

**COMMISSION OF INQUIRY INTO STATE CAPTURE**

**HELD AT**

**PARKTOWN, JOHANNESBURG**

10

**23 MAY 2019**

**DAY 97**

20

**PROCEEDINGS HELD ON 23 MAY 2019**

**CHAIRPERSON**: Good Morning Ms Sello, good morning everybody.

**ADV MAHLAPE SELLO**: Good morning Chair.

**ADV MAHLAPE SELLO**: Thank you.

**ADV MAHLAPE SELLO**: Chair before we continue with the testimony of Mr Callard.

**CHAIRPERSON**: Just one second Ms Sello. Ms Zonica could you tell them to make sure that the chair that I normally use is here by – yes.

**ADV MAHLAPE SELLO**: Thank – thank you Chair. Chair before we  
10 continue with the testimony of Mr Callard this morning I would like to refer the Chair to Exhibit BB4[c] I called it the black folder.

**CHAIRPERSON**: Hm.

**ADV MAHLAPE SELLO**: And I would like to point out certain things in respect of that folder.

**CHAIRPERSON**: Yes.

**ADV MAHLAPE SELLO**: The Chair will recall that when we parted on Monday that folder had BB4[c] and BB4[d]. In dealing with BB4[d] and at page – from pages 26 Mr Callard referred to three different responses by CNR to the – as regards the question of impact of TE on  
20 their price. The Chair then re – wanted to find out if the request from Transnet for clarification was included in the bundle and Mr Callard's response was that it was not in his bundle. Over the two days Mr Callard has located the request, has filed a further supplementary affi – a statement in order to introduce this request and that Chair now has been tendered in as BB4[e].

**CHAIRPERSON**: Okay no that is fine.

**ADV MAHLAPE SELLO**: Thank you Chair.

**CHAIRPERSON**: Thank you. Okay.

**ADV MAHLAPE SELLO**: Then Mr Callard if we may continue we are under time pressures today we are encroaching on Mr Mokoena's time so the less we can inconvenience him and the witness and the Chair of course the better. Thank you.

**MR FRANCIS QUENTIN CALLARD**: Understood.

**ADV MAHLAPE SELLO**: Just to...

10 **CHAIRPERSON**: Well the bottom line is you must still be able to give your evidence properly. Okay. So yes there is that factor but make sure that you are able to give your evidence properly and do not – so do not be under too much pressure.

**MR FRANCIS QUENTIN CALLARD**: Thank you Chair.

**CHAIRPERSON**: Do not feel under too much pressure. Okay. Just make sure that we – we – I hear everything that is important that you need to tell me.

**MR FRANCIS QUENTIN CALLARD**: Thank you Chair.

**CHAIRPERSON**: Okay.

20 **ADV MAHLAPE SELLO**: Thank you Chair. When we parted according to my records Mr Callard we were at page 49 of your statement and you had taken the Chair through the inconsistencies regarding the interpretation of BAFO across the diesel bidders.

**MR FRANCIS QUENTIN CALLARD**: Correct.

**ADV MAHLAPE SELLO**: We rose before you dealt with your paragraph

190 which is actually the conclusion of that chapter.

**MR FRANCIS QUENTIN CALLARD**: Correct.

**ADV MAHLAPE SELLO**: So if we can pick it up from there and then overleaf you start on a different issue which is analysing the BAFO price itself and its reflection of the real cost of the acquisition of the locomotive.

**MR FRANCIS QUENTIN CALLARD**: That is correct yes correct so.

**ADV MAHLAPE SELLO**: Then if you can take us through that. Yes we are now at your 190 at page 49.

10 **MR FRANCIS QUENTIN CALLARD**: Thank you counsel.

**ADV MAHLAPE SELLO**: Or perhaps you might want to summarise from 188 because I – just to make – place things in proper context.

**CHAIRPERSON**: I think the last thing I said when we – just before we adjourned was that this morning he would need to recap on the last point he was making.

**ADV MAHLAPE SELLO**: Yes Chair.

**CHAIRPERSON**: Before we adjourned.

**ADV MAHLAPE SELLO**: Yes Chair.

**CHAIRPERSON**: So I think that is where we should start.

20 **ADV MAHLAPE SELLO**: And Chair on my notes we had dealt with paragraphs 181. He had started on the inconsistent interpretation of BAFO across the diesel locomotives.

**CHAIRPERSON**: Hm.

**ADV MAHLAPE SELLO**: Just to make sure I am on the same page with the Chair.

**CHAIRPERSON**: Unfortunately I did not make point – I did not note the point that there was a point he was making which I had not understood or he might not have finished to deal with properly and that is why I said please when we resume – start from there refresh our memory because I had not heard it properly. So I did not make a note what the point was. Mr Callard do you remember what the point was?

**MR FRANCIS QUENTIN CALLARD**: Yes Mr Chair.

**CHAIRPERSON**: Hm.

**MR FRANCIS QUENTIN CALLARD**: If I may recap very briefly going  
10 back to 182.

**CHAIRPERSON**: Yes, yes.

**ADV MAHLAPE SELLO**: Yes.

**MR FRANCIS QUENTIN CALLARD**: Of my statement. This was a request on the 20 December 2013 to CNR and other diesel bidder requesting an explanation of the cost per the Annexure E. And I outlined in 182 the breakdown of the Annexure E costs for CNR and their response. Noting that – and without referring to the bundle but just looking at the table on – under paragraph 182 that on the fourth line – sorry fourth – third line in that table, the third element in that  
20 table, admin, overheads, mark-up, marketing, insurance, financing, interest etcetera and that amounts to some 5.2 billion which they quote in their Annexure E. In briefly in summary then on the 4 January 20 - CNR replied to this on the 22 December and that is in there and they just give a further exposition of that. I do not think it is necessary to go back to that but the point that we were – that I was seeking to make

was that on the 4 January the diesel bidders were invited to submit their best and final offers. There was a letter to CNR the response was the due on the 10 January CNR replied in the meantime with two letters requesting a fourteen day extension and then a 21 day extension but on the 10 January they replied and here I am referring to paragraph 187 on 49 and I am quoting from that point – from sub-paragraph 187.1.

10            “We have reduced our base price in the total cost of ownership as referred to in your [as referred to in your letter of 4 January 2014] from 39 million rounded or 39.7 million rounded to 27.3 million rounded. This price relates to the cost of manufacture and does not include training costs, logistics, royalties, technical support, service charge, finance costs and contingencies etcetera.”

20            And the point which I wish to make is that I believe this qualification does not constitute a comparative best and final offer price with that which we heard from GE. In support of this contention belief it should be noted that the reduction of 12.3 million per locomotive rounded if one multiplies that by the 465 diesel locomotives for which they bid this exceeds the amount of the 5. – this amounts to some 5.7 billion which exceeds the entire amount in their Annexure E from the RFP and I take one back there to the page – to the paragraph 182 from which I was quoting previously. In essence what the BAFO purports to be is this significant reduction of over R12 million per locomotive that reduction negates all the elements in their Annexure E. And why I believe this

now to be problematic is if we could please just pick this up in Annexure A 66.

**ADV MAHLAPE SELLO:** A66?

**MR FRANCIS QUENTIN CALLARD:** A66 which is at page 583.

**ADV MAHLAPE SELLO:** And that Chair will be in BB4[b].

**CHAIRPERSON:** Thank you. The page is 586 and the divider is?

**ADV MAHLAPE SELLO:** The – it is the Annexure 66 that is divider 66.

**MR FRANCIS QUENTIN CALLARD:** Annexure 6...

**ADV MAHLAPE SELLO:** Which starts at 583.

10 **MR FRANCIS QUENTIN CALLARD:** 3.

**ADV MAHLAPE SELLO:** And you specifically want to take us to page?

**MR FRANCIS QUENTIN CALLARD:** I would like to take us to page please 589. 589...

**ADV MAHLAPE SELLO:** Now for the record Chair it is 66A, 589 is 6A.

**MR FRANCIS QUENTIN CALLARD:** A.

**ADV MAHLAPE SELLO:** You recall 66 is in two parts.

**MR FRANCIS QUENTIN CALLARD:** 66 is in two parts.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** Thank you.

20 **CHAIRPERSON:** Yes.

**MR FRANCIS QUENTIN CALLARD:** 66A is the legible copy.

**ADV MAHLAPE SELLO:** Yes, yes.

**CHAIRPERSON:** Okay. Yes.

**ADV MAHLAPE SELLO:** We are there.

**MR FRANCIS QUENTIN CALLARD:** Thank you. Thank you Counsel.

Chair the point is – I wish to make is that this qualified BAFO does not include all these items, contingencies and the word etcetera. If we look at page 589 which is now this legible copy and at the bottom just above the note we have the last line is forex due to the difference. They explain the difference between the first and the second BAFO's and we will see there the difference is made up of the words used are discount on price.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** So this qualified BAFO with all  
10 these qualifications is taken forward into this evaluation documents as a discount. It is my belief and contention that a qualification like this cannot be presented or should not be presented as an unqualified discount is the point I wish to make on this one.

**ADV MAHLAPE SELLO:** Mr Callard I do not know if you are able to assist. In reading Annexure 98 which is CNR's response of the 10 June 2014 indicating a drop in price from 39 to 27 at – that is your paragraph 187 you have quoted it there.

**MR FRANCIS QUENTIN CALLARD:** Yes.

**ADV MAHLAPE SELLO:** Would our reading be correct if we conclude  
20 that to the extent that that is a response to the letter – the invitation by Transnet as per para – as per Annexure 95 you will with this is 184. That response went beyond what Transnet required of the bidders to do?

**MR FRANCIS QUENTIN CALLARD:** Indeed yes that is correct. It is a response to the annexure in



**ADV MAHLAPE SELLO:** 95.

**MR FRANCIS QUENTIN CALLARD:** The letter in Annexure 95 and I would also agree that it goes beyond – the response is beyond what was requested in the base – in the letter of Annexure – in the letter of the 4 January.

**ADV MAHLAPE SELLO:** The 4 January.

**MR FRANCIS QUENTIN CALLARD:** Yes.

**ADV MAHLAPE SELLO:** Now looking at the response and what CNR claims to have been deducted to reduce the price to 27 million based  
10 on your knowledge and experience are those costs relevant to determining the costs that are deducted are they relevant to determining the total costs to be incurred by Transnet for the acquisition of the locomotive or are these options that can be ignored?

