20 cost.”

ADV MAHLAPE SELLO: You state here it is not a true reflection of the real cost?

MR FRANCIS QUENTIN CALLARD: Were not a true reflection of the real cost.

ADV MAHLAPE SELLO: Okay. Then you provide – you give us a

sense by way of background and context at 157 and paragraph 158 the – the timeline that is relevant to this aspect of your testimony and the documents you will be relying on?

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: May I just for ease of understanding ...

ADV MAHLAPE SELLO: Absolutely.

MR FRANCIS QUENTIN CALLARD: Just highlight the timelines there
10 because they place things in context.

ADV MAHLAPE SELLO: Absolutely.

MR FRANCIS QUENTIN CALLARD: On 16 July 2012 the Request For Proposal Part 1 was issued. This was primarily technical of nature. On 11 December 2012 the RFP Part 2 was issued and I will deal with that. That dealt with the evaluation process, local content and the like.

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: On 30 April 2013 the bids closed. On 3 September 2013 PFMA approval was received. On 2 December 2013 letters were sent to selected bidders asking them to
20 clarify Rand impact of TE to selective bidders. This clarification closes on 4 December 2013.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: On 12 December 2013 we have the reports of the Cross Functional Evaluation Team – I refer to those quite extensively.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: On 20 December there was a request to breakdown an explanation of Annexure E costs in the RFP with a closing date of 23 December 2013.

ADV MAHLAPE SELLO: Huh-uh.

MR FRANCIS QUENTIN CALLARD: On 4 January 2014 there was a request for Best And Final Offers – BAFO – with a closing date of 10 January 2014. On 15 January there was the - there were the memorandums from the CFET. That will become clear later. It is Cross
10 Functional Evaluation Team Finance to the 1 064 Locomotives Steering Committee.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: In January 2018 I performed an analysis but I will come to that later. The dates up to there are the key pattern points.

ADV MAHLAPE SELLO: Before we leave that part of your evidence please go back to your paragraph 157.4.

MR FRANCIS QUENTIN CALLARD: 157.4.

ADV MAHLAPE SELLO: You state there 3 September 2013 PFMA
20 approval?

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: It has just been brought to my attention that you might want to reconsider that date. Please have regard to Annexure 82 at page 637.

MR FRANCIS QUENTIN CALLARD: Annexure 82 of page 37.

ADV MAHLAPE SELLO: Which is the approved – the Ministerial approval we referred to earlier and if that is the PFMA approval you refer to in your statement at 638 it appears to be dated 3 August and not 3 September.

MR FRANCIS QUENTIN CALLARD: My apologies.

ADV MAHLAPE SELLO: So ...

MR FRANCIS QUENTIN CALLARD: I would like to correct that please.

ADV MAHLAPE SELLO: To correct that.

MR FRANCIS QUENTIN CALLARD: 3 August and not 3 September.

10 **ADV MAHLAPE SELLO:** Thank you.

MR FRANCIS QUENTIN CALLARD: Thank you.

ADV MAHLAPE SELLO: With that change Chair it has brought us to 1 o'clock. Might this be an appropriate time to break for the lunch?

CHAIRPERSON: Thank you. We will take the lunch adjournment and resume at 2 o'clock. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay you may proceed.

20 **ADV MAHLAPE SELLO:** Mr Callard before we broke for lunch we had just dealt with your timeline which is at 157, you then follow that up with a list of documents which you list at paragraphs 158 and 159 which as you state are relevant to this particular subject, and that we will be referring to fairly frequently. Please take it that we have taken note of your list, of those annexures and I think we may then proceed to

paragraph 161, and we deal with the specifics of prescribing the role of Transnet Engineering as a sub-contractor.

MR FRANCIS QUENTIN CALLARD: Thanks very much (indistinct).

ADV MAHLAPE SELLO: Your mic Mr Callard, thank you.

MR FRANCIS QUENTIN CALLARD: Thank you very much. If I may draw an analogy and the analogy is to the argument here, I invite you to a meeting, I say we will be holding a meeting at a date and time in the future, two months later I ask why did you not attend the meeting, and you respond but you didn't give me the date and time, that will be
10 the essence of thrust which I am putting here, on the impact of the role of TE as a sub-contractor.

We may be start off that Transnet Engineering, as it was then called, is an operating division of Transnet. The accounting of TE as a sub-contractor is problematic and in my opinion contributed to a potentially flawed evaluation process.

ADV MAHLAPE SELLO: You are at your 161.

MR FRANCIS QUENTIN CALLARD: I'm at 161.

ADV MAHLAPE SELLO: Thank you.

MR FRANCIS QUENTIN CALLARD: And I'd even go so far as to say,
20 contributed to a flawed evaluation process in terms of what we had said earlier.

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: The request for proposal, and may I take us there please to page 634 Annexure 81.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Annexure 81 was from the request for proposal part 2 and I have only extracted, essentially the page 1 and page 3 of the documents. Page 3 is the critical page and it is 365.

ADV MAHLAPE SELLO: 635?

MR FRANCIS QUENTIN CALLARD: 635 apologies 635 and I take us through to the second paragraph TRE sub-contracting, TRE standing for the later name Transnet Rail Engineering.

ADV MAHLAPE SELLO: Okay.

10 **MR FRANCIS QUENTIN CALLARD:** If I may quote,

“Participation of TRE in this locomotive procurement process will be prescribed and further details will follow after the issuance of part2 of the RFP”,

This is part2, it's saying, further details will follow.

ADV MAHLAPE SELLO: So part1 of the RFP did not include sub-contracting of TFE read alone as a part1.

MR FRANCIS QUENTIN CALLARD: Correct, part1 of the request for proposal primarily dealt with technical consideration and it enabled bidders to get to the nitty gritty of the technical consideration of the locomotive, this dealt with other aspects of evaluation and if I may take
20 us through, particularly to that point it was the – ja the evaluation procedures...(intervention).

ADV MAHLAPE SELLO: So it is part2 that introduces the concept of using TE as a sub-contractor?

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: And you say this is what part2 tells us at point 2 of...(intervention).

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: Okay so we understand that it will be introduced in some future time and that further details will be provided as regards the inclusion of TE as a sub-contractor?

MR FRANCIS QUENTIN CALLARD: That is as it stands here yes.

ADV MAHLAPE SELLO: Okay yes, you may proceed.

MR FRANCIS QUENTIN CALLARD: May I add from 6 – 163.1 the
10 wording in the RFP part2 for the supply of 599 electric – new electric locomotives is identical.

ADV MAHLAPE SELLO: Okay let me just – at Annexure 81 is part2 of the RFP in respect of the diesel locomotives.

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: And you are saying if we have regard to the RFP part2 of the electric locomotives the provision is identical?

MR FRANCIS QUENTIN CALLARD: It's identical.

ADV MAHLAPE SELLO: We're with you.

MR FRANCIS QUENTIN CALLARD: Yes.

20 **CHAIRPERSON:** Is that identical to part1 what are you looking at that you say is identical what are the two things you are comparing?

MR FRANCIS QUENTIN CALLARD: What I'm saying is identical Mr Chair is that clause TRE sub-contracting on page 635 is identical in the electrical and diesel locomotives.

ADV MAHLAPE SELLO: Let me ask a different – another question

and see perhaps will help clarify for the Chair. Were two RFP's issued in respect of diesel and electric respectively?

MR FRANCIS QUENTIN CALLARD: I would imagine that at yes.

ADV MAHLAPE SELLO: So each one had a RFP1.

MR FRANCIS QUENTIN CALLARD: Correct.

CHAIRPERSON: Were they – can they be regarded as two separate RFP's or should they be regarded as two parts of one RFP?

MR FRANCIS QUENTIN CALLARD: They were two separate RFP's, one for 599 electrics and another for 465 diesels.

10 **CHAIRPERSON:** Okay, alright and you say that the wording of the - in regard to the RFP is identical in regard to both?

MR FRANCIS QUENTIN CALLARD: In this respect in part2 of the RFP for both the electricals and the diesels are identical.

CHAIRPERSON: Oh okay.

MR FRANCIS QUENTIN CALLARD: So this clause applies to both electrics and diesels.

CHAIRPERSON: Ja okay.

ADV MAHLAPE SELLO: Thank you Chair, yes.

20 **MR FRANCIS QUENTIN CALLARD:** I have found no record that the "further details" referred to were ever issued or formed part of the RFP either for diesel or electric locomotives.

ADV MAHLAPE SELLO: As contemplated by item 2 of part2 RFP.

MR FRANCIS QUENTIN CALLARD: As referred to - yes as part2 of the RFP.

ADV MAHLAPE SELLO: Thank you.

MR FRANCIS QUENTIN CALLARD: I go to my paragraph 163.3, in the absence of the further details the participation of TE, Transnet Engineering, in the locomotive procurement process cannot be considered prescribed, no details have been issued.

ADV MAHLAPE SELLO: That's a view you express?

MR FRANCIS QUENTIN CALLARD: That's a view I express yes. I then go further to my paragraph 164, the PMFA approval letter from the honourable Minister dated 3rd August 2013 talks to, and I quote from that letter – and this is Annexure 82,

10 “The critical role of Transnet Engineering in developing strategic and industrial capabilities relevant to the Rail Supply Chain”.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: We've already seen that the letter grants approval for the procurement of the 1064 locomotives subject to *inter alia* the following condition:

 “A clear statement by Transnet with regards to TE's vision in the locomotive supply chain and what capabilities will be needed to make this revision a reality”.

20 **ADV MAHLAPE SELLO:** Now you say this Annexure 82 is dated 3rd of August 2013, when did the bids close, when were the bids submitted?

MR FRANCIS QUENTIN CALLARD: The bids closed per the comment I made earlier, the bids closed on the 30th of April 2013. The point of this is that this PMFA approval of 3rd August is received after the bids closed.

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: I make the point there, that is the point I made...(intervention).

ADV MAHLAPE SELLO: At 164(1).

MR FRANCIS QUENTIN CALLARD: 164(1) but I would add to the point so that the PMFA approval could not reasonably be prescription to the bid process as the bids had already closed.

ADV MAHLAPE SELLO: Okay.

CHAIRPERSON: Do you know whether this was known to the
10 Minister at the time of him granting the leave, namely that the process was not waiting for his approval they had actually issued the RFP and gone ahead in the meantime, you don't know that?

MR FRANCIS QUENTIN CALLARD: It is my understanding Mr Chair that the RFP's were issued, they were issued with a qualification that award would be subject to PMFA approval during this process there was considerable correspondence between Minister and the National Treasury as well around aspects relating to elements of the RFP process particularly local content and – sorry not local content, particularly relating to the evaluation criteria of the bids. I have not
20 included that here, that can be dealt with by others, I was addressing myself solely to the role of Transnet Engineering in the process bid.

CHAIRPERSON: There would have had to have been something quite urgent for the to do things this way isn't it because if you issue a RFP in the circumstances where you need the Minister's approval before you issue but you issue before you get the approval on the

understanding, on the condition that the RFP is issued subject to the approval of the Minister being obtained. If you then subsequently get the Minister's approval but it's subject to conditions that you might not have expected, then you might have to do the whole thing.

MR FRANCIS QUENTIN CALLARD: That would be a reasonable process yes. One would say, I'm sorry I did not get the requisite approval I was seeking I will have to cancel this bid process and re-issue given that my superior authority has imposed certain requirements yes.

10 **CHAIRPERSON:** Yes okay.

ADV MAHLAPE SELLO: If I may just follow up on that Mr Callard please have regard to your Annexure 82 which is the Ministerial approval and you stated that the bids had closed by 30th April 2013.

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: If you have regard to the opening paragraph of that letter the Minister states:

"I refer to the PFMA section 54 application dated 2nd May 2013 regarding the acquisition of 1064 locomotives",

20 So when the RFP was issued the approval had not been sought at the time that the bids closed the approval still had not been sought as per that letter that approval is only sought on the 2nd of May.

MR FRANCIS QUENTIN CALLARD: I believe that was the point I made when I said that the bids – the first RFP was issued on 16 July 2012 that was per my item 157.1 yes that attest to that point.

ADV MAHLAPE SELLO: Okay you conclude on this point to

say...(intervention).

MR FRANCIS QUENTIN CALLARD: My conclusion on this.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Is that if the use of Transnet Engineering was to be prescribed then the detail should have been provided timeously before the closing date of the tender or the tender should have been re-issued.

ADV MAHLAPE SELLO: Yes and then you lead on to your next sub-heading which is the use of the prescription of TSM it is a mechanism
10 to adjust the price for evaluation.

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: Can you take us through that?

MR FRANCIS QUENTIN CALLARD: Certainly, may we please have ready Annexure – we will be referring to Annexures 83, 84, these are two reports 10 December reports 2012 from the CFET Finance that is the Cross-Functional Evaluation Team Finance and covers the use of the main sub-contractor in detail and its Annexure 84/84. I – if we could go please to Annexures 83/84 pages 651 and 691 respectively.

CHAIRPERSON: I'm sorry what pages?

20 **MR FRANCIS QUENTIN CALLARD:** Page 651 – 651 is Annexure 83, may I just then first take you to page 640.

ADV MAHLAPE SELLO: Before we get into the detail of that, just so that we find where we are, is it correct that Annexure 83 is a report of the Cross-Functional Evaluation Team Finance in respect of the electric locomotives?

MR FRANCIS QUENTIN CALLARD: Correct, as it states on page 640.

ADV MAHLAPE SELLO: Yes and Annexure 84 is the same report except in respect of the diesel locomotives?

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: Okay, then please proceed.

MR FRANCIS QUENTIN CALLARD: Thank you, if we then turn to the relevant pages of 651 of 83.

ADV MAHLAPE SELLO: Yes.

10 **MR FRANCIS QUENTIN CALLARD:** And at the same time have available 691 of 84.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Both of those have headings, “using TE as a main sub-contractor” and I would quote from this- and I quote from this under my paragraph 167 – sorry under paragraph 161.1 under the heading “using TE as a main sub-contractor” it states, *inter alia* that,

“The RFP part2 dictates as follows, participation of TRE in this locomotive procurement process will be prescribed”

20 That is in the first bullet point on 651 and the first bullet point of 691.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: This statement was not qualified and under the same heading of “using TE as a main sub-contractor” on page 12 it reads – and this holds for both diesel and

electric...(intervention).

ADV MAHLAPE SELLO: And the page 12, sorry if I may, is a numbered page 12 but on the pagination is 651.

MR FRANCIS QUENTIN CALLARD: Sorry number page 12 but it is still on 651 and 691 it is – and I’m quoting there from the second bullet on those pages,

“SCS which we should read Supply Chain Services in conjunction with TFR CE and Transnet GCE, reading Group Chief Executive and GCFO, Group Chief Financial Officer, decided that clarity
10 should only be obtained from those bidders...(intervention).

ADV MAHLAPE SELLO: I’m sorry Mr Callard I’m looking at the second bullet point at 651 am I looking at the right place?

MR FRANCIS QUENTIN CALLARD: I’m sorry – my apologies chair it’s the third bullet my apologies.

CHAIRPERSON: Oh okay.

ADV MAHLAPE SELLO: Yes we found the third bullet yes.

CHAIRPERSON: Yes you can continue, thank you.

MR FRANCIS QUENTIN CALLARD: And I repeat from there SCS in conjunction PFR CE and Transnet GCE and GCFO decided that clarity
20 should only be obtained from those bidders who included the TE as the Main sub-contractor. The clarity request was to establish what proportion of the bidders price related to the use TE. I move on to the next bullet,

“Accordingly the methodology provided to CFET Finance was that all bidders should be evaluated excluding the use of TE as

the main sub-contractor in order to normalise the base on which to evaluate price”.

ADV MAHLAPE SELLO: Before you comment on these, on the bullet points you’ve read into the record, can I get an understanding here reads,

“Accordingly the methodology provided to CFET Finance”,

Do you see that?

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: Do we know who provided that
10 methodology?

MR FRANCIS QUENTIN CALLARD: I – in answer to that I would go to 168.2.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Where I say from the wording of the report it is reasonable to conclude that CFET Finance were directed in the pricing methodology, who directed this pricing would reasonably only come – would reasonably come from Supply Chain Services in TFR, Transnet Freight Rail.

ADV MAHLAPE SELLO: So in response to my question definitive
20 answer can only be obtained from Supply Chain?

MR FRANCIS QUENTIN CALLARD: From Supply Chain Services and the head of Supply Chain Services.

ADV MAHLAPE SELLO: Thank you, you may proceed.