**MR FRANCIS QUENTIN CALLARD:** These are not options in the sense that we would normally understand the word options as applied to the locomotive of making it fit for purpose.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** These are elements of a price to provide a locomotive if I may call it free on siding. There is the  
20 locomotive free – or ex works.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** Ready for delivery. I highlighted the point on my paragraph 182.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** That we have now taken out all of

the manpower costs, factory overheads, admin overheads and if the wording is to be believed may I use that phrase, overheads and mark-up which would imply that well thank you I have sacrificed my entire mark-up by taking this out. What I – I cannot explain the inconsistencies I only see the inconsistencies and the use of the word etcetera as I highlighted earlier is – does not constitute a BAFO it is a qualified price which cannot be taken into a discount.

**ADV MAHLAPE SELLO:** Okay. Transnet then receives this Annexure 98 which is CNR's response.

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

**ADV MAHLAPE SELLO:** To the request for clarification as regards the hedging and escalations, what then transpires?

**MR FRANCIS QUENTIN CALLARD:** I not this because and it struck me as being unusual. I do not say it is incorrect I only say it was unusual that following this response then on the 14 January and that correct – on paragraph 188 that correction is noted that Mr Molefe writes to CNR.

**ADV MAHLAPE SELLO:** Yes.

20 **MR FRANCIS QUENTIN CALLARD:** Under his signature that the 10 January response inter alia did not indicate the foreign currency amount per individual currency and amount bold and underlined. In essence highlighting that CNR did not fully respond to their letter. CNR responds on the 14 January on the same day referring back to their tender proposal of the 30 April that this was – that there appears to have been considerable pressure on this because on the 15 January 2014 the and I am reading paragraph 190.

“The cross function and evaluation team finance submit the results of their best and final offer responses to the Locomotive Steering Committee.”

And this is on – this is Annexure 66.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** Mr Molefe’s letter may be found at Annexure 99 which is paragraph – page

**ADV MAHLAPE SELLO:** Annexure 7.

**MR FRANCIS QUENTIN CALLARD:** 788.

10 **ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** His letter of the 14 January to CNR requesting and it goes out under his personal signature.

**ADV MAHLAPE SELLO:** How – if one has regard to the response of the 10 January which states that the price has now reduced to 27 million per locomotive.

**MR FRANCIS QUENTIN CALLARD:** Yes.

**ADV MAHLAPE SELLO:** And then...

**MR FRANCIS QUENTIN CALLARD:** Or sorry by 27 million.

**ADV MAHLAPE SELLO:** No reduced to 27 million,

20 **MR FRANCIS QUENTIN CALLARD:** Oh sorry to 27 million.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** Yes, sorry, sorry, apologies.

**ADV MAHLAPE SELLO:** And at the same time in response to a further letter from Transnet to CNR indicating that it did not indicate the following currency amount per individual currency and amount when

CNR refers Transnet back to their tender proposal of 30 April 2013 as you state in your 189.

**MR FRANCIS QUENTIN CALLARD:** Yes.

**ADV MAHLAPE SELLO:** Are we then not talking about two different purchase prices? Did the 30 April 2013 tender proposal also propose a price of 27 million? I am trying to reconcile that response to what is stated in their letter of 10 January reducing the purchase price by 14 million – by 12 million?

**MR FRANCIS QUENTIN CALLARD:** No the base price I would go back  
10 to 187.1.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** Their wording we have reduced our base price in the TCO model as referred to in your letter from 39,7 million rounded down to 27.3. So 39.7 million refers I do not want to say exactly at the moment we can check that up to their offer of the April 2013.

**ADV MAHLAPE SELLO:** 2013.

**MR FRANCIS QUENTIN CALLARD:** Yes.

**ADV MAHLAPE SELLO:** So when they – the refer Transnet back to  
20 that offer when the 39 has reduced to 27 does that address the query contained in your paragraph 188? Because we are now talking two different prices. We started at 39 which is what was in their proposal in April 2013 what eight months later they say that price has reduced to 27 million? On 14 January when it is indicated that they do not indicate the foreign currency amount per individual currency and

amount they refer you back to their original proposal.

**MR FRANCIS QUENTIN CALLARD:** Correct. When a – sorry.

**ADV MAHLAPE SELLO:** Yes. No my question is can you assist us in reconciling all these documents?

**MR FRANCIS QUENTIN CALLARD:** When a locomotive bid is submitted one is asked for an effectively a rand price.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** One is asked for the local content. One asks the bidders to specify their local content. One asks the  
10 bidders to specify what is the imported content of the locomotive in – and in the foreign currency and it may be in one or more foreign currencies. There were – in the 1064 it was generally in dollar but there was also a bid which had both dollar and euros. One also asks – the bidders are also asked to state the date on which they have applied that currencies in determining their final locomotive price. So the – for CNR the dollar component of their locomotive price which was asked for in the – in the letter if I may be correct there they just refer back to their original bid. So notwithstanding having reduced the or given a qualified if I may use the qualified BAFO price of now some 27.3 million  
20 per locomotive they say that the dollar component of the locomotive, the imported component has not changed. By implication of this by using inverse logic it would seem that the total amount which they have then discounted would have been a South African Rand by implication, by inverse logic.

**ADV MAHLAPE SELLO:** Okay. Yes. That clarification I wanted to get

thank you. And you do indicate that the next day then what is referred to as the best and final offer responses are then submitted to the cross function evaluation team?

**MR FRANCIS QUENTIN CALLARD:** Yes also by the CFET.

**ADV MAHLAPE SELLO:** And that is the figure that finds its way into page 589 Annexure B of 589?

**MR FRANCIS QUENTIN CALLARD:** Yes may I say while I – look that up.

**ADV MAHLAPE SELLO:** The table 66A.

10 **MR FRANCIS QUENTIN CALLARD:** Table 6A. And that is the figure which finds its way into 589.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** It is also the figure which finds its way into page 584 which is the table on the opening page of the memorandum.

**ADV MAHLAPE SELLO:** The memorandum yes. Okay then I think Chair we then have clarified the issues that Mr Callard wanted to deal with or dealt with and unless there are any clarities required that will bring...

20 **CHAIRPERSON:** Ja no you may proceed.

**ADV MAHLAPE SELLO:** Thank you.

**MR FRANCIS QUENTIN CALLARD:** May I just make one comment.

**ADV MAHLAPE SELLO:** Absolutely.

**MR FRANCIS QUENTIN CALLARD:** Please Mr – Counsel just to be quite sure. The table on page 589

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** Describes how the difference is made up and it attributes that 12.3 million as a discount.

**ADV MAHLAPE SELLO:** As a discount?

**MR FRANCIS QUENTIN CALLARD:** As a – made – the table on page 11 the make-up at that price which incorporates that 12.3 is to be found on page 589 so...

**ADV MAHLAPE SELLO:** What do you mean table at page 11?

**MR FRANCIS QUENTIN CALLARD:** Correct the table on page 84.

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

**MR FRANCIS QUENTIN CALLARD:** Sorry it has an eleven on it.

**ADV MAHLAPE SELLO:** Oh okay. The table at 584?

**MR FRANCIS QUENTIN CALLARD:** 584.

**ADV MAHLAPE SELLO:** That figures discounted by 12 million.

**MR FRANCIS QUENTIN CALLARD:** Million the composition...

**ADV MAHLAPE SELLO:** Is what now appears...

**MR FRANCIS QUENTIN CALLARD:** And makeup of that is outlined on page 589.

20 **ADV MAHLAPE SELLO:** Yes. And now it is that figure that goes into the memorandum from the CFET?

**MR FRANCIS QUENTIN CALLARD:** Correct.

**ADV MAHLAPE SELLO:** Okay at 584?

**MR FRANCIS QUENTIN CALLARD:** Yes.

**ADV MAHLAPE SELLO:** Thank you. You – you proceed to then express a view that the very BAFO prices which are now set out in – we

know in the memorandum at page 584 do not reflect the real cost of the locomotive?

**MR FRANCIS QUENTIN CALLARD:** Yes.

**ADV MAHLAPE SELLO:** Can you explain why you so conclude?

**MR FRANCIS QUENTIN CALLARD:** The estimated total cost of a business case or of a memorandum like this would be so that the organisation could have an understanding effectively of the – what it is going to cost them and of the cash flow. The memorandum which have submitted are not a reflection of the real cost of the locomotives. The  
10 – to illustrate this the make-up of a real cost of a locomotive is set out in pages 40 and 47 of Annexures 83 and 84 respectively. May I just refer to that briefly/

**ADV MAHLAPE SELLO:** Okay.

**MR FRANCIS QUENTIN CALLARD:** Let us use one of them page 80 – Annexure 83 page 40.

**ADV MAHLAPE SELLO:** That would start at page 639 of BB4[a]. Apologies BB4[e] my apologies.

**MR FRANCIS QUENTIN CALLARD:** Ja.

**ADV MAHLAPE SELLO:** BB4[b].

20 **MR FRANCIS QUENTIN CALLARD:** BB4[b] yes.

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

**MR FRANCIS QUENTIN CALLARD:** And

**ADV MAHLAPE SELLO:** We are at BB4[b] and locating Annexure 83.

**MR FRANCIS QUENTIN CALLARD:** Annexure 83 that final

**ADV MAHLAPE SELLO:** Which starts at page 639. 83 Chair.



**CHAIRPERSON**: That is where I was and you said sorry and then ...

**ADV MAHLAPE SELLO**: That is where you were.

**CHAIRPERSON**: And then you...

**ADV MAHLAPE SELLO**: And it is because I got corrected from the side so when I checked my files I got – she misheard – she thought I had said a? So Chair apologies.

**CHAIRPERSON**: Okay.

**ADV MAHLAPE SELLO**: We were right – in the right file [b].

**CHAIRPERSON**: Okay, alright.

10 **ADV MAHLAPE SELLO**: Annexure 83.