MR FRANCIS QUENTIN CALLARD: Thank you, I’d just like to cover point 168 that in both the reports referred to above under heading of,

matters of approval of the Steering Committee, the CFET Finance request, inter alia “came from the report”. The approval of the price methodology provided to the CFET Finance for evaluation purposes to include the impact of price. My interpretation of this is that the CFET Finance team said, we understand this directive you’ve given to us, but it should be taken as a matter for approval to the Locomotive Steering Committee. I have deleted the paragraph 168.1, I subsequently found that there was an approval for this.

ADV MAHLAPE SELLO: An approval?

10 **MR FRANCIS QUENTIN CALLARD:** There was an approval.

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: My understanding, there was an approval.

ADV MAHLAPE SELLO: And approval, just for completeness is by the Locomotive Steering Committee?

MR FRANCIS QUENTIN CALLARD: No the approval I pick up was from the Board Acquisitions and Development Committee in it's meeting on – in February 2014.

20 **CHAIRPERSON:** That’s the Board Acquisitions and Disposal Committee?

MR FRANCIS QUENTIN CALLARD: Yes.

CHAIRPERSON: I think you said Development.

MR FRANCIS QUENTIN CALLARD: Development, my apologies.

ADV MAHLAPE SELLO: If you turn to page 665 and I’m doing this because I’d like to have an appreciation of what the process is, at 665

item 4 – no before that the heading says, “matters for approval of the Steering Committee’, the CFET Finance requests as part of this evaluation and based on the contents of the report above then I go to 4, approval of the price methodology provided to the CFET Finance for evaluation purposes to exclude the impact of TE on price.

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: So this was a request from CFET Finance to the Steering Committee.

MR FRANCIS QUENTIN CALLARD: Correct.

10 **ADV MAHLAPE SELLO:** My question is, do we know whether the approval by the Steering Committee was obtained?

MR FRANCIS QUENTIN CALLARD: I do not know, I have not found it, I do not know.

ADV MAHLAPE SELLO: All you know is that the Board approved it.

MR FRANCIS QUENTIN CALLARD: I have traced documentation that there was a BADC approval.

ADV MAHLAPE SELLO: And would you know how it – the matter came to be before BADC?

MR FRANCIS QUENTIN CALLARD: There Was a memorandum to
20 BADC outlining all the increase in anticipated price of the transaction and it, if I recall correctly, it was included in that because that is how BADC came to approve it.

ADV MAHLAPE SELLO: In that context okay thank you. Then you express your view at ...(intervention).

MR FRANCIS QUENTIN CALLARD: I express my view in 168.3 that I

believe this direction to the CFET was wrong as according to my reasoning the role of TE was not prescribed.

ADV MAHLAPE SELLO: Yes now overleaf you seek to then demonstrate to us how this TE pricing methodology was actually applied to the bids.

MR FRANCIS QUENTIN CALLARD: Yes.

CHAIRPERSON: Before that what would you say were the implications of TE not being prescribed, in particular the practical implications, if any in this whole project?

- 10 **MR FRANCIS QUENTIN CALLARD:** If TE were not to be prescribed there are a number of facilities in South Africa or bodies which could provide complete locomotives. If I may use an example Mitsui could assemble and provide a complete locomotive without using TE other locomotive suppliers like General Electric, if I may use them, were providing Transnet Freight Rail with locomotives but they were using TE as a sub-contractor. They could have used alternative sub-contractors as part of their final assembly and commissioning work. I refer back to the discussions which we had with the – as a team with Mr Singh when we were debating on whether the role of TE or not should be included
- 20 in the process documents or not we held that, if I may recall that we held we should be neutral on that. If the role of TE was to be prescribed, then it would have a implication on the OM's as to directing them to only use one sub-contractor and that would be Transnet Rail Engineering and they would not be able to use facilities and/or organisations of their choice they would be obliged to use Transnet Rail

Engineering if it was prescribed.

CHAIRPERSON: The use of an alternative to TE could it push the costs up or not, the use of an alternative or not, in other words not using TE?

MR FRANCIS QUENTIN CALLARD: It could push the costs up Mr Chairman but I think as we'll be seeing from here it would have led to a reduction in costs if Transnet Engineering were not used.

CHAIRPERSON: Oh okay so at a practical level the fact that TE may not have been prescribed wouldn't have any adverse effects for the
10 project as such if the entities could use alternatives?

ADV MAHLAPE SELLO: I submit that if the entities could use alternatives we could have procured the locomotives at a lesser price than by using TE as a main sub-contractor.

CHAIRPERSON: Okay thank you.

ADV MAHLAPE SELLO: Now before we apply this TE pricing methodology, let's just take a step back to the RFP's in respect of electric – let's deal with electric locomotives, how many bidders submitted bids?

MR FRANCIS QUENTIN CALLARD: I have highlighted, there were 7
20 bidders for the electric locomotives.

ADV MAHLAPE SELLO: Now did all bidders cater for the inclusion of TE as the sub-contractor?

MR FRANCIS QUENTIN CALLARD: No not all of them.

ADV MAHLAPE SELLO: So some included TE and some did not?

MR FRANCIS QUENTIN CALLARD: Some included TE and some did

not, correct.

ADV MAHLAPE SELLO: Do you know why that difference, why some did not include TE?

MR FRANCIS QUENTIN CALLARD: I cannot talk to that definitely but bidder 7, that was Mitsui had a fully-fledged manufacturing facility they did not need TE to deliver a locomotive and I read, I interpret that they were comfortable with their own facilities. Other bidders did not have access to manufacturing facilities and said – approached Transnet Rail Engineering to see if they could build a locomotive or assemble the
10 locomotives for them.

ADV MAHLAPE SELLO: Now the material facilities you speak of are they facilities in South Africa?

MR FRANCIS QUENTIN CALLARD: Yes they are.

ADV MAHLAPE SELLO: Not in Japan?

MR FRANCIS QUENTIN CALLARD: Not in Japan no, they are facilities in South Africa.

CHAIRPERSON: The fact that some bidders included TE as a sub-contractor, others didn't does it not point to the possible correctness of the view you express at 168.3, namely that TE was not prescribed
20 because if they were not prescribed they would have felt that they were not obliged to include TE as a sub-contractor?

MR FRANCIS QUENTIN CALLARD: I relate that to my earlier opening analogy Mr Chair which said TE would be prescribed, details to follow, the details did not follow by the time the bids closed am I prescribed to you as TE? You invited me to the meeting but you haven't

told me the date and time therefore I do not feel prescribed to use TE, I equated to that analogy.

CHAIRPERSON: Okay.

ADV MAHLAPE SELLO: Thank you Chair. Okay then let's turn to the application of this TE pricing methodology to the bids.

MR FRANCIS QUENTIN CALLARD: Right I'd like to first address the 599 electric locomotives.

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: Page 12 of Annexure 83 described
10 how Freight Rail Supply Chain Services normalised the bid price between those who used TE as a sub-contractor and those who did not use TE as a sub-contractor. Could I direct us then please to Annexure 83 page 12 which is 651 in the bundle.

ADV MAHLAPE SELLO: Yes.

CHAIRPERSON: Are you referring us to ...

MR FRANCIS QUENTIN CALLARD: Page – to 651.

CHAIRPERSON: 651?

MR FRANCIS QUENTIN CALLARD: Yes.

CHAIRPERSON: Oh okay. I did not close that page so I thought you
20 were referring us to another one. Okay.

MR FRANCIS QUENTIN CALLARD: If I may I will take it first through as I have it in the statement of my statement 169.2. This normalisation resulted in three bidders who used TE as a sub-contractor being asked to specify without apparent qualification the amount they would save by not using TE as a main sub-contractor. That is directed to bullet point

1, 2, 3, 4, 5 – the 5th bullet point which reads on page 651.

“Based on this decision clarity responses were only issued to bidder 1, 2 and 5 those bidders who indicated the – that should read those bidders who indicated the use of TE as a sub-contractor what would be their impact of not using TE as a sub-contractor?”

MS THABILE FUHRMANN: Before you proceed may I refer to the 4th bullet point and that is for purposes of understanding what
10 normalisation – normalising the bid price means? The fourth bullet point states that the – accordingly the methodology provided to CRET Finance was that all bidders should be evaluated excluding the use of TE as a main sub-contractor in order to normalise the base on which to evaluate the price.

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: Okay yes.

MR FRANCIS QUENTIN CALLARD: Correct. The implications of that being in mind the understanding that follows from this is if you did not use Transnet Engineering as a sub-contractor what would your price
20 have been? And we are going to evaluate on what your price would have been if you did not use Transnet Engineering as a sub-contractor.

ADV MAHLAPE SELLO: And so then the – your 5th bullet point follow up that based on this decision clarity responses were only issued to bidder 1, 2 and 5?

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: Those bidders who indicated the use of TE as a sub-contractor?

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: 4,6 7 did no?

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: Thank you.

CHAIRPERSON: Just to remind me going back to the Minister's approval by the way did he say TE must be used as a

MR FRANCIS QUENTIN CALLARD: Sub-contractor.

10 **CHAIRPERSON:** Sub-contractor?

MR FRANCIS QUENTIN CALLARD: No.

CHAIRPERSON: No it did not?

MR FRANCIS QUENTIN CALLARD: It did not specifically say that and if I may just go back to that for absolute clarity Mr Chair.

CHAIRPERSON: Yes.

MR FRANCIS QUENTIN CALLARD: And was the reason for including this. The PFMA – I am reading back from my 164.

20 "The PFMA approval letter talks to the critical role of Transnet Engineering in developing strategic individual capabilities relevant to the Supply Chain and it gave inter alia the following condition:

A clear statement by Transnet with regard to TE's vision in the locomotive supply chain and what capabilities will be needed to make this vision a reality. The PFMA approval which I state does not

prescribe that TE will be a sub-contractor.”

ADV MAHLAPE SELLO: Thank you.

CHAIRPERSON: It actually specifically said that is not being prescribed. TE is not being prescribed as a sub-contractor.

MR FRANCIS QUENTIN CALLARD: It asks for a lot of deal around it but it did not prescribe TE as a sub-contractor.

CHAIRPERSON: Yes okay. Okay. So- so what was being done now when the bidders were being asked to say what their price would be if TE was not a sub-contractor was this being done in the light of the
10 Ministerial approval not including a prescribed – that TE be prescribed?

MR FRANCIS QUENTIN CALLARD: I will...

CHAIRPERSON: You would not be sure?

MR FRANCIS QUENTIN CALLARD: I will jump to the conclusion Mr ...

CHAIRPERSON: Ja.

MR FRANCIS QUENTIN CALLARD: Mr Chair.

CHAIRPERSON: Ja.

MR FRANCIS QUENTIN CALLARD: But I believe that this process was flawed.

CHAIRPERSON: yes.

20 **MR FRANCIS QUENTIN CALLARD:** And because of this process by asking selected bidders who would use TE

CHAIRPERSON: Yes.

MR FRANCIS QUENTIN CALLARD: To quote without qualification

CHAIRPERSON: Yes.

MR FRANCIS QUENTIN CALLARD: What will be your price if you did

not use TE

CHAIRPERSON: Yes.

MR FRANCIS QUENTIN CALLARD: Artificially influenced the evaluation of the bid price.

CHAIRPERSON: Yes. Okay.

MR FRANCIS QUENTIN CALLARD: That is where this is leading to.

CHAIRPERSON: Thank you.

ADV MAHLAPE SELLO: Thank you Chair. Yes you – we were dealing with a – with page 651 your annexure 83 having dealt with bullet points
10 4 and 5.

MR FRANCIS QUENTIN CALLARD: Thank you. If I may come – revert back then to my statement of 169.2 my paragraph 169.2.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: And repeat again. This normalisation resulted in three bidders who used TE as a sub-contractor being asked to specify. Without apparent qualification the amount would save by not using TE as a major sub-contractor.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Page 13 of that same report and
20 that is Annexure – page 652.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Describes confusion relating to bidder 2 that is CSR using TE and whether the amount was – where the amount they would save was R3.48 million or 5.490 million.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: To clear up this confusion page 13 further describes a telephonic conversation with bidder 2 on the evening of the 4 December 2013. Which resulted in a 2.01 million difference that is the difference between 5.490 million and 3.480 million being declared a discount. That 2 million was declared a discount. Supply Chain Services then based on discussions with the Group Chief Executive and the Group Chief Financial Officer advised the CFET team that the evaluation should proceed excluding this potential discount. I will show later and take later that this discount was later taken back
10 and in fact included in the evaluation and later – it was later included in a price evaluation.

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: But I would for the moment then go to page 13 – sorry my 169.6 page 13 states that the impact of excluding TE from the normalised base pricing as follows: And we will see there that bidder 1 that was Bombardier was afforded a ...

CHAIRPERSON: Well Mr Callard let us be consistent with the page numbers.

MR FRANCIS QUENTIN CALLARD: Sorry.

20 **CHAIRPERSON:** Are you using the report page numbers.

MR FRANCIS QUENTIN CALLARD: My apologies Mr Chair.

CHAIRPERSON: Or [indistinct] paginated one?

MR FRANCIS QUENTIN CALLARD: The report page number – sorry my statement page number 44 I am referring to the table there which is the same table is at the bottom of page 652 I have extracted the same

table.

CHAIRPERSON: Okay thank you. Yes.

ADV MAHLAPE SELLO: Yes Mr Callard.

MR FRANCIS QUENTIN CALLARD: What this table shows is that bidder 1's was now favourably influenced by 1.9 million rounded figures and bidder 2's CSR by 3.48 million in the price evaluation process.

ADV MAHLAPE SELLO: So are we then to understand that to the request that they exclude the cost for using TE as a sub-contractor. Bombardier indicated that their price would drop by 1.9 billion.

10 **MR FRANCIS QUENTIN CALLARD:** Yes.

ADV MAHLAPE SELLO: And CSR indicated the price would drop by 3.4 billion.

MR FRANCIS QUENTIN CALLARD: If they did not use TE as a sub-contractor.

ADV MAHLAPE SELLO: If they did not use TE.

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: Now insofar as CR is concerned if you go back to your 169.4 no 169.3 and 169.4. The table you refer asked you at page 43 for CSR indicates a reduction of 3.4 billion. Where does the
20 figure of 5.4 billion as a potential amount to deduct come from?

MR FRANCIS QUENTIN CALLARD: I refer that 5.490 million comes from 652.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: It comes from the 3rd bullet point.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Sorry the 2nd bullet point the 3rd paragraph and if I read from that – sorry may I backtrack – may I backtrack? It is the last bullet point on page 651. The last bullet point on page 651.

“Bidder 2 provided the required information however we noted that their new submitted bid prices excluding TE as a sub-contractor did not reconcile to their original bid price.”

ADV MAHLAPE SELLO: Yes.

10 **MR FRANCIS QUENTIN CALLARD:**

“The difference noted was 2.01 million per locomotive. This posed a potential risk to the evaluation of the price and the CEFT Finance subsequently consulted with Supply Chain so this – to explain their concern as the impact of this difference was significant in relation to the final scoring on price.”

The next bullet describes how they resolved this that they engaged with a telephone call with bidder 2 on the evening of the 4 December 2013.

20 **ADV MAHLAPE SELLO:** Yes.

MR FRANCIS QUENTIN CALLARD: The second bullet and the third paragraph then indicates that bidder 2 indicated that the difference related to a discount offered on their original price. It was then explained and I paraphrase that this was not where clarity had been sought. Subsequent to the telephone phonic conversation bidder 2

submitted a new clarity. It was noted however that this clarity seemed to have reflected the discount in the TE portion of the new bid price. This indicates confusion as to this process. Bidder 2 originally submitted a reduction in bid price to the TE portion of 3.4 million per locomotive and a subsequent submission from them indicated to be 5.490 million per locomotive. I take to the next bullet. CFET Finance then further engaged Supply Chain Services to provide guidance on their [indistinct] as we were unable to determine the appropriate rate forward. The main concern from the CFET Finance was the uncertainty

10 of whether or not bidder 2 may have subsequently have included this discount portion of 2 million in their price thereby having the potential impact of a fairly prejudice thing other bidders in the evaluation process. The next paragraph deals with how they evaluated it. CFET Finance was advised by Supply Chain Services that based on discussions with the Group Chief Executive and the Group Chief Financial Officer that the evaluation should proceed on the basis excluding this potential discount and as such the CFET Finance utilised reduction price of 3.480 for the evaluation. That is where the 5.9 comes and I think what this does demonstrate is there is significant

20 confusion in the interpretation of what does – is meant by an impact of a TE price.

ADV MAHLAPE SELLO: Hm.

MR FRANCIS QUENTIN CALLARD: And as we have seen and the CFET Finance team correctly point out the potential impact this could have on the price evaluation.

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: The CFET team then completed their analysis and the result of that is the table which we have at the bottom of page 652 and the bottom of my – and at the top of my statement page 44.

ADV MAHLAPE SELLO: Ja.

MR FRANCIS QUENTIN CALLARD: Those two tables are one and the same and it shows the price impact that they were taken out or that was brought into consideration.

10 **ADV MAHLAPE SELLO:** Okay.

MR FRANCIS QUENTIN CALLARD: To show what this means sorry...

ADV MAHLAPE SELLO: Sorry before you move on you will recall that from your Annexure 83 at page 651 we read that based on the decision to seek clarity so as to normalise the base on which to evaluate price the responses were only – were sought only from bidder 1, 2 and 5. At your page 44 that table...

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: You indicate a sum provided by bidder 1, bidder 2 and under 5 you have zero.

20 **MR FRANCIS QUENTIN CALLARD:** Under bidder 5 I have zero yes.

ADV MAHLAPE SELLO: Why – was there no response from bidder 5 or what was the position?

MR FRANCIS QUENTIN CALLARD: No the point was made that if I may take you through there to page 651.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: The second last bullet.

ADV MAHLAPE SELLO: The sub bullet point?

MR FRANCIS QUENTIN CALLARD: The sub bullet point.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Bidder 5 provided the required information and indicated there would be no impact on the bid price per locomotive if TE was not used as a sub-contractor.

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: In fact what he is saying no
10 change.

ADV MAHLAPE SELLO: So bidder 1 is Bombardier, bidder 2 is CSR.

MR FRANCIS QUENTIN CALLARD: CSR.

ADV MAHLAPE SELLO: And remind us please bidder 5 is?

MR FRANCIS QUENTIN CALLARD: Okay we will track it down.

MR FRANCIS QUENTIN CALLARD: We will track it down I think.

ADV MAHLAPE SELLO: But we know that there is no change whether
or not they used TE?

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: Then you may proceed thank you.

20 **MR FRANCIS QUENTIN CALLARD:** If I may then take us to how this
was used and I deal with this in page 44 my paragraph 169.7.1.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: The TE component subtracted by –
sorry correction, correction. May I go to 169.7 page 40 of the CFET
Report and page 40 is page 769.

ADV MAHLAPE SELLO: 679.

MR FRANCIS QUENTIN CALLARD: 679.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Of the pack.

ADV MAHLAPE SELLO: Chair and Mr Callard at paragraph 12 of your supplementary statement you state that you introduce a legible copy of that page Chair and it is in the supplementary bundle marked just as Annexure 83 page 679A. And that would Chair appear at page 23 of that supplementary.

10 **CHAIRPERSON:** Thank you.

ADV MAHLAPE SELLO: Thank you Chair.

CHAIRPERSON: Got it. So that is a clearer copy.

ADV MAHLAPE SELLO: That is a clearer copy of 679.

CHAIRPERSON: Oh.

ADV MAHLAPE SELLO: Of Annex – 679 of Annexure 83.

CHAIRPERSON: Thank you.

ADV MAHLAPE SELLO: Thank you Chair.

CHAIRPERSON: Okay.

ADV MAHLAPE SELLO: Yes Mr Callard.

20 **MR FRANCIS QUENTIN CALLARD:** Thank you. Now reading from page 23 of the supplementary and this is Annexure headed Annexure E reconciliation of price.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Amongst other things it details the whole makeup of a locomotive price and impacts of a – some hedging

and escalation which were put in but the point I would like to take us through please is to the third line from the bottom subtotal 3 total price of 4TE adjustment.

ADV MAHLAPE SELLO: And that is third line from the bottom.

MR FRANCIS QUENTIN CALLARD: Third line from the bottom.

ADV MAHLAPE SELLO: In bold right?

MR FRANCIS QUENTIN CALLARD: Third line from the bottom yes. Subtotal 3 total price before TE adjustment and that is in bold.

ADV MAHLAPE SELLO: Okay we have located it.

10 **MR FRANCIS QUENTIN CALLARD:** We have the – if we have that line the next line says the impact of not using TE as the main sub-contractor. And we will see there that bidder 1 now has an advantage in its price evaluation of 1.9 million per locomotive where it is subtracted from the figure above.

ADV MAHLAPE SELLO: Yes.

CHAIRPERSON: I think – I think you have lost me.

MR FRANCIS QUENTIN CALLARD: I am sorry Mr Chair.

CHAIRPERSON: Are you on the supplementary affidavit?

MR FRANCIS QUENTIN CALLARD: Supplementary affidavit the left
20 hand column bidder 1.

ADV MAHLAPE SELLO: Page 23 that legible copy Chair.

CHAIRPERSON: Oh okay.

ADV MAHLAPE SELLO: And page 23.

CHAIRPERSON: Okay. Okay. Okay thank you.

ADV MAHLAPE SELLO: And you started from the bottom and you say

we should look at the bottom of that table third row from the bottom.

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: Subtotal 3 total price before TE adjustments.

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: Okay then you can take it from there please.

MR FRANCIS QUENTIN CALLARD: If we look at the first column bidder 1 it is 34.7 million rounded.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: We then have the next line which
10 reads the impact of not using TE as the main sub-contractor.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: And in there we now have minus 1.9 million rounded. We then have a line which is called price used for evaluation which is now 32.8 million rounded.

ADV MAHLAPE SELLO: So that price – that price for impact for not using TE is subtracted from the original bid price?

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: To get a new price.

MR FRANCIS QUENTIN CALLARD: Correct.

20 **ADV MAHLAPE SELLO:** Evaluation. Okay.

MR FRANCIS QUENTIN CALLARD: A similar process follows in column
2

ADV MAHLAPE SELLO: And that is for CSR now?

MR FRANCIS QUENTIN CALLARD: Just for CSR. With a total price before TE adjustment is 38 million rounded.

ADV MAHLAPE SELLO: Hm.

MR FRANCIS QUENTIN CALLARD: Subtract 3.48 million.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Giving a new price of 34.7 million rounded. The important part I wish to highlight here is that this is now a price used for evaluation and it will seem to be carried forward in subsequent documents and conveyed further into the organisation which I use this to illustrate the point which I make on 169.8 my statement.

10 **ADV MAHLAPE SELLO:** Yes.

MR FRANCIS QUENTIN CALLARD: Still on page 40 comparing lines subtotal 3 total price before TE adjustment with price used for evaluation shows how the impact of not using TE as a main sub-contractor favours bidder 1 Bombardier and 2 CSR as these prices are taken forward and as stated here prices used for evaluation. I take this forward to my earlier point where I argued that TE was not a prescribed sub-contractor and I contend that it was therefore incorrect and flawed to bring TE in for evaluation processes when they were not as a band retriever as to bring TE in for evaluation when they were not a
20 prescribed sub-contractor.

CHAIRPERSON: I think you said earlier on that it was only some and all the bidders who were asked to revise their bids and to indicate what their pricing would be if they did not use TE as a sub-contractor, is that right?

MR FRANCIS QUENTIN CALLARD: Correct.

CHAIRPERSON: Yes. So not all – not all of them – not all the bidders had said they would use TE as a sub-contractor?

MR FRANCIS QUENTIN CALLARD: Correct.

CHAIRPERSON: Now if 3 had put in their pricing on the basis of using TE as a sub-contractor are you suggesting that maybe only two instead of three were asked to revise or are you – when you say not all or some or are you simply saying all those that had used TE as – had included TE as a sub-contractor were asked to revise?

MR FRANCIS QUENTIN CALLARD: On the Elec – on the electric
10 locomotives those who indicated that they had used TE as a sub-contractor were asked to revise.

CHAIRPERSON: Without exception all of them those?

MR FRANCIS QUENTIN CALLARD: Without exception on the electric side.

CHAIRPERSON: Yes, yes.

MR FRANCIS QUENTIN CALLARD: The nett result to that if I may call it bidder 5 said whether we use TE or do not use TE no change.

CHAIRPERSON: Yes.

MR FRANCIS QUENTIN CALLARD: Bidders 1 and 2 said if we do not
20 have to use TE we can reduce our prices as I have indicated here.

CHAIRPERSON: Yes.

MR FRANCIS QUENTIN CALLARD: The impact of that on bidders 3,5 and 7 if I may take you please to the supplementary 23 again. Total price before impact of TE adjustment and we go down to the price used for evaluation there is no change for bidders 3, 5 and 7 in the price

used for evaluation. Whereas for bidders 1 and 2 may I repeat? There is a significant change in the price used for evaluation because of this impact that they have said – because the impact of using TE as a sub-contractor.

CHAIRPERSON: But you would – you accept – do you accept that where out of for argument sake 6 bidders 3 had prepared their bids on the basis of using TE as a contractor – as a sub-contractor whereas the other three had not used TE as a sub-contractor. If all the three who had used TE as a sub-contractor in preparing their bid – their bids if all
 10 those three were asked to revise their bids on the basis that they were not going to use TE then after they had revised their prices based on that that on its own did not result in any unfairness to any of the – to the bidders who had not used TE as a sub-contractor in preparing their bids.

MR FRANCIS QUENTIN CALLARD: I make the point [indistinct] Chair that and I hold I do not know whether it would have made a difference or not. I cannot say whether it would have made a difference or not. The point I wish to highlight that it was an incorrect principle that was being used for price evaluation. Whether it may or may not have made
 20 a difference is a point I think for further evaluation and examination in terms of all the criteria. I think from a first point glance at the pricing I could take and I refer to page 23 of the supplementary that bidder 7's remained the same 33.6 million to 33.7 million remained at 33.7. Bidder 8 – sorry bidder 2 which before the adjustment was at 38.2 million rounded taking that adjustment now comes down to 34.7 and

bidder 1 comes from 34.7 after that adjustment to 32 making it the lowest so in the price evaluation – price used for evaluation it brings them below other bidders who did not use TE.

CHAIRPERSON: Yes well I may be missing something. I am just trying to understand because it seems to me on the face of it that the request to in my example to you to the three who had previously used TE as a sub-contractor in giving their prices the request that they should revise their bids or prices and put in prices based on not using TE as a sub-contractor it seems to me on the face of it that it is something that it
 10 seeking to put all of them on the same level. All the six in my example – all the six bidders because the – what has happened is bidders have put in their bids on different understanding. Some have put it on the basis of using TE as a sub-contractor others have put in their bids on the basis of not using TE and that means it seems or to me on the face of it that it means these bidders are not competing on the same basis because there is this situation that the ones have included TE as a sub-contractor because maybe they understood that it is prescribed but I remember your example about come to the meeting without telling you the date. But they have included it but others have taken the view that
 20 look because we were not given the details it means we can regard TE as not prescribed therefore we will use other sub-contractors or alternatives. So I am trying to get whether there is a point you seek to make where – with regard to the fact that prices were revised by those that had used TE as a sub-contractor in terms of pricing. And I want to understand that point if there is a point you seek to make?

MR FRANCIS QUENTIN CALLARD: There is a point Mr Chair. It is not that the prices were revised.

CHAIRPERSON: Ja.

MR FRANCIS QUENTIN CALLARD: You are absolutely correct that they sought to normalise the prices by excluding TE.

CHAIRPERSON: Hm.

MR FRANCIS QUENTIN CALLARD: The point I make is because TE was not a prescribed sub-contractor in the bid process.

CHAIRPERSON: Hm.

10 **MR FRANCIS QUENTIN CALLARD:** To normalise it on this basis of not using TE was a flawed process because the evaluation is now done on a price difference between using TE and not using TE. As I said...

CHAIRPERSON: That is before – that is before the revision of the prices in regard to those who had – who had they would use TE? I understand the last point that you have made I understand it insofar as you are applied to the situation before some are requested to revise their prices. I understand it there.

MR FRANCIS QUENTIN CALLARD: Ja.

CHAIRPERSON: But to the extent that you may be meaning to apply it
20 to even after that is where – after they have revised their pricing that is where I am trying to get clarity.

MR FRANCIS QUENTIN CALLARD: Okay.

ADV MAHLAPE SELLO: Chair with your permission if I may?

CHAIRPERSON: Yes, yes.

ADV MAHLAPE SELLO: May I pose a couple of questions.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: To Mr Callard perhaps it might assist in us [indistinct] question.

CHAIRPERSON: That might help ja.

ADV MAHLAPE SELLO: Let us go back to the bid documentation Mr Callard.

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: To the best of your knowledge was the use of TE as a sub-contractor provided for directly as a line item with a
10 specific cost to it by the bidders?

MR FRANCIS QUENTIN CALLARD: No.

ADV MAHLAPE SELLO: So the bid just indicated that it has taken into consideration using TE as a sub-contractor?

MR FRANCIS QUENTIN CALLARD: The bids are in fact silent on that as a line item. In addition in a documentation that accompanies the bid they indicate whether they would or would not have used TE as a subcontractor.

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: Yes.

20 **ADV MAHLAPE SELLO:** So when the request is made to indicate the impact of not using TE as a subcontractor Transnet does not know what percentage of the total price to expect to be deducted because it was not stated up front what that cost is?

MR FRANCIS QUENTIN CALLARD: No, no.

ADV MAHLAPE SELLO: And my second question then is Bombadier

said it would reduce their price by 1.9 million. CSR said it would reduce their price by 3.4 million.

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: Were those to figures verifiable independently by Transnet? Could Transnet determine that if CSR does not use TE I see how their price will reduce to 3.4 million – by 3.4 million?

MR FRANCIS QUENTIN CALLARD: Those prices were to the best of my knowledge not verifiable. It is – it was almost the same as I have a quote from A, I have a quote from B. Tell me the difference between
10 quote A and B but I ask that – I give you an answer but you do not verify that by going to A and/or B to verify that.

ADV MAHLAPE SELLO: So ...

MR FRANCIS QUENTIN CALLARD: So I could have given you any figure as a difference between price A and B.

ADV MAHLAPE SELLO: So Transnet did not have the actual quote from – from TE to Bombadier if ever there was one or to CSR?

MR FRANCIS QUENTIN CALLARD: The ...

ADV MAHLAPE SELLO: What TE says it would charge for being a subcontractor on this acquisition?

20 **MR FRANCIS QUENTIN CALLARD:** They certainly should not have had that because in that – they should not have had that – no they should not have had that.

ADV MAHLAPE SELLO: So are you suggesting then to the Chair that those figures provided by CSR and Bombadier respectively – for lack of a better description – are arbitrarily?

MR FRANCIS QUENTIN CALLARD: That is – they are arbitrary and unverifiable. I know of no way which they could be verified.

ADV MAHLAPE SELLO: And yet they are applied to the bid price to reduce that price ...

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: For evaluation purposes?

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: And that – that then gained CSR in this instance which has got the biggest reduction of 3.4 a significant
10 advantage. Whereas it was higher than bidder seven when it introduces what it says is a DE impact cost it reduces to almost – not below – but same level as bidder seven who was by then the cheapest bidder?

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: Now the question is in that process is there a particular advantage that is then suffered by bidder seven?

MR FRANCIS QUENTIN CALLARD: Well significantly – there is definitely a disadvantage suffered by bidder seven and all the other bidders in that basis because the price – and I take it to the bottom line
20 – the price used for evaluation they are then evaluated – bidder seven who did not use TE is evaluated against another bidder who used TE with this arbitrary discount and who may then come into a lower price. So if I am evaluating on price and then I would choose and I am choosing the lower price and it has a percentage waging into the final evaluation. I would be advantaged by the fact of my lower price that is

used for evaluation. So the point I am making here I am advantaged by this lower price because of whatever arbitrary non-verifiable – to the best of my knowledge – non-verifiable deduction that I have planned through the use of TE. If the deduction had been verifiable and/or quantifiable in other terms here it might have been a different story but it is an unverifiable, unquantifiable and TE was not prescribed as the use of a subcontractor. So the point I am really – I wish to make here is that we are evaluating the price using a condition which was not in the bid documents.

- 10 **CHAIRPERSON**: But in the end the evaluation is not – is not made on the basis of a factor that was not supposed to be taken into account. The factor that was not supposed to be taken into account is what happens if you – was you must use TE as a subcontractor - as I understand your evidence. The – the – Transnet was not supposed to make an evaluation made on the basis that a bidder was obliged to use TE as a subcontractor, okay?

MR FRANCIS QUENTIN CALLARD: Correct.

CHAIRPERSON: Now some put in bids which included that – TE as a subcontractor?

- 20 **MR FRANCIS QUENTIN CALLARD**: Yes.

CHAIRPERSON: Others did not include TE as a subcontractor?

MR FRANCIS QUENTIN CALLARD: Correct.