**CHAIRPERSON**: Hm.

**ADV MAHLAPE SELLO**: Yes. Yes Mr Callard we are there.

**MR FRANCIS QUENTIN CALLARD**: Thank you. If I could take you through to page 40 which – sorry to page 40.

**ADV MAHLAPE SELLO**: Typed 40?

**MR FRANCIS QUENTIN CALLARD**: The annexure which is page 679.

**ADV MAHLAPE SELLO**: 679. Yes.

**CHAIRPERSON**: What Annexure, what page?

**ADV MAHLAPE SELLO**: Annexure 83 am I correct?

20 **MR FRANCIS QUENTIN CALLARD**: Annexure 83

**ADV MAHLAPE SELLO**: And at that annexure you would like us to turn to page 679?

**MR FRANCIS QUENTIN CALLARD**: 79 yes.

**CHAIRPERSON**: Okay. Try and just be consistent and use the number – page numbers at the top right hand corner.

**MR FRANCIS QUENTIN CALLARD:** My apologies.

**CHAIRPERSON:** The other numbers will confuse us. Number 679.

**MR FRANCIS QUENTIN CALLARD:** 679.

**ADV MAHLAPE SELLO:** Okay.

**MR FRANCIS QUENTIN CALLARD:** A clear copy of that page because it is relatively indistinct can be found in the supplementary on page 23 of the supplementary Annexure 83. That has a clear copy of that page.

**ADV MAHLAPE SELLO:** Yes.

**CHAIRPERSON:** At what page of the supplementary?

10 **MR FRANCIS QUENTIN CALLARD:** Page 23 of the supplementary.  
Annexure 80.

**CHAIRPERSON:** Oh that is Exhibit BB4

**ADV MAHLAPE SELLO:** [c]

**CHAIRPERSON:** [e].

**ADV MAHLAPE SELLO:** [c] Chair.

**CHAIRPERSON:** [c]?

**ADV MAHLAPE SELLO:** [c]. Supplementary BB4[c].

**CHAIRPERSON:** Okay.

**ADV MAHLAPE SELLO:** Thank you.

20 **CHAIRPERSON:** Yes.

**ADV MAHLAPE SELLO:** Yes Mr Callard.

**MR FRANCIS QUENTIN CALLARD:** Without going through the detail Chair I just wish to highlight that the table at the top of that page indicates the elements which make up a locomotive price.

**CHAIRPERSON:** Yes.

**MR FRANCIS QUENTIN CALLARD:** And we will – if I then may take you to again on that page to the second last line and we have covered this but I wish to restate the point I will take it forward in a moment. On the second last line from the bottom we have the impact of not using TE as a main sub-contractor and will see it is subtracted from that because the line below that is the price used for evaluation. So if that is the price used for evaluation I would now like to – with this impact of TE being excluded from this price one cannot use this price for evaluation now as a determination well how much does this locomotive cost because I have excluded an element of the price? So with these prices making their way into the memorandum as we have seen from the CFET going forward which we have just spoken about the price given forward and taken forward into the organisation is not the true cost of the locomotive. The reason or in support of this is and we will show later that this TE component price the impact of TE is later added back to this cost when they come to determine the actual cost to the locomotive. So by not taking this forward whichever hierarchy these memorandums are playing through they are not indicative of the real cost of a locomotive and that was the key point which I make here.

20 **ADV MAHLAPE SELLO:** Huh-uh.

**MR FRANCIS QUENTIN CALLARD:** And I would go back to this point was quite a deep one because I refer in 193 that even analysis which I did earlier these figures were taken at ...

**CHAIRPERSON:** Is that now 193 of what?

**ADV MAHLAPE SELLO:** Of your ...

**MR FRANCIS QUENTIN CALLARD:** 193 of my ...

**CHAIRPERSON:** Paragraph 193 of your statement.

**MR FRANCIS QUENTIN CALLARD:** Paragraph 193 of the statement.

**CHAIRPERSON:** Okay.

**MR FRANCIS QUENTIN CALLARD:** I had also on the first reading this assumed this price going forward is a real cost of a locomotive. It was not a real cost of a locomotive. Calculations I performed on a real cost of a locomotive were not on the real cost of a locomotive. When one unpacks this one sees that in fact it was quite different but equally the point was made the locomotives are then evaluated not on their real cost but on the impact of TE. We have covered that. I have submitted that the impact of TE was not part of the evaluation process or should not have been part of the evaluation process.

**CHAIRPERSON:** Where you are able to do address the question of whether you think some of these things were done deliberately because for purposes of the Commission if certain things were not done right but it was just genuine mistakes it might not be important if you know what is important is when schemes are devised in order to achieve wrong objectives. So just bear that in mind – you know. They can make lots of mistakes and so on and that is not good but that maybe somebody else – else's job to deal with in term - in terms of any competence and so on. So our focus is really on things that may have been done deliberately or to deceive in order to achieve certain illegal objectives.

**MR FRANCIS QUENTIN CALLARD:** Mr Chair ...

**CHAIRPERSON:** I accept that you might not always be able to – to say

but I just want to remind you that where you are able to say that on a properly analysis of certain documents and the facts this must have been deliberately done for certain unacceptable objectives but where you are not able to say I know that you – you might not be able to say in all the cases.

**MR FRANCIS QUENTIN CALLARD:** Chair if I may answer you by referring to page 156 of my statement – sorry – to paragraph 156 of my statement.

**CHAIRPERSON:** Yes.

10 **MR FRANCIS QUENTIN CALLARD:** Through a lengthy process ...

**ADV MAHLAPE SELLO:** At page 37.

**MR FRANCIS QUENTIN CALLARD:** Page 37.

**ADV MAHLAPE SELLO:** Thank you.

**MR FRANCIS QUENTIN CALLARD:** I said:

20 “I will cover the following to support my contention that the evaluation process was flawed. First prescribing the role of TE as a subcontractor when it was not supported by the documentation. Secondly, using the prescription of TE as a mechanism to adjust the price for evaluation. The third element, inconsistently applying the prescription of TE across the bidders.”

In answer to your question those three elements in my opinion demonstrate a pattern of events which favoured certain bidders. I do not believe that they can be characterised as mistakes. For me – to me

and in my opinion they demonstrated a pattern of events.

**CHAIRPERSON:** No, thank you.

**ADV MAHLAPE SELLO:** And before we leave that topic I interpret from what you have stated that what is presented in the memo is a misrepresentation of the actual cost of the acquisition of the locomotive?

**MR FRANCIS QUENTIN CALLARD:** And that is point four that I made in that one:

10                    “As a consequence of the above the BAFO prices presented to the 1 064 Locomotive Steering Committee and by extension we have seen how they have been taken forward but the – the various were not a true reflection of the real cost of the locomotive.”

**ADV MAHLAPE SELLO:** And the element that is deducted from the cost whether in the BAFO or in the original bid to present a misstated BAFO will only in the future or in time creep back into the cost for the real cost of the locomotive?

20                    **MR FRANCIS QUENTIN CALLARD:** On the electric locomotives what was removed as the BAFO – as the impact of TE is later added back into the evaluation – into the cost structure of the locomotive. That is the case for the electric locomotives. I do not see the same patter for the diesel locomotives.

**ADV MAHLAPE SELLO:** Noted. Thank you. Have you covered everything you – you wanted to tell the Chair about as regards the

BAFO not reflecting the true cost? Is there anything outstanding?

**MR FRANCIS QUENTIN CALLARD:** I ...

**ADV MAHLAPE SELLO:** You have?

**MR FRANCIS QUENTIN CALLARD:** I am comfortable, thank you.

**ADV MAHLAPE SELLO:** Because you now jump to 2018 this is after 2014.

**MR FRANCIS QUENTIN CALLARD:** Yes.

**ADV MAHLAPE SELLO:** Before we get to 2018 after your – after this process and the submission of the BAFO and before January 2018 did  
10 you have anything further to do with this process of acquisition? Were you engaged in the process of acquisition in any form or manner?

**MR FRANCIS QUENTIN CALLARD:** No.

**ADV MAHLAPE SELLO:** No?

**MR FRANCIS QUENTIN CALLARD:** No.

**ADV MAHLAPE SELLO:** As you indicated your paragraph 193 you performed a financial analysis in January 2018?

**MR FRANCIS QUENTIN CALLARD:** Yes.

**ADV MAHLAPE SELLO:** And you explain what information you had at your disposal at the time and the assumptions you had made?

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

**ADV MAHLAPE SELLO:** You deal with then from 195 the January 2018 price validation and firstly is that flowing from the financial analysis you had performed?

**MR FRANCIS QUENTIN CALLARD:** No, no. I was asked to perform a financial analysis in January 2018.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** And in that process I uncovered – as I said – pertinent and anonymous information relating to the final contract on price and the inconsistencies in the make-up of the locomotive price.

**ADV MAHLAPE SELLO:** Now what I want to understand is there is a – you have told that you performed a financial analysis. What – when you have a heading “January 2018 Price Validation” we are – we are basically talking about information you uncovered in the process of the  
10 financial analysis?

**MR FRANCIS QUENTIN CALLARD:** May I take you through that process which really starts then at 196?

**ADV MAHLAPE SELLO:** Before you get to 196.

**MR FRANCIS QUENTIN CALLARD:** Sorry.

**ADV MAHLAPE SELLO:** You used to concentrate. You said you conduct a financial analysis at 193?

**MR FRANCIS QUENTIN CALLARD:** Yes.

**ADV MAHLAPE SELLO:** Okay. At just before 195 you have a heading “January 2018 Price Validation”. Those are not two independent  
20 processes. It is the same process?

**MR FRANCIS QUENTIN CALLARD:** It is the same process.

**ADV MAHLAPE SELLO:** You just give it a different name?

**MR FRANCIS QUENTIN CALLARD:** The same process.

**ADV MAHLAPE SELLO:** Thank you.

**MR FRANCIS QUENTIN CALLARD:** Sorry – they have a different



name.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** Yes.

**ADV MAHLAPE SELLO:** Then – then you may take us through what you did in that price – that financial analysis and what you uncovered.

**MR FRANCIS QUENTIN CALLARD:** And I am taking you through my report from paragraph 196 this is on page 51.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** Heading “January 2018” I was  
10 approached Ms Nomfuyo Galeni and Mr Garry Pita to insist – to assist  
in reconciling the 38.6 billion which was deposited by the business  
case to the 49.55 billion which excluded options and contingencies  
which was finally contracted for the 1 064 locomotives and this was  
shortly after the publication of the Werksmans Report and Transnet as I  
understood it wanted to develop a formal response. I think it is - being  
recorded elsewhere many times. The Werksmans Report was  
considered inconclusive.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** And there were two points to that.  
20 I was – well I was part of a team that primarily compromised  
Messieurs Yousuf Laher and Mohammed Moola an Executive Manager  
Finance and others participated in a secondary role. Effectively our  
brief was twofold to show conclusively that forex hedging and  
escalation were included in the business case and reconcile –  
secondly, reconcile the 38.6 billion of the business case to the contract

amount of 49.5. The first task of showing that forex and hedging were included in the business case was easily completely and we have covered that at some length. References to the numerous instances where it is mentioned and incorporated in the financial models. I just comment it was a personal observation that the business case may have been better served if we had clearly indicated in the business case that the assumptions around forex and hedging had been clearly identified rather than requiring a detailed reading of the business case but that is purely a personal observation.