CHAIRPERSON: Now how would – how do you rectify this? Let us suppose that you realise at Transnet that a mistake was done because information was sent to bidders which suggested maybe that TE should

be taking into account or would be used there but just more information was not sent or you just realise that due to maybe some mistake on the part of Transnet and one or another some bidders may have been misled into thinking they have to use TE as a subcontractor. You want to rectify this. See it seems to be the easiest thing to do to say maybe rather than start the whole thing afresh let us say this factor which they should not have put in should not be put in and let us then evaluate everybody on the basis of not using TE as a subcontractor. Of course when they take TE – the TE factor out they might put an alternative and
 10 then revise their price on that basis. Now on the face of it that does not appear to me to be something unfair but it may be that it is. I am just not seeing the point you – you are making.

MR FRANCIS QUENTIN CALLARD: Could I perhaps try the flipside of the coin Mr Chair?

CHAIRPERSON: *Ja*, hm.

MR FRANCIS QUENTIN CALLARD: The basis for evaluation of the bids ...

CHAIRPERSON: Hm.

MR FRANCIS QUENTIN CALLARD: Should be for a purpose or
 20 transparency and fairness.

CHAIRPERSON: Hm.

MR FRANCIS QUENTIN CALLARD: Should be clearly stated in the bid documents.

CHAIRPERSON: Hm.

MR FRANCIS QUENTIN CALLARD: That we all know the level playing

field ...

CHAIRPERSON: Yes.

MR FRANCIS QUENTIN CALLARD: We are playing on.

CHAIRPERSON: Yes.

MR FRANCIS QUENTIN CALLARD: If the bid documents stated that the role of TE will be prescribed and that documentation be in you will use TE for assembly of the locomotives. Let me use that as a simple example – for the assembly of the locomotives. Then everybody would know that and everybody would include a price from TE for that. What I
10 am putting forward here is that that condition was not in the bid documents – because it is not in the bid documents it is unreasonable to put that condition in after the bids have closed, after the tenders have submitted their conditions and evaluate them on that bid without telling all the bidders that this going to be how they are going to be evaluated. We find no correspondence to say that this is how the bidders are going to be evaluated. So the evaluation process which was set out in the bid documents of what the tenderers had to comply to – sorry – they are evaluating the bidders on conditions different to that which was in the bid documents and that is the ...

20 **CHAIRPERSON:** Okay. We will move on just now so that we are not detained on this issue. You advertise a position for a job and you say a Bachelor's Degree is required – is an essential ...

MR FRANCIS QUENTIN CALLARD: Yes.

CHAIRPERSON: And you say well if you have got an Honours Degree or even a Masters that will be a recommendation but it is not essential

...

MR FRANCIS QUENTIN CALLARD: Correct.

CHAIRPERSON: But actually the idea was from whoever your superiors were we will evaluate on the basis of a Bachelor's Degree only. If you have seen anything higher we will not give it any points, okay. So you – you realise that now okay that is the position people have applied but they are under the impression that if they have something more than a Bachelor's Degree that will count – that may count for something. So you then say well maybe there was a mistake.

10 We just want to tell everybody that actually we will not take into account anything above a Bachelor's Degree. Then you make sure everybody then knows that. If they are happy to continue and the – their candidacy is evaluated on the basis of a Bachelor's Degree only it does not appear to me that there is unfairness on those who had only a Bachelor's Degree that those who have something higher that is not taken into account anymore. It just seems that it is then fine because you. You make sure that they know this will not be taken into account anything higher because if you do not tell them and you evaluate hem on the basis of a Bachelor's Degree only they – they will be entitled to
20 say but you told us it would be a recommendation if I have got an Honours Degree and now you did not give me any points for my Honours and my Masters.

MR FRANCIS QUENTIN CALLARD: May I – using those example Mr Chair?

CHAIRPERSON: *Ja.*

MR FRANCIS QUENTIN CALLARD: And just turning it the way around.

CHAIRPERSON: *Ja.*

MR FRANCIS QUENTIN CALLARD: We advertised the position saying for Bachelor's Degree and saying Masters and Honours are a recommendation.

CHAIRPERSON: Hm.

MR FRANCIS QUENTIN CALLARD: But in the – so we get some applications which have Bachelor's Degree ...

CHAIRPERSON: Hm.

10 **MR FRANCIS QUENTIN CALLARD:** And some applications which have Honours and Masters.

CHAIRPERSON: Hm.

MR FRANCIS QUENTIN CALLARD: In the evaluation process ...

CHAIRPERSON: Hm.

MR FRANCIS QUENTIN CALLARD: We change our mind and we say we are only going to evaluate if you have an Honours or Masters ...

CHAIRPERSON: Hm.

MR FRANCIS QUENTIN CALLARD: And we are not going to tell those who have a Bachelor's Degree.

20 **CHAIRPERSON:** That – that I understand. I see ...

MR FRANCIS QUENTIN CALLARD: And that is ...

CHAIRPERSON: Tell me how – how that applies here because that – that is – just tell me how that applies to this situation.

MR FRANCIS QUENTIN CALLARD: In the first – well – we advertise a bid ...

CHAIRPERSON: *Ja.*

MR FRANCIS QUENTIN CALLARD: It does not say – it does not prescribe the use of TE.

CHAIRPERSON: Hm.

MR FRANCIS QUENTIN CALLARD: I tried to demonstrate. It does not prescribe the use of TE.

CHAIRPERSON: Hm.

MR FRANCIS QUENTIN CALLARD: We then come to evaluate the bids and we say and we are now evaluating the bids on the basis that they
10 should have used TE which is what when we come to this – this price used for evaluation. We are using evaluating them on the basis that they should have used TE. We do not tell everybody else that this is the revised basis of evaluation.

CHAIRPERSON: Okay. Maybe I have misunderstood something. I thought that after somewhere those who had used TE – who had factored in TE for the – for – in their bids and they were asked to revise their bids in – on the basis of not using TE. I thought that - that meant that the evaluation would have no place for TE in the sense that the fact that you used TE or not use TE or rather that everybody would be
20 evaluated on the basis of not using TE.

MR FRANCIS QUENTIN CALLARD: That is – that is the subtlety of this. They do bring that in as everybody is evaluated on the basis of not using TE. Their point – impact of not using TE as a subcontractor. The difficulty in this is that when I was asked how – by how much would my price reduce if I did not use TE and said I could use an arbitrary

figure to give to you for your evaluation. Here is no way I will be evaluating this 3.48 million or 1.905 and ...

CHAIRPERSON: But you see the arbitrariness of the figure is a different point as I see.

MR FRANCIS QUENTIN CALLARD: Yes.

CHAIRPERSON: But I think let us – let us move on. It is okay.

ADV MAHLAPE SELLO: Okay Chair. I am happy to move on. Perhaps somehow we will get back to this point in a different manner.

MR FRANCIS QUENTIN CALLARD: I hope it will come up.

10 **ADV MAHLAPE SELLO:** Yes because we are now at evaluation stage. We know Bombadier and CSR intend to use TE. The question Mr Callard I will pose is that figure of 3.4 million representing impact of using TE by CSR.

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: Does it make its – its way in any form or shape back to the price of the locomotive when we progress?

MR FRANCIS QUENTIN CALLARD: Yes, it does. In the later part at the end of the negotiations we will see that that 3.4 million is added back into the price. So ...

20 **ADV MAHLAPE SELLO:** So we are getting back to the actual price now?

MR FRANCIS QUENTIN CALLARD: We are getting back to the actual price paid for the locomotive. It is taken out of here for the evaluation. It is later added back into the actual price of the locomotive.

ADV MAHLAPE SELLO: And ...

CHAIRPERSON: No at that point that I can understand.

ADV MAHLAPE SELLO: Yes.

CHAIRPERSON: *Ja, ja* that I would understand. This other one would need more consideration.

ADV MAHLAPE SELLO: Indeed Chair. I think and you will correct me if I misunderstood. At this point of evaluation when the one bidder takes off 3.4 million and drops significantly they will score higher in their scores on price and that is the advantage they gain and that amount they have removed as TE impact and they are successful they
10 go forward then finds its way back to the price. So they actually came in at a higher price than the lowest bidder but somehow they ended up being the successful bidder. That – that is the system that is at play here. Remembering Chair that bidder five did say I will – I have taken into consideration the possibility of using TE but whether with T – with using TE or any other subcontractor my price remains the same. So it may very well be and we will see as the evidence becomes – more evidence becomes available whether the proper interpretation of RFP2 was that you may choose to use a subcontractor and in so doing you may choose to use TE. If that is your choice the – what it costs you to
20 use TE as a subcontractor ought to be a responsibility you take onto yourself. So when you come in at a price of 38 – 3.8 – 38 million including TE that is how you structured your bid. To then be asked to take out TE presumes that there is an adverse impact on your price with the use of TE and perhaps that is not a debate to be had with this witness. Those who propagated for a consideration of a price without

the TE subcontractor might explain to us the logic behind the thinking because I think currently we are – we are struggling with that approach. All we know is that it – it appears to positively benefit some bidders and it adversely impacts those who did not ...

CHAIRPERSON: *Ja.*

ADV MAHLAPE SELLO: Yes.

CHAIRPERSON: I – I will listen more and ...

ADV MAHLAPE SELLO: We will (indistinct) for now.

CHAIRPERSON: I understand the one where they bring it back the
10 unfairness much better than the one

ADV MAHLAPE SELLO: Than this one?

CHAIRPERSON: Where they take it out, *ja*.

ADV MAHLAPE SELLO: Let us see if it improves Chair ...

CHAIRPERSON: Put it back.

ADV MAHLAPE SELLO: As we go along. Thank you. So you – you deal from paragraph 170 with the – an exercise undertaken in respect of the diesel locomotives?

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: It is more or less the same?

20 **MR FRANCIS QUENTIN CALLARD:** It is more or less the same. It is more or less the same.

ADV MAHLAPE SELLO: You however in your supplementary statement – you however in your supplementary statement at page 3 paragraph 14 in respect of your paragraph 170 in your original statement – you introduce further documentation in light of the fact that the – the diesel

evaluation followed the same process as in electric and there is no need to go through that detail. I would like you to explain the relevance of introducing those documents to your paragraph 170 when dealing with the evaluation.

MR FRANCIS QUENTIN CALLARD: Certainly.

CHAIRPERSON: You made a reference to the supplementary statement.

ADV MAHLAPE SELLO: Supplementary statement page 3 Chair paragraph 14 and it indicates at paragraph 170 which is the paragraph
10 we are dealing with in the main statement and at paragraph 14 Mr Callard says he wishes to introduce three emails in respect of clarification letters relating to the impact of TE submitted by CNR in respect of diesel.

MR FRANCIS QUENTIN CALLARD: If I may take that and it is in respect of CSR Diesels.

ADV MAHLAPE SELLO: CSR Diesels, yes.

MR FRANCIS QUENTIN CALLARD: CSR Diesels, yes.

ADV MAHLAPE SELLO: Hm ...

MR FRANCIS QUENTIN CALLARD: CSR also bid for diesel.

20 **ADV MAHLAPE SELLO:** Then let us look at our paragraph 14. We say submitted by CNR. Must we correct something at page 3?

MR FRANCIS QUENTIN CALLARD: Paragraph 14 – sorry. My apologies for that slip up. That should read definitely CSR.

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: That should read CSR.

ADV MAHLAPE SELLO: We will correct that accordingly, thank you and then that series of documents starts from supplementary page 26?

MR FRANCIS QUENTIN CALLARD: Certainly, thank you. If I – it starts on 26.

ADV MAHLAPE SELLO: 27.

MR FRANCIS QUENTIN CALLARD: If I may go to 27 please.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: 27 and if would could look at the middle of that page. It is an email from Ms Mdletshe to CSR supplier
10 426 - supplier 465 new diesel locomotives.

“Dear tenderer, please find attached for your information...”

And that is on December, the 2nd.

CSR respond on 4 December with a clarification to TFR and this is in response to that letter.

“Please give us the impact of your price for not using TE.”

CHAIRPERSON: I am sorry. The attachment to Ms Mdletshe’s email is – is it the one immediately after that email?

20 **MR FRANCIS QUENTIN CALLARD:** Immediately – this is the reply. This is the reply received on 4 December at ...

CHAIRPERSON: Yes.

MR FRANCIS QUENTIN CALLARD: 11:57.

CHAIRPERSON: But where – where is the attachment first?

MR FRANCIS QUENTIN CALLARD: Oh, her letter which we dealt ...

CHAIRPERSON: *Ja.*

MR FRANCIS QUENTIN CALLARD: I did not attach that. This is the important part was he reply.

CHAIRPERSON: Before I see a reply I need to know what went to – what is being responded to.

MR FRANCIS QUENTIN CALLARD: We can add to that. We will have that.

CHAIRPERSON: Oh it is not here?

MR FRANCIS QUENTIN CALLARD: It is not here.

10 **CHAIRPERSON:** Okay. Do you know what it said? Are you able to say what is said?

MR FRANCISQUENTIN CALLARD: Yes. It was ...

CHAIRPERSON: The gist of it.

MR FRANCIS QUENTIN CALLARD: The gist of it was the two tables on page 28 it asked them to complete the two tables on page 28.

CHAIRPERSON: Hm.

MR FRANCIS QUENTIN CALLARD: On supplementary 28.

CHAIRPERSON: Huh-uh.

20 **MR FRANCIS QUENTIN CALLARD:** What would be the impact – what would be the Rand impact on your price per locomotive if you did not use TE as a local subcontractor but used an alternative local private sector subcontractor?

CHAIRPERSON: Okay.

MR FRANCIS QUENTIN CALLARD: And the second question was what would be your price per locomotive if you did not use TE as a local

subcontractor but used an alternative local private subcontractor. It was essentially those two questions.

CHAIRPERSON: What is the difference between the two questions?

MR FRANCIS QUENTIN CALLARD: One – what – the first one was what would be the Rand impact on your price ...

CHAIRPERSON: I think the difference would be somewhere towards the end of the question but I am not sure what it is.

MR FRANCIS QUENTIN CALLARD: Well ...

CHAIRPERSON: Is it – are the two questions not completely identical?

10 **MR FRANCIS QUENTIN CALLARD:** The one ...

ADV MAHLAPE SELLO: No.

MR FRANCIS QUENTIN CALLARD: The first question we are saying if you did not use TE what would be your – if you did not use TE how much would you save. The answer to that ...

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Would be I would save R100,00.

CHAIRPERSON: Ja.

MR FRANCIS QUENTIN CALLARD: The second question is well if you saved this R100,00 what is the new price of your locomotive.

20 **CHAIRPERSON:** So the first one related to the overall price and the second one related to the price for each locomotive.

ADV MAHLAPE SELLO: No.

MR FRANCIS QUENTIN CALLARD: The first one related – the first one related Mr Chair to how much more expensive TE is than a private subcontractor.

CHAIRPERSON: So – so the first one relates to what we have been dealing with namely ...

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: Yes.

CHAIRPERSON: If you – if you disregard the use of TE what would – what would be your price.

MR FRANCIS QUENTIN CALLARD: Yes.

CHAIRPERSON: In effect.

MR FRANCIS QUENTIN CALLARD: That is correct.

10 **ADV MAHLAPE SELLO:** The first one Chair if you disregard TE how much should we deduct from your price.

CHAIRPERSON: *Ja*, but if you know what you – must be deducted then you know what the price would be. Is it no?

ADV MAHLAPE SELLO: *Ja*, then that is the second question.

CHAIRPERSON: *Ja*.

ADV MAHLAPE SELLO: So therefore ...

CHAIRPERSON: *Ja*.

ADV MAHLAPE SELLO: The new price will be ...

CHAIRPERSON: Yes.

20 **ADV MAHLAPE SELLO:** The second – in the second block.

CHAIRPERSON: But the – what would be the Rand impact on your price. Oh, the – the first one is also per locomotive?

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Yes.

CHAIRPERSON: On your price per locomotive if you did not use to TE

as a local contractor but use as an alternative local private sector. What would your price per locomotive be if you did not use TE as a local? No, I am not sure. I thought I was seeing what the difference is. I am not sure right now what it is. Okay. Let us – let us look at it again.

ADV MAHLAPE SELLO: Perhaps if we ...

CHAIRPERSON: What would be the Rand ...

ADV MAHLAPE SELLO: Look at the first one – impact on your price.

CHAIRPERSON: Whatever – whatever impact – oh, the one wants an
10 impact.

ADV MAHLAPE SELLO: On your price.

CHAIRPERSON: The other one wants an actual price.

ADV MAHLAPE SELLO: The actual price now.

CHAIRPERSON: But actually by using - if you answer the first one you can (intervenes).

ADV MAHLAPE SELLO: It becomes a mathematical ...

CHAIRPERSON: Answer the second one ...

ADV MAHLAPE SELLO: Yes.

CHAIRPERSON: Without ...

20 **MR FRANCIS QUENTIN CALLARD:** The second one should automatically follow.

CHAIRPERSON: Automatically follow.

MR FRANCIS QUENTIN CALLARD: Yes.

CHAIRPERSON: Yes, okay.

ADV MAHLAPE SELLO: But they elected to pose the two questions.

CHAIRPERSON: *Ja*, okay alright.

ADV MAHLAPE SELLO: And perhaps as we shall see it is not so obvious that if you remove the impact of the price you can automatically calculate the other as I think Mr Callard will now demonstrate ...

MR FRANCIS QUENTIN CALLARD: *Ja*.

ADV MAHLAPE SELLO: For us.

MR FRANCIS QUENTIN CALLARD: And the purpose of these three emails Mr Chair is if we look at 27 – page - supplementary page 27.

10 **CHAIRPERSON:** Yes.

MR FRANCIS QUENTIN CALLARD: At the top we see this first email comes in on Wednesday 4 December 2013 at 11:57. That is the second print line.

CHAIRPERSON: The top one, *ja*.

MR FRANCIS QUENTIN CALLARD: *Ja*.

CHAIRPERSON: Okay.

MR FRANCIS QUENTIN CALLARD: And we have this very formal letter all very complete.

20 **CHAIRPERSON:** Okay. So that top email at page 27 is the one that is accompanied by the letter at page 28?

MR FRANCIS QUENTIN CALLARD: Correct.

CHAIRPERSON: Okay.

MR FRANCIS QUENTIN CALLARD: It also has an additional comment which I cannot explain and that is in paragraph 4 and I read:

“Despite the aforementioned and in specific

response to your queries we provide hereunder an estimate of the information requested by you based on the revised figures furnished to you on 29 November 2013.”

I am not sure where that comes from at all.

ADV MAHLAPE SELLO: And this is to – this is in respect – in respect of the bids that closed on 30 April 2013 or 2014?

MR FRANCIS QUENTIN CALLARD: 2013.

ADV MAHLAPE SELLO: 2013?

10 **MR FRANCIS QUENTIN CALLARD:** Yes.

ADV MAHLAPE SELLO: Okay. So...

MR FRANCIS QUENTIN CALLARD: If I may then – so we have letter one coming in at 11:57. If we could go to supplementary 30 please.

ADV MAHLAPE SELLO: Page 30?

MR FRANCIS QUENTIN CALLARD: Page 30.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Supplementary page 30.

ADV MAHLAPE SELLO: Sorry before we go there.

MR FRANCIS QUENTIN CALLARD: Sorry.

20 **ADV MAHLAPE SELLO:** We are still at 28.

MR FRANCIS QUENTIN CALLARD: Yes, oh.

ADV MAHLAPE SELLO: That mathematical exercise the Chair asked.

MR FRANCIS QUENTIN CALLARD: Thank you, yes.

ADV MAHLAPE SELLO: Thank you.

MR FRANCIS QUENTIN CALLARD: You will notice that under point

one there at paragraph 4 in their table one. What would be the Rand impact of your price? That is then given at 6.6 million rounded figures per locomotive.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Which would be the Rand impact on their price. This does not accord with any of the other figures we have seen and it is – it is a higher figure to reduce the price of your locomotive or go to give a Rand impact.

ADV MAHLAPE SELLO: So do we interpret that to mean it is
10 suggested you take my bid price, you deduct 6.6 million and you arrive at the price now of 32 million which is my bid without using TE?

MR FRANCIS QUENTIN CALLARD: That would be the ...

ADV MAHLAPE SELLO: That is the logic of ...

MR FRANCIS QUENTIN CALLARD: The argument we have followed yes.

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: So then you wanted us to go to 30.

MR FRANCIS QUENTIN CALLARD: Page 30.

20 **ADV MAHLAPE SELLO:** Yes.

MR FRANCIS QUENTIN CALLARD: Now this is from the – the same individual also addressed to Ms Mdletshe.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Also on 4 December but it is received a 18.21, that is twenty one past six in the evening.

ADV MAHLAPE SELLO: It comes in alter than the first.

MR FRANCIS QUENTIN CALLARD: Later than the first.

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: We will see that the top part of that email, in fact it's just a follow on from the first email because the first email we see there at 11:57 we see another email, which is not referenced here at 12.03, we don't know the detail of that email, then we see this email of 18:21.

ADV MAHLAPE SELLO: Yes.

- 10 **MR FRANCIS QUENTIN CALLARD:** And exactly the same contents, please find the attached, request a clarification letter for your urgent attention, exactly the same wording as the 11:57 email.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: If we refer then to the attached letter which is page 32 of the supplement we see exactly the same formal letter.

ADV MAHLAPE SELLO: Yes.

- 20 **MR FRANCIS QUENTIN CALLARD:** We find no retraction of the original letter, no reference to the original letter, but just a brand new letter, but if we look at paragraph – their paragraph 4 and the bullet points and the table one, table one still says Rand impact at 6.6million 6.7million rounded.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: And now the price per locomotive at point two in the table has changed to 29.4million rounded which is

some change from the 32million, 32.9million of the previous letter.

ADV MAHLAPE SELLO: So we still deduct the same amount, that's 6.6 but in the first letter they say that then results in a new price of R32million, 32.9. In the second letter they say removing the same amount this time it comes 29.3million.

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: Okay.

CHAIRPERSON: So we can't say this is a continuation of what we saw with regard to what was happening within Transnet in regard to the
10 kinds of mistakes that we talked about when, you talked about when you gave evidence about your memorandum where you were asked to make changes and what we talked about in the morning where this seems to be obvious contradictions of things that should be quite clear but what is put is different, it's the same thing but happening with CSR now what was happening with Transnet is happening with CSR now.

MR FRANCIS QUENTIN CALLARD: Well may I take you through the third letter Mr Chair and if we could bring address your point after the third letter.

CHAIRPERSON: Okay.

20 **MR FRANCIS QUENTIN CALLARD:** We then have a third email and this is on page 34 of the supplementary.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Also the 4th of December on the second line, it's now received at 19:44, the previous one was received at 18:21 we're now at 19:44 so we're about an hour and ten minutes, an

hour twenty minutes later.

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: And interesting if we look at the trace of emails we see an email at 6.21, that's the – on page, supplementary 34. We then see an email at 638 of which I have no detail at the moment in this, we then see this email of 1944 which reads:

“Please find the attached once again and apologies for the inconvenience.”

10 So we now have a third letter and if we may go to that third letter please, which is on supplementary 36. Again refer to – and may I highlight a further significant difference Mr Chairman, if we look at ... (intervention)

ADV MAHLAPE SELLO: Sorry Mr Callard I know the Chair laughed but it must still go on the record.

MR FRANCIS QUENTIN CALLARD: My apologies.

ADV MAHLAPE SELLO: Please address yourself to page 36.

MR FRANCIS QUENTIN CALLARD: I'm addressing myself to page 36, paragraph 4, the above paragraph 4 notice that there has been a subtle
20 change now in that whereas I previously highlighted 29th of November 2013, paragraph 4 now reads despite the aforementioned and in specific response to your queries we provide hereunder an estimate of the information requested by you based on the bidding figures furnished to you on 30 April 2013, which was when the bids closed.

ADV MAHLAPE SELLO: Ja.

MR FRANCIS QUENTIN CALLARD: Changed from the 29th of November of the first letter, I wish to highlight that. Then we come to point one in the table and the Rand impact figure now becomes 1.5million rounded. The price per locomotive is now 29.4million rounded. Your first, your point you made before I came to this Mr Chairman is this the same, I submit that this illustrates the point you were making that ...

CHAIRPERSON: I mean it's quite strange, the questions under 4.1 the questions remain the same and they are responded to in a letter that
10 save for the figures seem to be identical save for the figures and maybe some few words.

ADV MAHLAPE SELLO: Yes.

CHAIRPERSON: But the question in regard to the first one, the answer to the first question is that it's six million, 6.6million rounded to the nearest figure, and then the second figure, the answer to the second question is 32.9million rounded and then you go to the next, that was at 28, then at 32, same questions, one under four, the answer given is 6.6million rounded to the same question number two, the answer is now different, it's 29.3 rounded, you go to the last one at 36 – answer to the
20 first question is very, very different now, it's 1.5million rounded and then you go to the second question the answer is now different, oh the answer is the same as in the second question, so in effect if you look at 28 they say if you deduct 6.6million from their price their price will be 32.9 and then in the second one at page 32 they say if you deduct 6.6million from their price their price will 29.3 and in the third one they

say if you deduct 1.5million from their price their price would be 29.3.

ADV MAHLAPE SELLO: That's the mathematics.

CHAIRPERSON: Ja.

MR FRANCIS QUENTIN CALLARD: Chair if I may add the point, these are all official, appear to be official letters dated, stamped by the appropriate authorities, they're all dated the same day, not one letter refers to a retraction or cancellation of a previous letter.

CHAIRPERSON: And they are written by the same person, is that right?

10 **MR FRANCIS QUENTIN CALLARD:** They are, they all come from the same email addressed individual at a first glance I would ...(intervention)

CHAIRPERSON: And the author seems to be the same.

MR FRANCIS QUENTIN CALLARD: ...submit that the – I am not an expert on Chinese signatures if I may put it that way.

CHAIRPERSON: Oh, but the name that is given.

ADV MAHLAPE SELLO: AT least the company is the same?

MR FRANCIS QUENTIN CALLARD: The company is the same, the signatures at first glance appear to be the same.

20 **ADV MAHLAPE SELLO:** Chinese.

CHAIRPERSON: Oh, ja. Ja, no.

ADV MAHLAPE SELLO: And then if I may just roundup on that you indicated that these clarifications were in response to a further telephone call to CSR of the 4th of December when they appeared their first clarification created problems and that is at page 692 which is

Annexure 84.

MR FRANCIS QUENTIN CALLARD: That is ...

ADV MAHLAPE SELLO: At the first bullet point there so we know the conversation took place on the 4th of December according to that report, between Transnet and CSR.

CHAIRPERSON: And I guess it has to be clarification in quotation marks? Because they don't bring any clarification, instead they compound the confusion.

ADV MAHLAPE SELLO: Then perhaps Mr Callard might be able to give
10 us this clarification, if this conversation takes place on the 4th, the evening of the 4th of December, well you can't explain why, do you know notice that all these letters are dated the 3rd of December 2013, so presumably before the telephone call was heard.

MR FRANCIS QUENTIN CALLARD: It is an anomaly that I cannot explain.

ADV MAHLAPE SELLO: Okay. Chair might this be an appropriate time for that short break?

CHAIRPERSON: Yes, yes I assume you spoke to Mr Callard?

ADV MAHLAPE SELLO: Chair may I place on record ...(intervention)

20 **CHAIRPERSON:** I assume you spoke to Mr Callard about us going up to five?

ADV MAHLAPE SELLO: Yes I did.

CHAIRPERSON: It is acceptable to you?

MR FRANCIS QUENTIN CALLARD: Yes fine Mr Chair.

CHAIRPERSON: Okay thank you. Alright, we will take a short

adjournment now, because we will go on until five, we will take a short adjournment and resume at five to four. Thank you, we adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay you may proceed Ms Sello.

ADV MAHLAPE SELLO: Thank you Chair. Mr Callard getting back then to your paragraph 170 I note there under paragraph 170 you have a table that you indicate you extracted from pages 12 and 13, typed pages 12 and 13 of Annexure 84 and that would be paginated 692.

10 **MR FRANCIS QUENTIN CALLARD**: That is correct.

ADV MAHLAPE SELLO: And I see there and I depart from the premise that bidder 1 is Bombardier, am I correct?

MR FRANCIS QUENTIN CALLARD: This is on the diesel locomotives no.

ADV MAHLAPE SELLO: Oh yes this is diesel my apologies.

MR FRANCIS QUENTIN CALLARD: Bidder 1 is CNR

ADV MAHLAPE SELLO: CNR. Bidder 2?

MR FRANCIS QUENTIN CALLARD: Is CSR.

ADV MAHLAPE SELLO: Do you recall Bidder 3?

20 **MR FRANCIS QUENTIN CALLARD**: Bidder 3 was EMD.

ADV MAHLAPE SELLO: EMD.

MR FRANCIS QUENTIN CALLARD: And Bidder 4 was GE, General Electric.

ADV MAHLAPE SELLO: Okay then under bidder 2 CSR I see the figure that comes through into the report to be deducted for TE is the figure

given in the third of the series of clarifications you pointed us to.

MR FRANCIS QUENTIN CALLARD: That is correct yes.

ADV MAHLAPE SELLO: Do you know on what basis that figure was chosen over the other two figures of R6 million?

MR FRANCIS QUENTIN CALLARD: No.

ADV MAHLAPE SELLO: Okay. Perhaps the creators of the report might guide us then.

MR FRANCIS QUENTIN CALLARD: I would have to refer to them.

ADV MAHLAPE SELLO: We then move onto your – the observations
10 you make of the impact on TE pricing on the electric locomotives and
you start with that at your 171.

MR FRANCIS QUENTIN CALLARD: Yes thank you. And for 171 which talks to page 23 of Annexure 83 which is page 662 of the bundle I am dealing here with elec – the electric locomotives.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: 662. And I am quoting here from bullet point – sub bullet 1, 2 the bottom of the third sub-bullet point.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Which has the heading bidder 1
20 and 3 have not quoted using TE as a main sub-contractor. No clarity was obtained from these bidders as mentioned in the report above. If clarity and this refers to the debate which we were having. If clarity was obtained from these two bidders and they indicated there was no change in price whether TE will be used or not as with the response on bidder 5 then the impact on the evaluation scoring result could be

significant. This was the conclusion of the CFET team acknowledging that the impact on the scoring could have been significant.

ADV MAHLAPE SELLO: Mr Callard let us just look at this. Should we be working on 83 or on 84?

MR FRANCIS QUENTIN CALLARD: For the...

ADV MAHLAPE SELLO: 83 you are correct. Oh then we are back to the electric locomotives yes.

MR FRANCIS QUENTIN CALLARD: That was my conclusion on the electric locomotives yes.

10 **ADV MAHLAPE SELLO**: Indeed okay I follow you now not the diesels. And you make the same point that I think you had previously made to the Chair at 174 which is that if it is accepted that the role of TE was not prescribed then applying the impact unfairly favoured Bombardier and CSR?

MR FRANCIS QUENTIN CALLARD: That is the conclusion of all of this in this process yes.

ADV MAHLAPE SELLO: And we are still...

CHAIRPERSON: That is at what – at what page?

ADV MAHLAPE SELLO: Statement page 45 at paragraph 174.

20 **CHAIRPERSON**: Oh.

ADV MAHLAPE SELLO: The statement at...

CHAIRPERSON: Ja okay yes now I can see.

ADV MAHLAPE SELLO: Yes Chair. Yes thank you Chair.

CHAIRPERSON: Hm.

ADV MAHLAPE SELLO: And we will hopefully before we complete with

your statement be in a position to demonstrate to the Chair that the opinion you express at 174 is correct?

MR FRANCIS QUENTIN CALLARD: Now...

ADV MAHLAPE SELLO: That relates to the...

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: Then if we could in the meantime then move to the next which is under the heading correlation.

10 **MR FRANCIS QUENTIN CALLARD:** Yes this is just to show where it comes – if we refer to page 40 of Annexure 83 which – which is page 679 where we have a legible copy under

ADV MAHLAPE SELLO: Supplementary?

MR FRANCIS QUENTIN CALLARD: Under the supplementary which legible copy is at – supplementary 20 – supplementary 23.

ADV MAHLAPE SELLO: Page 23?

MR FRANCIS QUENTIN CALLARD: Page 23 of the supplementary.

ADV MAHLAPE SELLO: Yes.

20 **MR FRANCIS QUENTIN CALLARD:** If we could then while holding that open refer to Annexure 65 please.

ADV MAHLAPE SELLO: Annexure 65. And that will be at 577.

MR FRANCIS QUENTIN CALLARD: Annexure 65 which is at 577 and to give context Annexure 65 is a report from the cross function evaluation team dated the 15 January 2014 to the locomotive steering committee – steering committee. And the purpose if I may say – the purpose of this

memorandum is to provide the steering committee with an update to the results of the best and final offer from bidders 1 and 2.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: I use the words best and final offer with deliberate emphasis because I am sure to the normal reader that they have a certain connotation of what is meant by best and final offer. I then – we then go down if we may to their point 5. The table below outlines the buffer prices received by bidders 1 and 2. Bidders 1 and 2 in this case being Bombardier and CSR respectively.