10 **ADV MAHLAPE SELLO:** Huh-uh.

**MR FRANCIS QUENTIN CALLARD:** I – I make note that the prices used in the locomotives of – I describe the process which I followed and I do not know that I need describe the whole thing in the record. If I may just to them – really to the conclusions.

**ADV MAHLAPE SELLO:** Before you do so ...

**MR FRANCIS QUENTIN CALLARD:** (Intervenes).

**ADV MAHLAPE SELLO:** With your reference to your 196 for the record you make reference to the contract finally – the 49.5 billion finally contracted for the 1 064 locomotives. You confirm that that contract  
20 was concluded in 2014 – March 2014?

**MR FRANCIS QUENTIN CALLARD:** That was the March 2014.

**ADV MAHLAPE SELLO:** And the business case had stated 38.6 billion as a total cost – estimated total cost?

**MR FRANCIS QUENTIN CALLARD:** That is an ETC yes.

**ADV MAHLAPE SELLO:** The contracts are concluded at 49.5 billion?

**MR FRANCIS QUENTIN CALLARD:** Excluding options and contingencies.

**ADV MAHLAPE SELLO:** Excluding options and contingencies?

**MR FRANCIS QUENTIN CALLARD:** Yes.

**ADV MAHLAPE SELLO:** And then you – you undertake this exercise to determine whether the increase of 49.5 billion was justified in the circumstances?

**MR FRANCIS QUENTIN CALLARD:** How could we reconcile it?

**ADV MAHLAPE SELLO:** Yes.

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

**ADV MAHLAPE SELLO:** Please go ahead.

**MR FRANCIS QUENTIN CALLARD:** We – before ...

**CHAIRPERSON:** Before you do that.

**MR FRANCIS QUENTIN CALLARD:** Yes.

**CHAIRPERSON:** Can I just ask whether the 38 – the 38 billion do you move from the premise that that was in order itself before there was an increase or is that something you did not look into?

20 **MR FRANCIS QUENTIN CALLARD:** What we wish to demonstrate Chair or analyse what were the factors which could cause the 38.6 to move to a higher price whether it reached – whatever price it reached and there were a number of factors which we considered.

**CHAIRPERSON:** No, I understand that.

**ADV MAHLAPE SELLO:** Ja.

**MR FRANCIS QUENTIN CALLARD:** Sorry.

**CHAIRPERSON:** Ja, but before you get there I just want to know

whether even the 38 billion from where the amount moved up ...

**MR FRANCIS QUENTIN CALLARD:** Yes.

**CHAIRPERSON:** Whether you have done an exercise whether that would have been a reasonable price?

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

**CHAIRPERSON:** *Ja.*

**MR FRANCIS QUENTIN CALLARD:** The 38.6 was a figure which McKinsey developed from their model which was in the – put forward in the April 2013 business case. I had seen that model. I had commented  
10 on that model and was comfortable with that price.

**CHAIRPERSON:** You were comfortable with that?

**MR FRANCIS QUENTIN CALLARD:** It had followed very much the same figures ...

**CHAIRPERSON:** Yes.

**MR FRANCIS QUENTIN CALLARD:** Which we had submitted a - a year ...

**CHAIRPERSON:** Okay.

**MR FRANCIS QUENTIN CALLARD:** In (indistinct) or so.

**CHAIRPERSON:** Okay. No that is – that is – that is fine.

20 **MR FRANCIS QUENTIN CALLARD:** I was comfortable at that level. I had no reason to ...

**CHAIRPERSON:** Yes.

**MR FRANCIS QUENTIN CALLARD:** To dispute that model figure.

**CHAIRPERSON:** Yes and what was the period that had lapsed between the time when that was the price that was given and this 49 billion –

over what period. I just want to have an idea what may have changed during that interval.

**MR FRANCIS QUENTIN CALLARD:** Certainly. Two significant time lapses Chair. The one time lapse was the business case was approved in April 2013. It was awarded in March 2017 so that – sorry – March 2014.

**CHAIRPERSON:** Yes.

**MR FRANCIS QUENTIN CALLARD:** Thank you.

**CHAIRPERSON:** About a year later?

10 **MR FRANCIS QUENTIN CALLARD:** About a year later.

**CHAIRPERSON:** Yes.

**MR FRANCIS QUENTIN CALLARD:** There were significant foreign exchange fluctuations ...

**CHAIRPERSON:** Yes.

**MR FRANCIS QUENTIN CALLARD:** Over that time.

**CHAIRPERSON:** Yes.

**MR FRANCIS QUENTIN CALLARD:** However the request for proposal had gone out – if I recall the date correctly - was in July 2013 with a closure date in April 2000 - sorry – I forget when the closure date is.

20 **CHAIRPERSON:** *Ja.*

**MR FRANCIS QUENTIN CALLARD:** The business case went out in July 2013. May of the bidders put their base price around August 2013 which was even six months previous prior to the business case. So when we talk of escalation up to award and forex change up to award from the bidders perspective it was not from the time which we – the

business case was approved but from the time which they did their initial calculations. So which takes it back even slightly further than the year of the business case.

**CHAIRPERSON:** Okay, thank you.

**ADV MAHLAPE SELLO:** And while we are on that just so we remind ourselves the 38.6 billion that was deposited in the business case and as you confirmed by McKinsey in their assessment excluded only borrowing costs?

**MR FRANCIS QUENTIN CALLARD:** Excluded only borrowing costs. It  
10 included forex and hedging.

**ADV MAHLAPE SELLO:** Thank you. Alright please proceed.

**MR FRANCIS QUENTIN CALLARD:** The process which we followed was first to take the original business case. We created a model which replicated the McKinsey model with a high degree of correlation because the McKinsey model did not lend itself to this incremental analysis. We created a new model. Went through stages of incremental analysis of here is the business case. Let us delay the business case for a year because it was delayed. See what the impact of the forex on that was. Having delayed it for a year we then said let  
20 us then shorten the delivery period because from the initial seven year delivery period deposited by the business case it came to three years – shorten the delivery period. Then we changed it to what were the real prices used by – tendered by the locomotives. Then we changed the local content not to reflect the 60/40 which was used in the business case but to the actual local content as stipulated by the bidders to try

and arrive at a figure but long story short on this in retrospect – and I make this point – those calculations were flawed because as a going in position I used the figures which were presented in the BAFO – in these memorandums and have just indicated that those were not the real prices of the locomotives. That was the information which we had available at the time. So those calculations of January 2018 were flawed but in that at that time I became aware of two spreadsheets. I call them the March 2017 negotiation spreadsheets. One deals with diesel. One deals with electric locomotives.

10 **ADV MAHLAPE SELLO:** Now before ...

**MR FRANCIS QUENTIN CALLARD:** Sorry.

**ADV MAHLAPE SELLO:** Before we get to the spreadsheets ...

**MR FRANCIS QUENTIN CALLARD:** Yes.

**ADV MAHLAPE SELLO:** And I – the Chair has noted that at the time you did this financial analysis you worked on the BAFO?

**MR FRANCIS QUENTIN CALLARD:** Correct.

**ADV MAHLAPE SELLO:** But notwithstanding on your calculation insofar as electric locomotives are concerned the ETC taking into consideration forex movement in the period between submission of bid  
20 and conclusion of the tender – of the contract the electric ETC had moved to 40.45 billion?

**MR FRANCIS QUENTIN CALLARD:** 40.45 that was the total electrical and diesel.

**ADV MAHLAPE SELLO:** Against a 49.5 billion?

**MR FRANCIS QUENTIN CALLARD:** Correct.

**ADV MAHLAPE SELLO:** Contract amount?

**MR FRANCIS QUENTIN CALLARD:** Yes, yes and I make the further point in 204.1 bottom of page 52 ...

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** That I had used the same prices for diesel and electric locomotives when I corrected this the ETC reduced to 39.497 but I stressed that those were wrong prices used in this BAFO and we had some debate at the time on the impact of TE and my interpretation to the team at that time was the way this was  
10 presented. A TE price should not make an impact of the – I was unaware of the detail which I had - subsequently I covered to see that the TE price should make an impact.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** Which leads then to the 205 that this initial analysis however as commented earlier does not include the premium TE as the BAFO prices used were not the true base price of the locomotive.

**ADV MAHLAPE SELLO:** Yes. Okay, you wanted now to turn to the spreadsheets?

20 **MR FRANCIS QUENTIN CALLARD:** During a big presentation I became aware of these two spreadsheets. I was told ...

**CHAIRPERSON:** And where are they?

**ADV MAHLAPE SELLO:** I think Mr Callard is now at his paragraph 206 page 53 Chair.

**CHAIRPERSON:** Yes.



**MR FRANCIS QUENTIN CALLARD:** I will highlight the spreadsheets in about ...

**CHAIRPERSON:** Oh you are still going to go ...

**ADV MAHLAPE SELLO:** Yes.

**CHAIRPERSON:** To go there?

**MR FRANCIS QUENTIN CALLARD:** I will go there.

**CHAIRPERSON:** Okay, alright.

**MR FRANCIS QUENTIN CALLARD:** I will go there. I was told that the spreadsheets were restricted and/or confidential and could not gain  
10 access to them. I subsequently asked the Freight Rail CFO for access to the files and (intervenes).

**CHAIRPERSON:** I am sorry. You were told that ...

**MR FRANCIS QUENTIN CALLARD:** They were ...

**CHAIRPERSON:** You were not to have access to them?

**MR FRANCIS QUENTIN CALLARD:** Correct.

**CHAIRPERSON:** Oh and who told that?

**MR FRANCIS QUENTIN CALLARD:** Hm.

**CHAIRPERSON:** Oh you cannot remember but that is what you were told?

20 **MR FRANCIS QUENTIN CALLARD:** No, I can remember.