10 **ADV MAHLAPE SELLO:** Yes.

MR FRANCIS QUENTIN CALLARD: If I may take – refer now to supplementary 23 left hand column bottom line price used for evaluation.

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: And under bidder 1 that is 32.8 million rounded.

ADV MAHLAPE SELLO: You referring us to Annexure?

MR FRANCIS QUENTIN CALLARD: Supplementary 23 that is...

ADV MAHLAPE SELLO: Yes.

20 **CHAIRPERSON:** Page 578.

ADV MAHLAPE SELLO: Supplementary page 23. Is that where you referred us to Mr Callard?

MR FRANCIS QUENTIN CALLARD: Yes that is the page headed reconciliation of price.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Which was the final page of the CFE – CFET report of the 10 December.

ADV MAHLAPE SELLO: Which is our Annexure 93 in the main statement?

MR FRANCIS QUENTIN CALLARD: Correct and this is the legible copy of the page.

ADV MAHLAPE SELLO: Yes.

CHAIRPERSON: But you were – were you reading just now from page 578 that is Annexure 65 at the bottom? Because that is where I was
10 reading.

MR FRANCIS QUENTIN CALLARD: I was reading from 578 yes.

CHAIRPERSON: Ja okay.

ADV MAHLAPE SELLO: So let us just find our place. You referred us to Annexure 65

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: At 578. We keep that page open.

MR FRANCIS QUENTIN CALLARD: Keep that page open please.

ADV MAHLAPE SELLO: And you want us then to go to supplementary page 23?

20 **MR FRANCIS QUENTIN CALLARD:** Yes.

ADV MAHLAPE SELLO: Okay.

CHAIRPERSON: Well is that what you want us to do now?

MR FRANCIS QUENTIN CALLARD: Yes please.

CHAIRPERSON: Because I thought you said let us keep them open and then you came to Annexure 65. Are you done with Annexure 65 or

not yet?

MR FRANCIS QUENTIN CALLARD: No. I wish to correlate between...

CHAIRPERSON: Yes.

MR FRANCIS QUENTIN CALLARD: Between these two please.

CHAIRPERSON: Okay. Okay.

ADV MAHLAPE SELLO: Okay.

CHAIRPERSON: And we – must we still be holding 679?

MR FRANCIS QUENTIN CALLARD: 679.

CHAIRPERSON: Or not?

10 **MR FRANCIS QUENTIN CALLARD**: 679 – 23 is a clear page of 679.

CHAIRPERSON: Yes okay.

ADV MAHLAPE SELLO: Of 679.

CHAIRPERSON: So we do not need to ...

MR FRANCIS QUENTIN CALLARD: 23 is the clear page.

CHAIRPERSON: Okay alright. Yes we now go to 23 – page 23 of the supplementary. Okay.

MR FRANCIS QUENTIN CALLARD: Left hand column.

CHAIRPERSON: Yes.

MR FRANCIS QUENTIN CALLARD: Price used for evaluation.

20 **CHAIRPERSON**: Hm.

MR FRANCIS QUENTIN CALLARD: 32.8 million rounded.

ADV MAHLAPE SELLO: Yes for bidder 1?

MR FRANCIS QUENTIN CALLARD: For bidder 1.

ADV MAHLAPE SELLO: Yes.

CHAIRPERSON: I am sorry.

MR FRANCIS QUENTIN CALLARD: Left hand column.

ADV MAHLAPE SELLO: At page supplementary 23.

CHAIRPERSON: Ja I that is where I am.

MR FRANCIS QUENTIN CALLARD: Okay.

CHAIRPERSON: You are not reading at the top? You say price per loco as submitted by bidder is that where you read just now?

MR FRANCIS QUENTIN CALLARD: No I am reading at the bottom of the column.

CHAIRPERSON: Where it says impact – just read what it says where
10 you are reading?

MR FRANCIS QUENTIN CALLARD: I am reading the very last line price used for evaluation.

CHAIRPERSON: Okay alright. Then for bidder 1 32?

MR FRANCIS QUENTIN CALLARD: .8.

CHAIRPERSON: Ja, yes.

MR FRANCIS QUENTIN CALLARD: And you will note that this is after deducting the impact of TE.

CHAIRPERSON: Yes, yes.

MR FRANCIS QUENTIN CALLARD: They are now using this price for
20 evaluation.

CHAIRPERSON: Hm.

MR FRANCIS QUENTIN CALLARD: 32.8.

CHAIRPERSON: Hm.

MR FRANCIS QUENTIN CALLARD: While holding that price in our mind if we now go look at page 578 that was Annexure

ADV MAHLAPE SELLO: 65.

MR FRANCIS QUENTIN CALLARD: 65

CHAIRPERSON: 65

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Page 578.

CHAIRPERSON: Yes.

MR FRANCIS QUENTIN CALLARD: Table 5.

CHAIRPERSON: Hm.

MR FRANCIS QUENTIN CALLARD: And we will see on that table in the
10 middle price previous evaluated price. And it says 32.833325, 32.8. I
would just wish to demonstrate the correlation between those two
figures.

ADV MAHLAPE SELLO: Okay yes.

CHAIRPERSON: Yes.

MR FRANCIS QUENTIN CALLARD: So the figure which comes from
the CFET evaluation team finds its way into this formal document to the
locomotive steering committee meeting as a best and final offer price.

CHAIRPERSON: Yes.

MR FRANCIS QUENTIN CALLARD: I want to make that correlation.

20 **CHAIRPERSON:** Yes.

MR FRANCIS QUENTIN CALLARD: And then when it uses the words
price used for evaluation as a best and final offer price.

CHAIRPERSON: Hm.

MR FRANCIS QUENTIN CALLARD: The normal reading I would posit
of a best and final offer is what you see is now what you getting.

CHAIRPERSON: Is the ultimate not to be changed, not to be amended before evaluation?

MR FRANCIS QUENTIN CALLARD: Correct.

CHAIRPERSON: Ja.

MR FRANCIS QUENTIN CALLARD: But the – which will be demonstrated later is that this TE is act – TE impact price is actually added back.

CHAIRPERSON: Yes.

MR FRANCIS QUENTIN CALLARD: So this is not the actual price
10 which we are going to pay for these locomotives.

CHAIRPERSON: Yes. Okay.

MR FRANCIS QUENTIN CALLARD: It is posited as being best and final offer what you see what you get.

CHAIRPERSON: YEs.

MR FRANCIS QUENTIN CALLARD: It is not what we are actually going to pay for those locomotives.

CHAIRPERSON: Yes.

MR FRANCIS QUENTIN CALLARD: A similar point holds for bidder 2.

CHAIRPERSON: Is – I mean the one that is the best and final offer you
20 mean it is without the TE factor?

MR FRANCIS QUENTIN CALLARD: It is without the TE factor.

CHAIRPERSON: Ja but you say it will be brought back later?

MR FRANCIS QUENTIN CALLARD: Be brought back later.

CHAIRPERSON: And part of the point you intend making which you have not necessarily made is you cannot have – you cannot have a

price higher than your best and final offer? Your best and final is the last price?

MR FRANCIS QUENTIN CALLARD: Exactly that point. The normal reader reading this.

CHAIRPERSON: Hm.

MR FRANCIS QUENTIN CALLARD: Would say thank you I assume that is going to be the price that I am going to pay?

CHAIRPERSON: Yes, yes.

MR FRANCIS QUENTIN CALLARD: The small exclusion.

10 **CHAIRPERSON:** Ja.

MR FRANCIS QUENTIN CALLARD: If I may refer to point 9.

CHAIRPERSON: Hm.

MR FRANCIS QUENTIN CALLARD: On page 579.

CHAIRPERSON: Hm.

MR FRANCIS QUENTIN CALLARD: Which says this memorandum must be read in conjunction with the CFT Finance report dated the 10 December.

CHAIRPERSON: Hm.

20 **MR FRANCIS QUENTIN CALLARD:** The normal reader of this report would not go into the depth of detail.

CHAIRPERSON: Yes.

MR FRANCIS QUENTIN CALLARD: Which we have just been here.

CHAIRPERSON: Yes, yes.

MR FRANCIS QUENTIN CALLARD: To pick up the nuances around this pricing.

CHAIRPERSON: Yes, yes.

MR FRANCIS QUENTIN CALLARD: And would take it I submit.

CHAIRPERSON: Ja.

MR FRANCIS QUENTIN CALLARD: At face value – thank you I read that – that is the price we are going to pay when in fact that is not the case.

CHAIRPERSON: Ja, yes.

MR FRANCIS QUENTIN CALLARD: That we are actually going to pay.

CHAIRPERSON: Yes, yes.

10 **ADV MAHLAPE SELLO**: Okay.

CHAIRPERSON: Hm.

ADV MAHLAPE SELLO: And then you do the same correlation for the diesel locomotives at your paragraph 176.

CHAIRPERSON: But I thought I saw something that I thought you would come to.

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: That I thought Mr Callard was going to come to shortly before moving away from this. Okay I think it has gone.

ADV MAHLAPE SELLO: Ag I hope we can...

20 **CHAIRPERSON**: It may come...

ADV MAHLAPE SELLO: Somehow get to address it Chair.

CHAIRPERSON: It may come back.

MR FRANCIS QUENTIN CALLARD: I will come back to more...

CHAIRPERSON: You see that is why sometimes when I – when something occurs to my mind I want to ...

ADV MAHLAPE SELLO: To deal with it immediately.

CHAIRPERSON: To deal with it there and then before it escapes ja.

Okay alright.

ADV MAHLAPE SELLO: Now if – before we leave your Annexure 65 578 it states as its purpose to provide the steering committee with an update of the results of the best and final offer response from bidders 1 and 2. Do we know when those best and final offers came in and this memorandum is dated the 15 January 2014?

MR FRANCIS QUENTIN CALLARD: My apologies your question was
10 onto 65?

ADV MAHLAPE SELLO: 578?

MR FRANCIS QUENTIN CALLARD: 578.

ADV MAHLAPE SELLO: That memorandum we just – you just took us through.

MR FRANCIS QUENTIN CALLARD: Ja. Ja.

ADV MAHLAPE SELLO: Annexure 65.

MR FRANCIS QUENTIN CALLARD: Annexure 65.

ADV MAHLAPE SELLO: Ja. I look at...

MR FRANCIS QUENTIN CALLARD: Sorry.

20 **ADV MAHLAPE SELLO:** Annexure 65 I see it is dated the 15 January 2014.

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: It is from the cross functional evaluation team.

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: And it is going to the 1054 locomotive steering committee?

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: It has as it – it states as its purpose to provide the steering committee with an update of the results of the best and final offer BAFO responses from bidders 1 and 2.

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: Okay. Now you will recall that the report we have been working through of the CFET Finance.

10 **MR FRANCIS QUENTIN CALLARD:** Yes.

ADV MAHLAPE SELLO: Is dated the 10 December 2013?

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: And that is at page 640.

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: This memorandum is dated almost a month later the 14 – 15 January 2015?

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: My question is, do you know when these best and final offers were received that are reflected in this memorandum?

20 **MR FRANCIS QUENTIN CALLARD:** Yes and I believe that I highlighted that when I gave the time line of events which if I may go back to?

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: Of my – paragraph 157.8 of my statement which is page 38. The – and that was on the 4 January 2014 there was the request for the best and final offers BAFO with a closing

date of 10 January.

ADV MAHLAPE SELLO: Okay. So they would have been received by the 10 January and then they are followed by this memorandum on the 14 January to the 1064 steering – locomotive steering committee.

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: May I point out one further point on this. What I have illustrated on bidder 1, column 1 also applies to bidder 2. But remember if you would recall we were talking about the 2 million odd discount from bidder CSR that differentiation between the 5 million and the 3 million.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Could I draw our attention – could we go have a look please at page 580 of – which is again still the same annexure 65. And page 580 is a reconciliation between the BAFO evaluated price and the previous evaluated price. The previous evaluated price which we see there that middle line for bidder 2.

ADV MAHLAPE SELLO: Before we do so.

MR FRANCIS QUENTIN CALLARD: Sorry.

20 **ADV MAHLAPE SELLO:** Excuse me Mr Callard perhaps we might – we will make a note. We should consider providing a more legible copy of 580.

MR FRANCIS QUENTIN CALLARD: 580 apologies there is a legible copy at 582.

ADV MAHLAPE SELLO: 582. Thank you. Then let us work through it.

MR FRANCIS QUENTIN CALLARD: Thank you. If we may take the – and again we need these various documents open before us. Supplementary 23 which was the reconciliation of price which was the last page of the CFET report. The second column price used for evaluation is 34.7 million rounded. That price is the same price as at under bidder 2 of page 578.

CHAIRPERSON: Did you say instead of looking at 578 we can look at 582?

10 MR FRANCIS QUENTIN CALLARD: No first 582 please. I just wish to establish the linkage between...

ADV MAHLAPE SELLO: May I Mr Callard because I think it was in response to my question that you referred to 582. You originally referred us to page 580. I made the point that 580 is not a very legible copy.

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: And Mr Callard indicated that a more legible copy should appear Chair in your – at you page 582.

MR FRANCIS QUENTIN CALLARD: Yes.

20 CHAIRPERSON: Oh yes but I thought that he was saying that one is a better copy of 578. That is actually not what he said hey?

ADV MAHLAPE SELLO: No it is a better copy of 580.

CHAIRPERSON: Right. Of 580.

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: Okay.

MR FRANCIS QUENTIN CALLARD: If I may I would like to refer to

three separate pages.

ADV MAHLAPE SELLO: Okay.

CHAIRPERSON: No, no I think I had – I had understood correctly. Ja no, no, no, I – now I understand the [indistinct].

ADV MAHLAPE SELLO: Thank you Chair.

CHAIRPERSON: I got confused in the process. Yes now you want us to look at what?

MR FRANCIS QUENTIN CALLARD: The first page

CHAIRPERSON: Of?

10 MR FRANCIS QUENTIN CALLARD: Is the supplementary 23.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: Recall that this is the table of the CFET report of the 10 December.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: The second column the last line price used for evaluation.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: For bidder 2 CSR 34.7 million.

20 ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: That figure is the same figure that appears on page – in the report to the locomotive steering committee page 578 their report of the 15 January as the previous evaluated price.

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: We have a correlation between this price at the 10 January and what they refer to as the previous evaluated price.

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: The report of the 15 January referred to the figure above it gives the current what they call BAFO evaluated price of 2.4 million rounded.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: There is a difference of 2.2 million.

10 ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: If we could turn holding that difference of 2.2 million please – if we could turn to the legible copy of the reconciliation which is page 582.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: This is a reconciliation of the difference between the figure in supplementary 23 and the BAFO price here. We will see the 34.7 million on the second column 1, 2, 3 the fourth figure from the bottom the 3f4 716.

ADV MAHLAPE SELLO: Yes.

20 MR FRANCIS QUENTIN CALLARD: Price used for evaluation before BAFO.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: We will see the BAFO which they include here at bidder 2 and it is marked there in bold just above it at the 2 – 32.4 million.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: The immediate table below that gives us the difference between those two prices.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: You will – may recall that when we spoke on the CSR and the impact of TE there was the confusion between the 3.8 million and the 5 million and the 2 million and whether that was a discount or not and should be taken into a discount. I would just like to highlight here that the difference is now made up of a discount on price. That 2.01 million finds its way in – finds its way back here as a discount on the BAFO price.

ADV MAHLAPE SELLO: So that is the discount – it is the discount on the price used for evaluation to arrive at the BAFO price?

MR FRANCIS QUENTIN CALLARD: To arrive at the BAFO price presented to the board.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: The first which is on that table under bidder 2 32.4 million.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Which is presented as the BAFO evaluated price.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Reading through that column it says there is a difference of 2.2 million.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: 2.25 million. What I wanted to point out was that difference of 2.25 million is made up inter alia of the 2.01 million.

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: That came through in the confusion of the impact of TE.

CHAIRPERSON: Is this where you say earlier they deducted an amount that they said would have to be deducted if they did not use TE?

MR FRANCIS QUENTIN CALLARD: Yes.

10 CHAIRPERSON: But now you are saying they up – they have brought it back now. Is this where you say they have brought it back?

MR FRANCIS QUENTIN CALLARD: No.

CHAIRPERSON: Not yet?

MR FRANCIS QUENTIN CALLARD: I am giving a more – slightly more complicated picture.

CHAIRPERSON: Yes.

MR FRANCIS QUENTIN CALLARD: For CSR when they – when there was confusion around the price to deduct for the impacted TE.

CHAIRPERSON: Yes.