**CHAIRPERSON:** Oh.

**MR FRANCIS QUENTIN CALLARD:** Mr Yousuf Laher.

**CHAIRPERSON:** Okay. Yes, are you able to tell me?

**MR FRANCIS QUENTIN CALLARD:** Well he said they are restricted ...

**ADV MAHLAPE SELLO:** Sorry Mr Callard. I think the Chair missed the

name.

**CHAIRPERSON**: Yes, the name.

**ADV MAHLAPE SELLO**: You provide the name.

**MR FRANCIS QUENTIN CALLARD**: Mr Yousuf Laher.

**ADV MAHLAPE SELLO**: Thank you.

**CHAIRPERSON**: Oh okay, okay. That is the one who had asked you at some stage to work on some memorandum or something?

**MR FRANCIS QUENTIN CALLARD**: He was part of the team working on the same memorandum.

10 **CHAIRPERSON**: Yes, *ja*.

**MR FRANCIS QUENTIN CALLARD**: The team is – as I mentioned – essentially compromised Mr Yousuf Laher, Mr Mohammed Moola and myself and there were others in a secondary role.

**CHAIRPERSON**: Yes, yes.

**MR FRANCIS QUENTIN CALLARD**: But that was the – the core of the ...

**CHAIRPERSON**: Yes.

**MR FRANCIS QUENTIN CALLARD**: The three of us formed the core of the team.

20 **CHAIRPERSON**: Yes. So he said that you may not have access to the spreadsheets?

**MR FRANCIS QUENTIN CALLARD**: Correct.

**CHAIRPERSON**: *Ja* and what was your reaction to that?

**MR FRANCIS QUENTIN CALLARD**: I said these are crucial spreadsheets. They – they appear to have the figures relevant to the –

the prices and the – the information we need to come to this conclusion of what was the – how do we move from 38.6 to the 49 billion or the 54 however we wish to interpret it and ...

**CHAIRPERSON:** This is still at that time?

**MR FRANCIS QUENTIN CALLARD:** This is in January 2018 – January 2018.

**CHAIRPERSON:** Oh.

**MR FRANCIS QUENTIN CALLARD:** February 2018.

**CHAIRPERSON:** Oh, okay alright.

10 **MR FRANCIS QUENTIN CALLARD:** *Ja*. This is part – when I was called back to do the analysis.

**CHAIRPERSON:** Oh, okay *ja, ja*. After the event?

**MR FRANCIS QUENTIN CALLARD:** Way after ...

**CHAIRPERSON:** Way after the event.

**MR FRANCIS QUENTIN CALLARD:** I was called back to do the analysis.

**CHAIRPERSON:** Yes, okay alright.

**MR FRANCIS QUENTIN CALLARD:** I see these spreadsheets. I say sorry. I approached the Transnet Chief Financial Officer and said  
20 please we need these spreadsheets. After some days I was given the spreadsheets. By that time ...

**CHAIRPERSON:** And who was the Chief Financial Officer at the time – 2018, January?

**MR FRANCIS QUENTIN CALLARD:** That was Ms Nomfuyo Galeni.

**CHAIRPERSON:** Okay, alright. So you got the spreadsheets?

**MR FRANCIS QUENTIN CALLARD:** Got the spreadsheets.

**CHAIRPERSON:** Yes but before you approached the Chief Financial Officer what justification did Mr Laher give to you for saying you may not have access to the spreadsheets when you were part of the team?

**MR FRANCIS QUENTIN CALLARD:** I cannot recall that – what justification was given except that they were confidential.

**CHAIRPERSON:** Okay, alright.

**MR FRANCIS QUENTIN CALLARD:** If there was a further justification ...

10 **CHAIRPERSON:** You are not aware of what it was?

**MR FRANCIS QUENTIN CALLARD:** It escapes me.

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

**ADV MAHLAPE SELLO:** Thank you Chair.

**MR FRANCIS QUENTIN CALLARD:** When I received the spreadsheets and they are put here. Could I skip 207 please ...?

**ADV MAHLAPE SELLO:** Okay.

**MR FRANCIS QUENTIN CALLARD:** But go to 208.

**ADV MAHLAPE SELLO:** We are at 208 of your statement, yes.

**MR FRANCIS QUENTIN CALLARD:** 208 of my statement.

20 **CHAIRPERSON:** Yes.

**MR FRANCIS QUENTIN CALLARD:** May I backtrack. Apologies. I have to backtrack to my statement ...

**CHAIRPERSON:** Huh-uh.

**MR FRANCIS QUENTIN CALLARD:** And I need to go to ...

**CHAIRPERSON:** Yes.

**MR FRANCIS QUENTIN CALLARD:** Could I go to 159 of my statement please? Page 39 paragraph 159.

**ADV MAHLAPE SELLO:** Okay and that is page 39.

**MR FRANCIS QUENTIN CALLARD:** Page 39 ...

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** Paragraph 159.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** I am referring now to these files of Excel spreadsheets and they are crucial to an understanding of the  
10 development of the final locomotive pricing. One was for electric locomotives and the other was for diesel locomotives. I move to paragraph 159.2.

**CHAIRPERSON:**

**ADV MAHLAPE SELLO:** Before you do so.

**MR FRANCIS QUENTIN CALLARD:** Sorry.

**CHAIRPERSON:**

**ADV MAHLAPE SELLO:** You recall when you first made reference to the Excel spreadsheets the Chair wanted to know if they are in your file.

20 **MR FRANCIS QUENTIN CALLARD:** They are in the file.

**ADV MAHLAPE SELLO:** Now can you – can we identify ...

**CHAIRPERSON:** I want us to identify them so that ...

**ADV MAHLAPE SELLO:** They are annexures.

**MR FRANCIS QUENTIN CALLARD:** Certainly, certainly.

**CHAIRPERSON:** We do not keep on talking about spreadsheets.

**ADV MAHLAPE SELLO:** Indeed Chair.

**CHAIRPERSON:** Whoever reads the transcripts where – where are they?

**MR FRANCIS QUENTIN CALLARD:** Fine. Chair could I take you first to the diesel locomotives please. I will use the diesel ones which are Annexure 77 ...

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** In the second bundle and they are at page 622.

10 **CHAIRPERSON:** Well is it BB ...

**ADV MAHLAPE SELLO:** BB ...

**CHAIRPERSON:** 4B.

**ADV MAHLAPE SELLO:** 4B Chair.

**CHAIRPERSON:** Not second bundle.

**MR FRANCIS QUENTIN CALLARD:** Sorry.

**CHAIRPERSON:** That wil confuse. So okay. Did you say Annexure 7?

**MR FRANCIS QUENTIN CALLARD:** Can we start at Annexure 77 please?

20 **CHAIRPERSON:** Thank you. Is there – I do not seem to have Annexure 77B.

**MR FRANCIS QUENTIN CALLARD:** Sorry.

**CHAIRPERSON:** I only have 77.

**ADV MAHLAPE SELLO:** 77.

**MR FRANCIS QUENTIN CALLARD:** Apologies.

**CHAIRPERSON:** I think he said 77B.

**MR FRANCIS QUENTIN CALLARD:** Apologies Chair.

**CHAIRPERSON:** *Ja.*

**MR FRANCIS QUENTIN CALLARD:** 67.

**CHAIRPERSON:** 67.

**ADV MAHLAPE SELLO:** 67.

**MR FRANCIS QUENTIN CALLARD:** 67.

**CHAIRPERSON:** Okay.

**MR FRANCIS QUENTIN CALLARD:** Yes.

**CHAIRPERSON:** Alright.

10 **MR FRANCIS QUENTIN CALLARD:** The – the annexure ...

**CHAIRPERSON:** Is that one of the spreadsheets?

**MR FRANCIS QUENTIN CALLARD:** That is one of the spreadsheets.

**CHAIRPERSON:** Yes.

**MR FRANCIS QUENTIN CALLARD:** There are – there are – the diesel locomotives are covered under 67 – Annexures 67, 68, 69, 70 and 71 because they have various worksheets in the file and the various worksheets have a – a significance to them. If I could take you through please first to annexure ...

**ADV MAHLAPE SELLO:** Sorry Mr Callard ...

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

**ADV MAHLAPE SELLO:** And again for record purposes.

**MR FRANCIS QUENTIN CALLARD:** Yes.

**ADV MAHLAPE SELLO:** Now response to the question whether or not you have the Excel spreadsheets in your record ...

**MR FRANCIS QUENTIN CALLARD:** Yes.

**ADV MAHLAPE SELLO:** You have referred the Chair to Annexure 77 and you say that it is in respect of the diesel locomotives?

**MR FRANCIS QUENTIN CALLARD:** Annexure ...

**ADV MAHLAPE SELLO:** 67 – my apologies.

**MR FRANCIS QUENTIN CALLARD:** Yes.

**ADV MAHLAPE SELLO:** That is in respect of the diesel locomotives?

**MR FRANCIS QUENTIN CALLARD:** Correct.

**ADV MAHLAPE SELLO:** You then just mentioned other annexures. Should we note that they also are spreadsheets – Excel spreadsheets  
10 and that they relate to the diesel locomotives or what point were you seeking to make?

**MR FRANCIS QUENTIN CALLARD:** I was going to go through – let us record all the spreadsheets first.

**ADV MAHLAPE SELLO:** Okay (intervenes).

**MR FRANCIS QUENTIN CALLARD:** Then we have electric - the spreadsheets for the electric locomotives which go from Annexure 60 – 70- sorry 67 to 72.

**CHAIRPERSON:** But – but are we done with the spreadsheet for diesel locomotives?

20 **MR FRANCIS QUENTIN CALLARD:** No I was just going to bring them all into the record but I wanted to take you through the Annexure, through the spreadsheets themselves.

**CHAIRPERSON:** Okay what I thought you would do is first tell – say to us the spreadsheet for diesel locomotives is found from page so and so to page so and so if it's more than one spreadsheet you say they are



found – those for diesel locomotives are found from that to that and then we go to the ones for electric locomotives, is that convenient to you or is that inconvenient?

**MR FRANCIS QUENTIN CALLARD:** No very convenient, I will try and follow that...(intervention).

**ADV MAHLAPE SELLO:** Mr Callard perhaps if I may assist, you have done precisely what the Chair requested, your paragraph 1591 if I read it correctly at page 39. You do indicate there that you are attach Annexure 67 through to 72 as worksheets for the electric locomotives  
10 and from Annexure 73 through to 77 for diesel, is that correct?