20 MR FRANCIS QUENTIN CALLARD: Whether it was 3 million round figures 3.4 million or 5. Something million.

CHAIRPERSON: Ja, ja.

MR FRANCIS QUENTIN CALLARD: And through discussions with Supply Chain Services and the various bodies it said use the 3.4 million.

CHAIRPERSON: Hm.

MR FRANCIS QUENTIN CALLARD: And the 2 million was not taken into account.

CHAIRPERSON: Hm.

MR FRANCIS QUENTIN CALLARD: However now subsequently later after we have requested an updated BAFO on the 4 January it finds it way back into the figure here as this 2.01 million as a discount.

CHAIRPERSON: Hm.

10 MR FRANCIS QUENTIN CALLARD: So initially been told to ignore it it now finds it way back here as a discount.

CHAIRPERSON: And the problem is it being given as a discount.

MR FRANCIS QUENTIN CALLARD: It is here now reflected as a discount.

CHAIRPERSON: Creating the impression that what Transnet would be getting here as – this discount.

MR FRANCIS QUENTIN CALLARD: Whether this is a real or a fictitious discount is...

20 CHAIRPERSON: But that is [indistinct] but you – is part of the point that you are making that it creates that impression that Transnet will benefit because there is this discount?

MR FRANCIS QUENTIN CALLARD: Correct.

CHAIRPERSON: Ja.

MR FRANCIS QUENTIN CALLARD: Correct.

CHAIRPERSON: Okay.

ADV MAHLAPE SELLO: And just for the record and please confirm for

me that debate of 5.3 million and 3.4 million would – for the TE impact that discussion is heard in the report at page 652?

MR FRANCIS QUENTIN CALLARD: That...

ADV MAHLAPE SELLO: And second – third – second bullet point of that page where it is indicated that two prices were received of 5.8 and 3.4 and a discussion then follows thereafter and Transnet or the team decides to use the 3.4 million? At page...

MR FRANCIS QUENTIN CALLARD: Absolutely correct.

ADV MAHLAPE SELLO: 652.

10 **MR FRANCIS QUENTIN CALLARD:** 652 and the second bullet point it confirms that discussion exactly where the bidder 2 may have substantially included this quote “discount” unquote portion of 2.01 – 2.01 million into their price thereby having the potential impact.

ADV MAHLAPE SELLO: So it says there it was firstly 5.4 then 3.8 and they described the difference as a discount and they do so in the third bullet point and that discount is 2.010 – 2 million odd.

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: Now it is that 2 million discount and I say that in inverts that find its way to page 582 and is reflected as a discount on
20 the price?

MR FRANCIS QUENTIN CALLARD: An identical figure is reflected there as a discount yes.

ADV MAHLAPE SELLO: Thank you. Thank you Chair. Now this report I see at 578 Annexure 65 where you originally took us.

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: At page 579 it reflects a number of signatures and a number of names and are those the members of the cross functional evaluation team?

MR FRANCIS QUENTIN CALLARD: I understand those to be the members of the cross functional evaluation team by their signatures to this report.

ADV MAHLAPE SELLO: Okay. So that would be Mr Mohammed Moola, Mr Yusuf Laher, Mr Zunaid Vally, Mr Danie Smit, Mr Thabo Seapi and Mr Tsietsi Tlaletsi?

10 **MR FRANCIS QUENTIN CALLARD:** Correct.

ADV MAHLAPE SELLO: And it is that team that is then seeking – is it – is it seeking approval or it is this submitting information to that Committee? Is it updating the committee on progress ...

MR FRANCIS QUENTIN CALLARD: By – by ...

ADV MAHLAPE SELLO: In the negotiations?

MR FRANCIS QUENTIN CALLARD: By the purpose of this memorandum it was to provide the Steering Committee with an update of the results of the best and final offer BAFO response from bidders one and two for the purpose of this report and how the locomotive
20 committee - Steering Committee may take this further.

ADV MAHLAPE SELLO: Okay. What then transpires after this memo is submitted?

MR FRANCIS QUENTIN CALLARD: It is not a – after this memorandum is submitted it finds its way into a memorandum to the Board Acquisitions and Disposals Committee Meeting which takes place on

24 January.

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: And these figures find their way through into that memorandum.

ADV MAHLAPE SELLO: And you do not have that memorandum as an annexure to your statement?

MR FRANCIS QUENTIN CALLARD: I did not include as an annexure to my statement.

ADV MAHLAPE SELLO: So ...

10 **MR FRANCIS QUENTIN CALLARD:** It is available but it is not in.

ADV MAHLAPE SELLO: Yes. So whichever witness we then next deal with we take this – this report from this juncture and see how BADC dealt with it at that meeting of 24 January.

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: Okay and if we may proceed.

MR FRANCIS QUENTIN CALLARD: Thank you. I would like for a moment to pass over my points 175.2 ...

ADV MAHLAPE SELLO: Yes.

20 **MR FRANCIS QUENTIN CALLARD:** And 176.2 because they deal with some detailed spreadsheets and I would rather deal with them as an entity ...

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: Rather than introduce them now.

ADV MAHLAPE SELLO: That is fine.

MR FRANCIS QUENTIN CALLARD: But to address that – the similar

issue of TE across the diesel bidders while we are dealing with this.
So if I may come back to those later and go to 177.

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: What I commented earlier on bidder one for diesel locomotives not being subject to the impact of pricing. I am not sure if I specifically stated that but if I could just take you through please to 170 – my – paragraph 170 page 44.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: The application of TE pricing
10 methodology for the 465 diesels followed a similar pattern and we have effectively dealt with that table ...

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: And the inconsistencies of bidder two in that table.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Coming to bidder one for the diesel locomotives not being subject to impact at TE pricing and I believe this could be an inconsistent application of this prescription across the bidders.

20 **ADV MAHLAPE SELLO:** Yes.

MR FRANCIS QUENTIN CALLARD: Per 178 we have almost exactly the – I set out exactly the same process as I did for the electricals and I may be permitted not to have to go through that again.

ADV MAHLAPE SELLO: Absolutely.

MR FRANCIS QUENTIN CALLARD: I would then go to paragraph 179.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Where CNR was bidder one for diesels. An extract from their RFP submission is set out below ...

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: And this ...

ADV MAHLAPE SELLO: Could you read it into the record please?

MR FRANCIS QUENTIN CALLARD: I will read it into the record. This is extracted from their RFP submission and paragraph 2.1:

“Local content plans for supplier and components.”

10 **ADV MAHLAPE SELLO:** Yes.

MR FRANCIS QUENTIN CALLARD: “Reiterating our commitment to Transnet’s Supplier Development requirements it needs to be mentioned that the CNR Consortium has entered into an agreement with Transnet Engineering as its major local Supplier Development (SD) partner for the manufacture of certain components and the assembly of the locomotives after delivery of an initial quantity of 20 fully built up units. Based on this above the
20 assertion by Supply Chain Services that bidder one not specify the use of TE as main subcontractor is incorrect.”

ADV MAHLAPE SELLO: And that is a conclusion you draw when – we did not work through paragraph 178.

MR FRANCIS QUENTIN CALLARD: Sorry and that ...

ADV MAHLAPE SELLO: Where you give reference to where CFET indicated that CNR had not – had not specified TE as a subcontractor and in this regard you refer as to page 12 of Annexure 84 read with page 691?

MR FRANCIS QUENTIN CALLARD: Correct and ...

ADV MAHLAPE SELLO: Second bullet point if you could have regard thereto.

MR FRANCIS QUENTIN CALLARD: And if I may just read that as well because it is the pertinent part of this?

10 **ADV MAHLAPE SELLO:** Yes.

MR FRANCIS QUENTIN CALLARD: On page 12 of Annexure 84 – 10 December 2013 report of the Cross Functional Evaluation Team on the locomotive tender evaluation for the supply of 465 new diesel locomotives under the heading of “Using TE as a Main Subcontractor “Inter Alia”” states: the bullet.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: “Supply Chain Services – SCS – however advised CFT Finance that the supplier development files submitted by bidders indicated that bidder one – read CNR – did not specify the use of TE as a main subcontractor and this could have a potential price adjustment ...”

20

ADV MAHLAPE SELLO: Huh-uh.

CHAIRPERSON:

MR FRANCIS QUENTIN CALLARD: “...implication. Supply

Chain Services also mentioned that bidders were likely to make different assumptions in the use of TE as main subcontractor including the percentage that would be subcontracted. These assumptions were not specified by TFR in the RFP process and could differ significantly between bidders.”

That is my bold.

ADV MAHLAPE SELLO: Yes. So if I may that is what the report claimed?

10 **MR FRANCIS QUENTIN CALLARD:** Yes.

ADV MAHLAPE SELLO: And what you seek to draw attention to at 179 is that contrary to what the report suggests CNR had actually ...

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: Indicated TE as a subcontractor?

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: And indicated that it has concluded – has entered into a consortium with TE to partner on local supplier development?

MR FRANCIS QUENTIN CALLARD: Correct and ...

20 **ADV MAHLAPE SELLO:** And you draw your conclusion at 180.

MR FRANCIS QUENTIN CALLARD: And my conclusion based on the above:

“The reported assertion by Supply Chain Services that bidder one did not specify the use of TE as a main subcontractor is incorrect.”

ADV MAHLAPE SELLO: Now that error – if it is an error – by CFET of what relevance is it to this whole process in the diesel evaluation?

MR FRANCIS QUENTIN CALLARD: The relevance of this is that bidder one – CNR were not asked to give – provide the impact of not using TE as a main subcontractor. Unlike other bidders who had specified they were using TE they were asked to provide an impact as we have seen in the table - previous table of bidders one, two and etcetera but bidder one was not asked for.

ADV MAHLAPE SELLO: Please go ahead.

- 10 **MR FRANCIS QUENTIN CALLARD:** From this clear statement in their RFP that they were using TFR as a main subcontractor it is unusual and I cannot explain why they were not asked to submit the same clarification that the other bidders had been asked when they clearly said here they were using TE and this is the point that I was making that this is an inconsistent application or inconsistently applying the prescription of TE across diesel bidders ...

ADV MAHLAPE SELLO: So ...

MR FRANCIS QUENTIN CALLARD: And that is the first point around this.

- 20 **ADV MAHLAPE SELLO:** The failure to ask CNR to clarify – CNR, yes.

MR FRANCIS QUENTIN CALLARD: CNR.

ADV MAHLAPE SELLO: Is that CNR was adjudicated on a higher price which reflected a TE component and was not given the opportunity to deduct the TE component from its price to – so as to determine a price for evaluation?

MR FRANCIS QUENTIN CALLARD: If I may ...

ADV MAHLAPE SELLO: Along with the other bidders who had used TE.

MR FRANCIS QUENTIN CALLARD: If I may reflect that. CE were then evaluated in the CFET Report on their original price. That their original price was substantially higher than the other prices so be it but they were not asked or they were not given – asked and/or given the same consideration as the other bidders to state the impact of their TE price and that was the inconsistency that I referred to.

10 **ADV MAHLAPE SELLO:** Now going back to the point I think the Chair asked earlier that – you know – engagement you had with the Chair.

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: You conclude that the – this acted to the prejudice of CNR. Do you draw that conclusion – this inconsistent application of the TE impact?

MR FRANCIS QUENTIN CALLARD: It may have acted to the prejudice of CNR. If CNR were to have come back and said there is no impact on my price (indistinct) as one of the electrical bidders did.

ADV MAHLAPE SELLO: Yes.

20 **MR FRANCIS QUENTIN CALLARD:** It would not be to their prejudice. If they said that TE was going to be cheaper it would have been prejudicial – sorry – it would have been – whichever one it is going to be.

ADV MAHLAPE SELLO: Yes. It is late in the day.

CHAIRPERSON: Well prejudicial or non-prejudicial.

MR FRANCIS QUENTIN CALLARD: Sorry.

CHAIRPERSON: Prejudicial or non-prejudicial.

MR FRANCIS QUENTIN CALLARD: I could have been prejudicial or non- prejudicial depending on the answer. If the answer had been as per what the (indistinct) there is no impact. It would have had no impact on that price.

ADV MAHLAPE SELLO: Okay. Now just remind us as far as the diesel locomotives are concerned who were the successful bidders there?

MR FRANCIS QUENTIN CALLARD: The successful bidders were CNR
10 and General Electric.

ADV MAHLAPE SELLO: Okay. So clearly it does not seem that even that inconsistent application of the TE impact does not seem to have prejudiced CNR.

MR FRANCIS QUENTIN CALLARD: Not at that stage.

ADV MAHLAPE SELLO: Okay. On the issue of inconsistencies overleaf you then want to talk about inconsistencies again on the interpretation of BAFO across the diesel bidders?

MR FRANCIS QUENTIN CALLARD: Correct, yes.

ADV MAHLAPE SELLO: Okay. Then you can take us from paragraph
20 181.

MR FRANCIS QUENTIN CALLARD: 181 and all the documentation in this subsection was through MNS with the exception of Annexure 66.

ADV MAHLAPE SELLO: Okay. You do – sorry – you did indicate that NNS engaged you to provide assistance in their investigation?

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: So are you suggesting you – you became aware of these documents in that process – during the course of that process?

MR FRANCIS QUENTIN CALLARD: In the course of that process.

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: I became aware of the existence and the importance of these documents, yes.

ADV MAHLAPE SELLO: Alright. You may proceed.

MR FRANCIS QUENTIN CALLARD: Thank you.

10 “It was on 20 December 2013 that CNR and the other diesel bidders were requested to provide a breakdown of their RFP – Annexure E – costs.”

Which is Annexure 101.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: May we just turn to Annexure 101 please?

ADV MAHLAPE SELLO: Yes. That we find at page 791.

MR FRANCIS QUENTIN CALLARD: Page 791 and this is the letter to CNR – this time we have the letter to CNR Mr Chair. The letter is dated
20 20 December 2013. It is addressed to ...

CHAIRPERSON: The letter is on what page?

MR FRANCIS QUENTIN CALLARD: 792.

ADV MAHLAPE SELLO: 792.

CHAIRPERSON: 792?

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: Annexure 101 Chair.

CHAIRPERSON: Thank you. Yes you may proceed.

MR FRANCIS QUENTIN CALLARD: Thank you - and it asks for an explanation of their – the Annexure E costs per their RFP. Now the Annexure E is a document which all the bidders have to fill in, in their RFP and it details certain costs under the headings which we have here being their manpower costs, factory overheads - which includes rental, depreciation and amortisation, utility costs, consumables etcetera - and thirdly administrative overheads and mark-up which includes marketing, insurance, financing etcetera – financing, interest etcetera. CNR had given the figures indicated here in the Annexure E. We will see from page – from page 792 that that was actually a cut-out – an extract from their RFP and the table was pasted into this letter. Please provide an explanation of these costs.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Well we notice that these costs are quite significant and quite high and we are talking about here 5 billion in respect of the – their request for a proposal.

ADV MAHLAPE SELLO: Okay.

20 **MR FRANCIS QUENTIN CALLARD:** CNR replied on 22 December which is Annexure 102 which is page 795.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: And they breakdown their manpower costs of – I will not go through the – the full – describe the amounts at the moment but they breakdown their manpower costs as a

budget expense. They describe their factory overheads as been a type test warehouse training in China mock-up bogie factory and equally the – on page 796 overleaf – they give their administrative overheads and mark-up – which we will see in the billions and importantly this includes insurance, transport, import duties, mark-up and for mark-up I will read profit – in my interpretation – warranties, interest costs etcetera a list of what they include in that price. I put this to give context to what follows next.

ADV MAHLAPE SELLO: Okay.

- 10 **MR FRANCIS QUENTIN CALLARD:** On 4 January all the diesel bidders were invited to submit Best And Final Offers. The letter to CNR is attached as Annexure 95 and if we could go to that one please it is page 775.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: It is a letter of 4 January to CNR and it refers to their tender. I would take you through to the second last paragraph – third last – third last paragraph.

- 20 “In order to achieve the above objective and conclude the final stages of the evaluation process Transnet is requesting that you provide a Best And Final Offer. The Best And Final Offer must focus on commercial aspects of your bid only. We suggest the following guidelines be used. Best price excluding hedging and escalations. Best price using subcontractors of your choice - not Transnet

Engineering.”

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: “Disclosure of foreign amounts and what exchange rates used. Your local content target as originally committed will not change and reconciliation of current best and final offer price to the submitted price with reason for changes if any.”

ADV MAHLAPE SELLO: Yes.

- 10 **MR FRANCIS QUENTIN CALLARD:** You see and I read that – you can give a discount but just tell us that this is your discount.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: By virtue of this letter or responding to this letter CNR responded on 6 January – sorry – on 4 January requesting a 14 day – first requesting a 14 day extension and again on 6 January 2014 requesting a 21 day extension. This may be seen in Annexure 96.