**MR FRANCIS QUENTIN CALLARD:** Correct.

**ADV MAHLAPE SELLO:** Yes.

**CHAIRPERSON:** Okay it is there in the statement what – so that one – when one goes through the Annexures, maybe one can make a note so you can – so one can see them without going to the statement but one can find them, it's okay it's not a problem.

**ADV MAHLAPE SELLO:** Okay so we've located which excel spreadsheets relates to which acquisition as per you 1591.

**CHAIRPERSON:** Yes.

20 **ADV MAHLAPE SELLO:** Okay.

**MR FRANCIS QUENTIN CALLARD:** I would also add that I – and then turning through to – I added three additional spreadsheets.

**ADV MAHLAPE SELLO:** Okay.

**MR FRANCIS QUENTIN CALLARD:** Which are described...(intervention).

**ADV MAHLAPE SELLO:** Do you want to refer to your paragraph 207 that's where you speak of additional worksheets.

**MR FRANCIS QUENTIN CALLARD:** Thank you.

**ADV MAHLAPE SELLO:** Thank you.

**MR FRANCIS QUENTIN CALLARD:** Yes on paragraph 207 I added three further Annexures.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** Because the spreadsheets are difficult to interpret one has to page through spreadsheet by  
10 spreadsheet, I added three further spreadsheets which – where I extracted the information from the existing spreadsheets and presented it on a side by side basis for easy comparison. This was Annexure 78, Annexure 78 for the diesel locomotives and Annexures 79 for CSR locomotives and Annexure 80 for BT sometimes also referred to as Bombardier those are used synonymously.

**ADV MAHLAPE SELLO:** Okay so for us not to get confused, we know 67 and 72 are the actual spreadsheets you received, they are not your creation.

**MR FRANCIS QUENTIN CALLARD:** Yes not my creation.

20 **ADV MAHLAPE SELLO:** And that is so far as the electrical locomotives is concerned, 73 to 77 are the diesel spreadsheets?

**MR FRANCIS QUENTIN CALLARD:** Yes.

**ADV MAHLAPE SELLO:** You take both sets of spreadsheets and then you create Annexure 78, 79 and 80.

**MR FRANCIS QUENTIN CALLARD:** Correct.

**ADV MAHLAPE SELLO:** And that is just for ease of comparison.

**MR FRANCIS QUENTIN CALLARD:** Correct.

**ADV MAHLAPE SELLO:** Okay so those 78.79, 80 are your creation whereas the first lot is official Transnet documentation?

**MR FRANCIS QUENTIN CALLARD:** The – yes.

**ADV MAHLAPE SELLO:** Thank you.

**MR FRANCIS QUENTIN CALLARD:** I may add that on the official Transnet documentation you might find some – occasionally some arrows which I have pointed to highlight where some figures go to the  
10 other but the numbers are unchanged.

**ADV MAHLAPE SELLO:** Okay, alright we found our – we've got our bearings now you may take us through them.

**MR FRANCIS QUENTIN CALLARD:** As an example of the – or for the diesel one, and I would like to start with the diesel first please.

**ADV MAHLAPE SELLO:** Okay.

**MR FRANCIS QUENTIN CALLARD:** Which is now...(intervention).

**CHAIRPERSON:** Are you going to spreadsheets now?

**MR FRANCIS QUENTIN CALLARD:** I'm going to the spreadsheet and I would like, first just to illustrate why the spreadsheet is important and I  
20 would like to take us please to – media, media – to Annexure 76.

**ADV MAHLAPE SELLO:** That's at BB4(b) page 620.

**MR FRANCIS QUENTIN CALLARD:** And – page 620 and I'd like us to turn to page 621 please, it is a A3 page.

**ADV MAHLAPE SELLO:** 621?

**MR FRANCIS QUENTIN CALLARD:** 621.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** The left-hand title on the page where I say media 17<sup>th</sup> of March that is my creation on the page for identification purposes, I extracted that to print. On the left-hand side of the page, the print negotiations, diesel 17<sup>th</sup> of March 2014, that is also my creation on the page to reference it, to reference the printout of the page but immediately below that it has awarded 465 diesel locomotive contract. This one is entitled, media, this was what was given to the media as the result for the award of the tender.

10 **ADV MAHLAPE SELLO:** You say this one was titled, media, where do we see media on that page?

**MR FRANCIS QUENTIN CALLARD:** You'll see media on the top right-hand side...(intervention).

**ADV MAHLAPE SELLO:** You said that's your addition, that's what you inserted.

**MR FRANCIS QUENTIN CALLARD:** That's my identification of the print page.

**ADV MAHLAPE SELLO:** Okay.

**MR FRANCIS QUENTIN CALLARD:** As well as print negotiations,  
20 diesel is my identification of the print page.

**ADV MAHLAPE SELLO:** Now without your additions how is that page to be identified?

**MR FRANCIS QUENTIN CALLARD:** It would be identified in the worksheet – sorry in the excel spreadsheets and there are multiple spreadsheets, it's simply called media.

**ADV MAHLAPE SELLO:** Media, okay thank you.

**MR FRANCIS QUENTIN CALLARD:** Soft copies are available and it was just to identify the page – excel sheets have multiple pages and this was to identified the page that was being used.

**ADV MAHLAPE SELLO:** Yes, you may proceed.

**MR FRANCIS QUENTIN CALLARD:** Thank you, on the left-hand side it has, award of the 465 diesel locomotive contract and it details there the best and final offer per Board's submission, we see again the CNR 23 – 27.3billion rounded, we see the GE amount and then it has, 10 adjusted for changes, and there are four lines there which are blank. It has a best and final offer updated to the 17<sup>th</sup> of March then it has various adjustment lines which are blank.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** Then it has new price including TE scope, we have two figures there for cost to fix escalation to end of contract, cost of hedging and we have then a line called the final locomotive cost and two further lines, estimated total cost excluding hedging and escalation and estimated total cost including hedging and escalation. The totals for the diesels there, including hedging and 20 escalation we'll see is 18.375billion. That is the component of the diesel price that was finally awarded.

**ADV MAHLAPE SELLO:** If we could take a step back.

**MR FRANCIS QUENTIN CALLARD:** Yes.

**ADV MAHLAPE SELLO:** It starts with a best and final offer entry let's take CNR at 27billion.

**MR FRANCIS QUENTIN CALLARD:** Yes.

**ADV MAHLAPE SELLO:** It then indicates that certain adjustments are made as listed thereunder but the detail is not provided.

**MR FRANCIS QUENTIN CALLARD:** Correct.

**ADV MAHLAPE SELLO:** And it just reflects an interest from the 27 to 34.

**MR FRANCIS QUENTIN CALLARD:** Correct.

**ADV MAHLAPE SELLO:** Okay now further adjustments are made to incorporate the TE scope.

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

**ADV MAHLAPE SELLO:** And the TE scope is then costed at 4.8?

**MR FRANCIS QUENTIN CALLARD:** No that is cost to fix escalation to end of contract under that line.

**ADV MAHLAPE SELLO:** Okay and what is the TE scope there?

**MR FRANCIS QUENTIN CALLARD:** It is blank in this line.

**ADV MAHLAPE SELLO:** It's blank again. Then after fixing escalation and costs of hedging, we get a new price of 42?

**MR FRANCIS QUENTIN CALLARD:** Yes.

**ADV MAHLAPE SELLO:** That's the final locomotive cost?

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

**ADV MAHLAPE SELLO:** Okay, you indicate – then the next line suggests that estimated total cost excluding hedging and escalation is 14, is that so?

**MR FRANCIS QUENTIN CALLARD:** May I take that one step further, we have a locomotive cost of 42.875 020 million for 232 locomotives

which we'll see at the top under CNR.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** Multiply 232 by the 48 –  
42million point 8 rounded.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** We get 7.888billion.

**ADV MAHLAPE SELLO:** Okay.

**MR FRANCIS QUENTIN CALLARD:** With a similar exercise for GE  
those two figures are then added up to the 14billion, if we take that to  
10 the next line where they include the hedging and escalation, we get the  
18billion total amount for the diesels.

**ADV MAHLAPE SELLO:** Okay – oh thank you Chair. We – final  
locomotive costs, I'm trying to reconcile the final locomotive cost of  
42billion, is that 42million?

**MR FRANCIS QUENTIN CALLARD:** That is 42million per item.

**ADV MAHLAPE SELLO:** My apologies, yes okay.

**MR FRANCIS QUENTIN CALLARD:** 42million times  
the...(intervention).

**ADV MAHLAPE SELLO:** Times the number of locomotives.

20 **MR FRANCIS QUENTIN CALLARD:** Times number of locomotives to  
give us that final cost.

**ADV MAHLAPE SELLO:** Okay.

**MR FRANCIS QUENTIN CALLARD:** The reason I bring this – refer to  
this sheet first is that this was the media statement and it reflected how  
the amount was made up, this is what we contracted on. If I may take

us...(intervention).

**ADV MAHLAPE SELLO:** If I may understand, so what was communicated to the media is that the total cost of acquisition of the diesel locomotives is 9billion is that a correct understanding of that...(intervention).

**MR FRANCIS QUENTIN CALLARD:** 9billion for CNR.

**ADV MAHLAPE SELLO:** That's what's communicated to the media?

**MR FRANCIS QUENTIN CALLARD:** That's what was communicated.

**ADV MAHLAPE SELLO:** Okay.

10 **MR FRANCIS QUENTIN CALLARD:** May I be very specific, I cannot state categorically how it was communicated to the media it's called the media sheet but certainly, internally this was how we received the makeup.

**ADV MAHLAPE SELLO:** Okay, yes.

**MR FRANCIS QUENTIN CALLARD:** If I may then go back one Annexure to Annexure 75.

**ADV MAHLAPE SELLO:** Still in BB4(b).

**MR FRANCIS QUENTIN CALLARD:** Still in BB4(b).

**CHAIRPERSON:** What page again?

20 **ADV MAHLAPE SELLO:** 616 Chair, that's where 75 starts.

**MR FRANCIS QUENTIN CALLARD:** And go to page 617.

**ADV MAHLAPE SELLO:** Okay and before you deal with the content are we correct to say to right-hand corner the word negotiations is inserted by you to assist in identifying the name of the file?

**MR FRANCIS QUENTIN CALLARD:** Correct.



**ADV MAHLAPE SELLO:** And equally so the price print negotiation diesel 17 March is also your addition for purposes of identification?

**MR FRANCIS QUENTIN CALLARD:** Correct.

**ADV MAHLAPE SELLO:** Okay and can I accept that in the actual excel spreadsheets, that particular file is called, negotiation?

**MR FRANCIS QUENTIN CALLARD:** Correct.

**ADV MAHLAPE SELLO:** Okay, will do thank you, you may proceed.

**MR FRANCIS QUENTIN CALLARD:** If we may look at the table at the bottom right-hand – bottom left-hand corner it is called, latest offers,  
10 and you will see it has a line called BAFO and we have various lines going down there right to the very last line, coloured in green, and it has a price there under CSR of 42.875 020 which agrees with the figure which was in the media file which we have just referred to.

**ADV MAHLAPE SELLO:** Okay.

**MR FRANCIS QUENTIN CALLARD:** And similarly for the General Electric locomotive.

**ADV MAHLAPE SELLO:** Okay the 36,174 also.

**MR FRANCIS QUENTIN CALLARD:** Correct.

**ADV MAHLAPE SELLO:** Okay.

20 **MR FRANCIS QUENTIN CALLARD:** What is now apparent from this or what comes from this, is we now have an indication of the breakdown of the prices.

**ADV MAHLAPE SELLO:** Okay.

**MR FRANCIS QUENTIN CALLARD:** Those elements that were missing from the media statement are now on this sheet where they talk

to, and I read from the top,

“1) we have BAFO, 2) the exchange rate impact on the loco, escalation up to signature date. Warranty/SD bond cost removal is the third line, fixed cost Forex adjustment on the other items and batch pricing adjustment”.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** Recall – we’ll go into the batch pricing in a moment we then get a new price, then we add cost of new TE scope so we have another addition of TE scope here.

10 **ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** A discount, price to fix the TE scope including escalation and hedging going forward and then cost to fix escalation going forward.

**ADV MAHLAPE SELLO:** Okay.

**MR FRANCIS QUENTIN CALLARD:** This sheet now gives us a breakdown of how the various elements of the price and would explain the makeup of the price. The – if I may just draw some attention to some apparent anomalies on ...(intervention).

**CHAIRPERSON:** Before you do that Mr Callard please don’t forget  
20 the point you wanted to say at some stage – I don’t want to forget this, at some stage tell me whether, after you had seen the contents of the spreadsheets, whether you were able to deuce what the reason was why Mr Leher said you should not have access to it or that it was confidential, you don’t have to deal with it now if it’s not convenient, as long as at some stage you deal with it.

**MR FRANCIS QUENTIN CALLARD:** I'm happy to deal with it now Mr Chair.

**CHAIRPERSON:** Okay.

**MR FRANCIS QUENTIN CALLARD:** From what we have here, there is one point I will make now. This gives us an indication of the breakdown of the prices which is what in fact we were tasked to achieve, how did we arrive at these final prices. I will jump to a final point in my statement that I was disappointed that Mr Leher did not share this because with this information, why did we have to go through  
10 an exercise but from perusal of these spreadsheets and particularly here one picks up a number of anomalies and I would take one through those anomalies and perhaps those anomalies are problematic.

**CHAIRPERSON:** Okay well I was - I'm interested in hearing whether the conclusion you are able to make or the conclusion you are able to make is that the reason why he may have not wanted you to see the spreadsheets was some illegitimate reason because the spreadsheet would give you information that he didn't want you to know. So – but as I say you can deal with it later if that's convenient but if you want to deal with it now it's fine.

20 **MR FRANCIS QUENTIN CALLARD:** Your question, Mr Chair, I would not like to say what was in his mind as to why he did not want to give it to me, what I can certainly...(intervention).

**CHAIRPERSON:** That's fine yes.

**MR FRANCIS QUENTIN CALLARD:** What I can certainly say is that the information contained in these spreadsheets...(intervention).

**CHAIRPERSON:** Is highly relevant.

**MR FRANCIS QUENTIN CALLARD:** Is highly relevant and the workings that we deduce from the spreadsheets – I've been working back from what was negotiations – sorry from the media statement to negotiations, there are earlier statements of the diesels excluding TE and the base cost and if one traces the path through those spreadsheets they demonstrate a pattern of numbers which are cause for concern, they show in the spreadsheets, elements or unexplained variations in the foreign exchange amounts which show that those  
10 unexplained variations in foreign exchange amounts influence the prices which have been reflected, equally in the final price of this negotiation – of which we have seen here, if we were to accept the foreign exchange amounts which they have here then the local content – the award does not meet the local content, if the foreign exchange amounts are reflected here but there are – one can see how, in areas, the foreign exchange amounts have been brought into these final escalations.

**CHAIRPERSON:** Thank you.

**MR FRANCIS QUENTIN CALLARD:** And if I may just...(intervention).

20 **ADV MAHLAPE SELLO:** Mr Callard?

**MR FRANCIS QUENTIN CALLARD:** Yes.

**ADV MAHLAPE SELLO:** Before you go into the detail of that spreadsheet if I may follow-up on the Chair's question and perhaps ask this question, having had access to the spreadsheets and being able to analyse them and understand them, are you of the view that you were

originally denied access thereto because there was an intention to conceal precisely that which you subsequently established?

**MR FRANCIS QUENTIN CALLARD:** That is my interpretation yes.

**ADV MAHLAPE SELLO:** Thank you.

**MR FRANCIS QUENTIN CALLARD:** That is my interpretation.

**ADV MAHLAPE SELLO:** You want to take us to the detail of the table then?

**MR FRANCIS QUENTIN CALLARD:** If I may just...(intervention).

**CHAIRPERSON:** I'm sorry, you wouldn't know would you whether  
10 that you shouldn't have access to these spreadsheets was simply Mr  
Leher's decision or whether he was just carrying out somebody else's  
instruction that certain people mustn't see – certain people including  
you, mustn't see these spreadsheets?

**MR FRANCIS QUENTIN CALLARD:** I cannot say whether it was his decision or an instruction, I can't say Mr Chair.

**CHAIRPERSON:** Okay thank you.

**ADV MAHLAPE SELLO:** Thank you Mr Callard.

**MR FRANCIS QUENTIN CALLARD:** If I may, just on page 61 – may I  
refer to the diesels where we put them all together and take you please  
20 to the diesel ones as a relevant and that is the...(intervention).

**ADV MAHLAPE SELLO:** Paragraph 207, is that 207.1, you want to take us through that spreadsheet where you do a comparison.

**MR FRANCIS QUENTIN CALLARD:** The spreadsheet where I do the comparison.

**ADV MAHLAPE SELLO:** Please consider your 207.1 paragraph, is

that the Annexure you are looking for?

**MR FRANCIS QUENTIN CALLARD:** 207.1 of the diesel locomotives, Annexure 78.

**ADV MAHLAPE SELLO:** Okay and that is BB42(b) at page 624.

**MR FRANCIS QUENTIN CALLARD:** 624?

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** And I'm looking at page 625.

**ADV MAHLAPE SELLO:** Okay you go overleaf to 625.

**MR FRANCIS QUENTIN CALLARD:** The first – this spreadsheet is  
10 my compilation, I have taken the figures from the previous  
spreadsheets and put them on a basis of side by side for purposes of  
comparison. This spreadsheet has both CNR and GE the first three  
columns relate to CNR the columns 4 to 6 relate to GE on the right-  
hand side. I'd like to take us through the CNR columns first please  
and there are three columns. The first one is headed, base  
price...(intervention).

**ADV MAHLAPE SELLO:** Are we at 625 or 626?

**MR FRANCIS QUENTIN CALLARD:** Page 625.

**CHAIRPERSON:** Well the first column would it not be the big one  
20 which doesn't have best base price and then – or you'd say the first of  
the smaller columns?

**MR FRANCIS QUENTIN CALLARD:** The first of the smaller columns  
on 625.

**CHAIRPERSON:** Okay, alright.

**ADV MAHLAPE SELLO:** Perhaps it might help to identify it this way,

the first main column list all the items taken into consideration, numbered 1 to 27.

**MR FRANCIS QUENTIN CALLARD:** Yes.

**ADV MAHLAPE SELLO:** Okay so all that will be applicable across the spreadsheet.

**MR FRANCIS QUENTIN CALLARD:** Across the spreadsheet, correct.

**ADV MAHLAPE SELLO:** Then when you speak of first column it's this – actually physically the second column.

**CHAIRPERSON:** Or first small column.

10 **ADV MAHLAPE SELLO:** First small column yes, headed base price, that's your first column.

**MR FRANCIS QUENTIN CALLARD:** The first small column is headed base price, bidder one, CNR.

**ADV MAHLAPE SELLO:** Yes we have found that.

**MR FRANCIS QUENTIN CALLARD:** The second small column is headed base price excluding TE, bidder one, CNR.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** And the third column is headed, negotiations, bidder one, CNR.

20 **ADV MAHLAPE SELLO:** Okay.

**MR FRANCIS QUENTIN CALLARD:** You'll see the spreadsheet has various colours and some of them are the cells – worksheet cells are in yellow.

**ADV MAHLAPE SELLO:** Yes, now before you go further you have base price, bidder one, CNR and it's in different colours, grey, blue,

yellow.

**MR FRANCIS QUENTIN CALLARD:** Yes.

**ADV MAHLAPE SELLO:** But after each column you have a clear and coloured column for a better – if I may use that term, the white one.

**MR FRANCIS QUENTIN CALLARD:** The white one.

**ADV MAHLAPE SELLO:** The clear white column which doesn't have a heading, it seems to follow, it comes after each column.

**MR FRANCIS QUENTIN CALLARD:** Yes.

**ADV MAHLAPE SELLO:** We've got base one, bidder one, CNR.

10 **CHAIRPERSON:** Yes.

**ADV MAHLAPE SELLO:** And it is populated right through per item.

**CHAIRPERSON:** Yes.

**ADV MAHLAPE SELLO:** Immediately next to it is a white column that has...(intervention).

**CHAIRPERSON:** Oh are those columns as well I thought they were spaces (indistinct).

**ADV MAHLAPE SELLO:** If they're spaces in-between column.

**MR FRANCIS QUENTIN CALLARD:** Call them spaces.

**ADV MAHLAPE SELLO:** Okay.

20 **CHAIRPERSON:** They are spaces (indistinct).