ADV MAHLAPE SELLO: 778.

- 20 **MR FRANCIS QUENTIN CALLARD:** 778 and there are two emails. The first one is 4 January which is to be found at the bottom of 778.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Which requests an extension of 14 days followed by the email of 6 January which is at the top of 778 requesting an extension of 21 days and the reason for this request is after the series of discussions between members of the CNR

Consortium an Incorporated Joint Venture – I will skip to the point.

“As you are aware during the tender process CNR used prices from Transnet Engineering as its local subcontractors for building locomotive bodies as well as the assembly of the locomotives. As the period for the submission of the tender price is by Transnet Engineering was in the excess of three months it will be impossible for CNR to obtain a quotation from an alternative local subcontractor by 10 January 2014.”

10

Hence the request for extension.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Hold that point please as we look at 186.

ADV MAHLAPE SELLO: 186, where are you?

MR FRANCIS QUENTIN CALLARD: Sorry – my point – Annexure 97.

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: Where GE replied on 4 January. Sorry GE replied ...

20 **CHAIRPERSON:** I am sorry we – I am sorry we were at page 778 ...

MR FRANCIS QUENTIN CALLARD: And we are now going to page 782.

CHAIRPERSON: Okay.

ADV MAHLAPE SELLO: And you go to 782 with reference to your paragraph 186 in your statement a page 48?

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: Okay. Please do that.

MR FRANCIS QUENTIN CALLARD: This is where – from my statement
186 – General Electric replied on 10 January.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: And they give there:

“Following the guidelines...”

First paragraph. It is addressed to Mr Singh.

“Following the guidelines suggested GSET has
prepared the responses that follow. Best price
10 excluding hedging and escalation.”

And they give a price.

“This is ...”

But the – what follows is pertinent.

“This is the best price excluding hedging escalation
as per our proposal of 30 April 2013. This best price
assumes the use of Transnet Engineering as a
subcontractor for the scope is to find in our
30 April 2013 submittal and is based on the pricing
TE provided to GSET at the same time.”

20 **ADV MAHLAPE SELLO:** Yes.

MR FRANCIS QUENTIN CALLARD: The second paragraph:

“Best price using subcontractors of GSET’s choice
and not Transnet Engineering.”

And they give an alternative price there.

ADV MAHLAPE SELLO: And the price there reduces ...

MR FRANCIS QUENTIN CALLARD: By ...

ADV MAHLAPE SELLO: Say of a million to 24 million.

MR FRANCIS QUENTIN CALLARD: About by - reduce it by about 1.2 million.

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: I believe that price to be consistent with the price quoted in their original table on the impact of not using TE.

ADV MAHLAPE SELLO: TE, okay.

10 **MR FRANCIS QUENTIN CALLARD:** Yes. I have not checked that exactly but it is certainly appears to be of the same order.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: Over leaf if I may on 783 they set out all the conditions – not the conditions – but how they complied with the original letter.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: This is presented as a BAFO price strictly in accordance with the request.

ADV MAHLAPE SELLO: Okay. Now you referred to GE – the purpose
20 being?

MR FRANCIS QUENTIN CALLARD: To establish a concept of what a BAFO is.

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: I now take us to 187 – my paragraph 187.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: CNR replied to 4 January request on 10 January. This is Annexure 98.

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: Recall that they have applied twice for an extension.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: I have not found whether the extension was granted or not granted.

10 **ADV MAHLAPE SELLO:** Okay.

MR FRANCIS QUENTIN CALLARD: But I just take us to their letter of 10 January and we read from their letter.

ADV MAHLAPE SELLO: So hen if I understand the letter addressed to the bidders on 4 January they first ask for a 14 day extension then a 21 day extension. Which would mean that their response would come somewhere towards the end of January or February for the reasons that they stated?

MR FRANCIS QUENTIN CALLARD: Yes.

20 **ADV MAHLAPE SELLO:** So when you send us to Annexure 98 that letter is dated 10 January?

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: They seem to have been able to comply with providing the necessary information – notwithstanding their request for extensions?

MR FRANCIS QUENTIN CALLARD: They respond notwithstanding their

request for an extension.

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: It is the nature of their response.

ADV MAHLAPE SELLO: Then I read their documents correctly, thank you.

MR FRANCIS QUENTIN CALLARD: In the nature of their response they state:

“Considering the guidelines suggested in the above mentioned letter ...”

10 That is the letter of 10 January 2014.

“...we would like to present to you our Best And Final Offer for (intervenes).”

CHAIRPERSON: I am sorry. I am a 788. Is that where you are reading?

MR FRANCIS QUENTIN CALLARD: Sorry.

ADV MAHLAPE SELLO: Seven – 785.

MR FRANCIS QUENTIN CALLARD: 785 Chair, sorry.

CHAIRPERSON: Oh, okay. Were we at 788 and I have – I did not go back. You left me behind or what? I thought you said 788 there. I
20 went there. Okay. 785.

MR FRANCIS QUENTIN CALLARD: 785.

CHAIRPERSON: Okay.

MR FRANCIS QUENTIN CALLARD: Okay. I would read again.

ADV MAHLAPE SELLO: Yes.

CHAIRPERSON: Yes.

MR FRANCIS QUENTIN CALLARD: “With reference to your

letter etcetera on 4 January. Considering the guidelines suggested in the above mentioned letter on 4 January we would like to present to you our best and final offer for the tender. We have reduced our best price in the TCO Model – Total Cost to Ownership – that you refer to in your letter of 4 January from 39 million – 39.7 million rounded – to 27.36 million rounded. This price relates to the
10 cost of manufacture and does not include training costs, logistics, royalties, technical support, service charges, finance costs and contingencies etcetera.”

The point I wish to make Mr Chair is that these qualifications do not make it a BAFO price. It is qualified in respect of being a BAFO price – very qualified in respect of a BAFO price.

CHAIRPERSON: In particular what are the qualifications that you say render it not to be a BAFO price?

MR FRANCIS QUENTIN CALLARD: I take from their paragraph 1 ...

CHAIRPERSON: *Ja.*

20 **MR FRANCIS QUENTIN CALLARD:** We have reduced our best price and the last sentence ...

CHAIRPERSON: Yes.

MR FRANCIS QUENTIN CALLARD: This price relates to the cost of manufacturing ...

CHAIRPERSON: Huh-uh.

MR FRANCIS QUENTIN CALLARD: And does not include training costs

...

CHAIRPERSON: Huh-uh.

MR FRANCIS QUENTIN CALLARD: Logistics, royalties ...

CHAIRPERSON: Huh-uh.

MR FRANCIS QUENTIN CALLARD: Technical support, service charges, finance charges ...

CHAIRPERSON: Huh-uh.

MR FRANCIS QUENTIN CALLARD: And contingencies etcetera.

10 **CHAIRPERSON:** Huh-uh.

MR FRANCIS QUENTIN CALLARD: I ...

CHAIRPERSON: I wonder what you exclude when you say etcetera.

MR FRANCIS QUENTIN CALLARD: It is – that is my concern Mr Chairman. It is open ended. What is meant by etcetera?

CHAIRPERSON: *Ja.*

MR FRANCIS QUENTIN CALLARD: In contractual terms etcetera can mean a host of things.

CHAIRPERSON: *Ja.* Okay, yes. So that – that is the one qualification. Is that the only qualification?

20 **MR FRANCIS QUENTIN CALLARD:** No, it is in fact all those qualifications before that. Training, logistics, royalties ...

CHAIRPERSON: Yes. No, what I mean is the qualification in paragraph 1 that you have just read.

MR FRANCIS QUENTIN CALLARD: Yes.

CHAIRPERSON: *Ja.*

MR FRANCIS QUENTIN CALLARD: That is the qualification.

CHAIRPERSON: Okay.

ADV MAHLAPE SELLO: Before you go further then in that response.

What we have at 785 ...

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: That is in response to the letter of 4 January requesting a Best And Final Offer as appear at 775?

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: Now when I go to 775 I – I note that it
10 requires the bidders to provide a Best And Final Offer focusing only on commercial aspects of the bid.

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: As a guideline it is indicated what - what they must do?

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: Now in reading those sub – those bullets - no – those numbered paragraphs at page 775 from one to five – you see them at one to five?

MR FRANCIS QUENTIN CALLARD: I would submit that they do not
20 comply with the request to give us a BAFO price focusing on commercial conditions only.

ADV MAHLAPE SELLO: So when – when CNR indicates that my price has reduced from 39 million to 27 million because it excludes those items that you listed.

MR FRANCIS QUENTIN CALLARD: Yes.

ADV MAHLAPE SELLO: Where would I fit that into one to five at page 775? What are they responding to there?

MR FRANCIS QUENTIN CALLARD: I cannot answer.

ADV MAHLAPE SELLO: Okay, thank you.

MR FRANCIS QUENTIN CALLARD: It is a reduction but I cannot answer how they fit in.

ADV MAHLAPE SELLO: So it is an impromptu reduction but it is not – it does not arise from the request at 775?

MR FRANCIS QUENTIN CALLARD: It certain does not appear to.

10 **ADV MAHLAPE SELLO:** Okay.

MR FRANCIS QUENTIN CALLARD: Right.

CHAIRPERSON: Well you – you have drawn our attention to the last part of paragraph 1 of the letter at page 785 and have said that renders the price not to be a BAFO price – a best and final price, right? Is that right?

MR FRANCIS QUENTIN CALLARD: Sorry.

20 **CHAIRPERSON:** I am just confirming that I understood you correctly namely that the – you have said that the last part of paragraph 1 at page 785 renders the price that CNR gives not to be the best and final price.

MR FRANCIS QUENTIN CALLARD: The exclusions render it not at Best And ...

CHAIRPERSON: Final.

MR FRANCIS QUENTIN CALLARD: Final Offer as could be used in interpretation to be taken forward.

CHAIRPERSON: *Ja.* No, no I accept that.

MR FRANCIS QUENTIN CALLARD: *Ja.*

CHAIRPERSON: I just wanted to confirm that.

MR FRANCIS QUENTIN CALLARD: Confirm that is the (indistinct).

ADV MAHLAPE SELLO:

CHAIRPERSON: But you did not mention to is there a special reason for that?

MR FRANCIS QUENTIN CALLARD: Well ...

CHAIRPERSON: Why two is – does not also disqualify it from being
10 above one.

MR FRANCIS QUENTIN CALLARD: Because if we refer it to page 775
...

ADV MAHLAPE SELLO: Okay.

CHAIRPERSON: *Ja.*

MR FRANCIS QUENTIN CALLARD: The letter of request it said best price excluding hedging and escalations. So two would exclude – two
...

CHAIRPERSON: Oh.

MR FRANCIS QUENTIN CALLARD: Accords with their one and three
20 also accords with the additional – with the first letter excluding hedging and escalations, so two would exclude two accords with their one and three also accords with the additional, with the first letter excluding hedging and escalation.

CHAIRPERSON: But okay no I understand that but isn't the whole concept of a best and final offer necessarily, it doesn't necessarily

mean that that's your final inclusive of everything?

MR FRANCIS QUENTIN CALLARD: It could depend how the operative request it Mr Chair because the bids are closed at a particular date, they closed as I recall it was April 2013, when we were now adjudicating much later forward escalation or escalation up to contract date and forex exchange movements up to contract date are sometimes – are derived variables from the base price, so that is why it's asked give it to us on your base price, we would work out these, the escalation and forex differently, and given the different bidders may
10 have different assumptions around forex and escalation, it is – and that's, the normalisation process it is easiest to ask work it on your base price only. What was our over the counter price at that time.

CHAIRPERSON: Mmm.

ADV MAHLAPE SELLO: Okay then staying at page 785 under one ...(intervention)

CHAIRPERSON: Just before that, before that, then at 775 where it says the best and final offer must focus on commercial aspects of your bid only. Is that a normal requirement when you talk about a best and final offer?

20 **MR FRANCIS QUENTIN CALLARD:** Yes I would submit that it would be, asking the best final offer is we're not asking you to change any technical specifications, if I may use a simple example I wish to buy a motor car, and the dealer says it's going to cost me R1 500 000 for this car, with all these options and I say is that your best and final offer and he might say yes or he'll say we will give you a further R10 000 on it

but that does not change the makeup of the car, the options, so there's no technical change for it, it's not changing the repayment period, it's a simple straightforward I can offer you R10 000 off the final price and that is what would normally be understood by a request for a best and final offer.

CHAIRPERSON: Okay thank you.

ADV MAHLAPE SELLO: Thank you Chair, now on paragraph one did the bid or the RFP require the bidders to indicate the training costs, or to cost the training requirements to provide for logistics, for royalties, technical support and the like? Is the costing for all those elements expected to be found in the original bid?

MR FRANCIS QUENTIN CALLARD: Indeed you will find that similar points are, because if I could then take you to the supplementary page, page 23 of my supplementary Annexure E which we've been dealing with the reconciliation of price, just to highlight.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: And I'm reading now from the supplementary 23.

ADV MAHLAPE SELLO: Yes.

MR FRANCIS QUENTIN CALLARD: That table gives an indication of how a locomotive price is made up, the base price submitted by the bidder, and then there's additional items to get to the capital acquisition cost, you will see there we have special tooling, engineering support, capital spares, consumables, special holding and a list of items including set up costs, insurance rounding and all those

if I then may read to the line price per locomotive submitted as per Annexure F the capital acquisition cost of a locomotive. To deliver a locomotive requires all of those elements.

ADV MAHLAPE SELLO: Okay so in order to get, to present this reduced price CNR then deducted those very parts of the cost of the locomotive itself that they had originally costed in their bid?

MR FRANCIS QUENTIN CALLARD: Correct.

ADV MAHLAPE SELLO: Okay. Which if they were to meet specification and were to succeed they would have to incorporate in the
10 execution of the contract?

MR FRANCIS QUENTIN CALLARD: That is my understanding and interpretation of this yes and I will as we look at the what CNR included in their mark-up of Annexure, in their mark-up of F if I may just refer back to that previously because that was an item – sorry if I turn back the page, if you'll give me half a moment, and I responded on the 4th of January, Annexure E, the breakdown of their Annexure E.

ADV MAHLAPE SELLO: Give us a page number please?

MR FRANCIS QUENTIN CALLARD: Annexure E, Annexure 101.

ADV MAHLAPE SELLO: Okay, at page 791?

20 **MR FRANCIS QUENTIN CALLARD:** Sorry may I go to the breakdown on Annexure 102 in their response, page 796.

ADV MAHLAPE SELLO: Okay.

MR FRANCIS QUENTIN CALLARD: Where under their heading of admin overheads and mark-up of their significant billions there they say this figure is made up of insurance transport costs, import duties, mark-

up, warrantees, interest cost, performance bonds, consulting fees, contingency, and on the ...(intervention)

ADV MAHLAPE SELLO: 785?

MR FRANCIS QUENTIN CALLARD: And on 785 a bogey factory, type test TE warehouse, TE training in China, TE mark-up, manpower costs, many of the figures one would expect to find in this set up here they have now taken out so all or some but there is such a reduction that these figures would be significantly impacted here in what we call the additional items for the locomotive have been removed.

10 **ADV MAHLAPE SELLO:** Yes Chair, it's been brought to my attention.

CHAIRPERSON: Yes I think that last point please just let refresh our minds on it when we meet next time, that last time that you were making.

MR FRANCIS QUENTIN CALLARD: Sure.

CHAIRPERSON: It's one minute past five, we will adjourn now and we are not sitting tomorrow and on Wednesday because the owner of the building needs the venue and in terms of the lease we agreed to give them that opportunity to use it for their purposes but we will resume on Thursday and on Thursday I see counsel wants to say something about

20 Thursday?

ADV MAHLAPE SELLO: Yes please Chair, we had scheduled another full day witness for Thursday, not my witness, the witness is ready, Mr Callard I have not finished, we need about two hours to finish and I fear if we start at ten o'clock we then will impact the next witness in that timing.

CHAIRPERSON: Yes, ja.

ADV MAHLAPE SELLO: May I request that perhaps we consider starting at nine o'clock on Thursday and Mr Callard and I will try and finish by tea time, then that witness can then run from half past eleven.

CHAIRPERSON: Would that be fine with you Mr Callard?

MR FRANCIS QUENTIN CALLARD: That will be fine Chair.

ADV MAHLAPE SELLO: Thank you Chair.

CHAIRPERSON: Then we will start at nine on Thursday. We adjourn.

INQUIRY ADJOURNS TO 23 MAY 2019