**ADV MAHLAPE SELLO:** And then to understand, how do we relate the columns to the spaces.

**MR FRANCIS QUENTIN CALLARD:** Yes.

**ADV MAHLAPE SELLO:** How do we relate that?

**MR FRANCIS QUENTIN CALLARD:** Well we relate the columns to



the spaces and that they generally are – show some information in that for example between the first small column and the second small column in that white space that first amount we have there is a minus 12 375 831 which relates to the discount which we have been talking about earlier from CNR and it shows a change from the – may I take you through that – we had that line called one, base price as per technical specification.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** On the extreme left-hand side,  
10 take that through the base price was initially given as 39.7million rounded.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** We have been through the reduction which is – and the BAFO price and we've seen the – approximately 12million reduction there and the new figure is in there of 27.3million rounded. The difference I have highlighted in that white space in-between.

**ADV MAHLAPE SELLO:** So you inserted that difference...(intervention)

20 **MR FRANCIS QUENTIN CALLARD:** I inserted that difference.

**ADV MAHLAPE SELLO:** Okay in the white columns.

**MR FRANCIS QUENTIN CALLARD:** Yes I did.

**ADV MAHLAPE SELLO:** So my question was, can we follow the same pattern, the information in the white columns for lack of a better term are – is what is introduced by you?

**MR FRANCIS QUENTIN CALLARD:** Correct, correct.

**ADV MAHLAPE SELLO:** Okay, in comparing the various main columns?

**MR FRANCIS QUENTIN CALLARD:** Correct.

**ADV MAHLAPE SELLO:** Okay, now then if we deal with – just so we don't lose it tomorrow, that base price of 39million and then the base price excluding TE of 27million that information at least we can glean from the response by TNR which indicated that it had reduced its price from 39 to 27, those are the two figures.

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

**ADV MAHLAPE SELLO:** The figure that you have in-between the two columns of 12million rounded, that is the difference between the two?

**MR FRANCIS QUENTIN CALLARD:** Correct.

**ADV MAHLAPE SELLO:** Thank you, you may proceed.

**MR FRANCIS QUENTIN CALLARD:** Thank you, I spoke of anomalist variations in the foreign exchange component.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** Could we go down on the extreme left-hand side we have the lines 19 and 20, import content,  
20 foreign value first rate and import content foreign value second rate.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** Let's deal with line 19 first please, import content foreign value, first rate.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** Under the base price which is

now the first column, that is given as US Dollars and I would round it 484 000 rounded.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** In the second column it is yellow and it is now given as 493 000 dollars rounded.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** Small change, small increase and I'm not questioning that increase but if we now go to the third column.

**ADV MAHLAPE SELLO:** Yes.

10 **MR FRANCIS QUENTIN CALLARD:** Which is called, negotiations, we will see that the US Dollar component as in this spreadsheet jumps to 918 000 dollars effectively – virtually doubling the imported content in US Dollar terms.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** If we go to the second line which is the import content foreign value second rate, line 20.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** Under bidder price – under the base price for bidder 1 that is the first small column it is 993 000 euros  
20 rounded. In the second column...

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** When it comes to base cost excluding TE that euro decreases to 325 000. That is a drop of 668 000 euros.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** That is substantial. Yet when we go to the negotiations column the euros now increase to 774.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** I just draw the back to the letter from – sorry. The letter from CNR which said that their foreign exchange component remains the same as in their April 2013 offer and yet we see this variation across the foreign components here.

**ADV MAHLAPE SELLO:** Hm.

**MR FRANCIS QUENTIN CALLARD:** These foreign components by  
10 multiplying the – them by the exchange rates of the day could I take you to line 26 please?

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** Line 26 in the first small column in 2.7 million rounded.

**ADV MAHLAPE SELLO:** And just for record purpose line 26 is headed Additional cost to add to base price.

**MR FRANCIS QUENTIN CALLARD:** Add to base price.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** That 2.7 million is a function of the  
20 United States Dollar rate times the exchange rate of the day which we see up there as first exchange rate used by bidder line 14.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** Added to the import – the line 20 the import content foreign value the euro value times the euro exchange rate applicable which was in line 15 second exchange rate

used by bidder euro.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** Effectively one takes United States Dollars times it by the exchange rate, the euros times it by the exchange rate add the two together and that gives us the additional cost to add to the base price.

**ADV MAHLAPE SELLO:** And what line 14 tells us is that the rate, the US exchange rate at the time and for bidder 1 used a 9 to the dollar exchange rate?

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

**ADV MAHLAPE SELLO:** And at line 15 it gives you the exchange rate for the euro at 11.86?

**MR FRANCIS QUENTIN CALLARD:** And then it changes to 12 and 12.

**ADV MAHLAPE SELLO:** And then it changes during base cost including TE to 9 the US exchange remains the same, the EU exchange rate changes to 12?

**MR FRANCIS QUENTIN CALLARD:** Yes.

**ADV MAHLAPE SELLO:** That is lines 14 and 15.

**MR FRANCIS QUENTIN CALLARD:** Yes.

20 **ADV MAHLAPE SELLO:** Okay.

**CHAIRPERSON:** Where – where in those columns the currency is not written what must we take it to be?

**MR FRANCIS QUENTIN CALLARD:** Sorry?

**CHAIRPERSON:** Where – where the figures do not indicate the currency. You see some of the figures you have got US Dollar and so

on but other figures do not – some of the – and then you have got Euro and then others you do not have the currency. Which currency should we be...

**MR FRANCIS QUENTIN CALLARD:** Other figures are in rand Mr Chair.

**CHAIRPERSON:** Right in rand?

**MR FRANCIS QUENTIN CALLARD:** In rand yes.

**CHAIRPERSON:** Okay.

**MR FRANCIS QUENTIN CALLARD:** Yes. So the purpose of this was to take the imported content and convert it to the change in the imported  
10 content and convert it to rand.

**ADV MAHLAPE SELLO:** Hm.

**MR FRANCIS QUENTIN CALLARD:** So the 2.7 million and I would just like to correct the impression I gave earlier. Is taking the – made of the 484 000 US Dollars times the difference in the exchange rate.

**ADV MAHLAPE SELLO:** Hm.

**MR FRANCIS QUENTIN CALLARD:** Similarly for the Euro it is the difference between the two exchange rates.

**ADV MAHLAPE SELLO:** Hm.

**MR FRANCIS QUENTIN CALLARD:** And that gives us 2. – the 2.7  
20 million.

**ADV MAHLAPE SELLO:** And the 2.7 at line 16 the additional cost is the rand equivalent of the foreign exchange?

**MR FRANCIS QUENTIN CALLARD:** Correct.

**ADV MAHLAPE SELLO:** Quoted okay.

**MR FRANCIS QUENTIN CALLARD:** The impact of the foreign

exchange.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** Taking forward. If we then take that to base cost excluding TE.

**ADV MAHLAPE SELLO:** Hm.

**MR FRANCIS QUENTIN CALLARD:** Which is now the second column and we see that the US Dollar remains the same but the Euro has been significantly reduced.

**ADV MAHLAPE SELLO:** Yes.

- 10 **MR FRANCIS QUENTIN CALLARD:** The bottom line around this is that the additional cost to add to the base price has changed from not adding 2.7 million.

**ADV MAHLAPE SELLO:** Hm.

**MR FRANCIS QUENTIN CALLARD:** But we now add 1.3.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** 1.3 million.

**ADV MAHLAPE SELLO:** At line 26?

**MR FRANCIS QUENTIN CALLARD:** Yes.

**ADV MAHLAPE SELLO:** Yes.

- 20 **MR FRANCIS QUENTIN CALLARD:** I would show later how I believe this figure is in fact taken into the evaluation calculations per se.

**ADV MAHLAPE SELLO:** Okay.

**MR FRANCIS QUENTIN CALLARD:** But going to lie – column 3 where we now see this significant increase in the foreign exchange components. We have seen the US Dollar go to 918 000 and the Euros

go to 774 000.

**ADV MAHLAPE SELLO:** Hm.

**MR FRANCIS QUENTIN CALLARD:** The additional cost to add to the base price now increases to 3.7 million.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** You will see there is an arrow touching on the 3.7 million.

**ADV MAHLAPE SELLO:** Now before you get to that arrow let us look at the additional cost as reflected in line 26? Base price is 2.7 and we  
10 take that base price to be as at the date of submission of the bid?

**MR FRANCIS QUENTIN CALLARD:** No that is now the first base price is – was normalised to the 11 February. The...

**ADV MAHLAPE SELLO:** 11 February what date?

**MR FRANCIS QUENTIN CALLARD:** 2013.

**ADV MAHLAPE SELLO:** This is 11 February 2013.

**MR FRANCIS QUENTIN CALLARD:** That is the green column.

**ADV MAHLAPE SELLO:** 2013.

**MR FRANCIS QUENTIN CALLARD:** Yes.

**ADV MAHLAPE SELLO:** If you look at the – that movement under base  
20 cost excluding TE and what period was the – TE being excluded? Was that in...

**MR FRANCIS QUENTIN CALLARD:** That one would have been January – the January 2014.

**ADV MAHLAPE SELLO:** January 2014.

**MR FRANCIS QUENTIN CALLARD:** January 2014.



**ADV MAHLAPE SELLO:** And then the negotiations column?

**MR FRANCIS QUENTIN CALLARD:** The negotiations column should correctly be around the time the negotiations March 2014.

**ADV MAHLAPE SELLO:** Thank you. You wanted to deal with the 3.765 130 item 26 under negotiations?

**MR FRANCIS QUENTIN CALLARD:** Yes.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** If we turn over to page 626.

**ADV MAHLAPE SELLO:** Yes.

10 **MR FRANCIS QUENTIN CALLARD:** 626 is the same worksheet I had printed over two pages.

**ADV MAHLAPE SELLO:** Hm.

**MR FRANCIS QUENTIN CALLARD:** And we will see...

**CHAIRPERSON:** You did not forget the point you wanted to make about the arrow?

**MR FRANCIS QUENTIN CALLARD:** Ah – yes the point – it is an observation Mr Chair.

**CHAIRPERSON:** Hm.

20 **MR FRANCIS QUENTIN CALLARD:** That where we have columns in yellow highlighted in yellow.

**ADV MAHLAPE SELLO:** Hm.

**MR FRANCIS QUENTIN CALLARD:** My analysis of this is that the columns in yellow need to be scrutinised very carefully.

**CHAIRPERSON:** Hm.

**ADV MAHLAPE SELLO:** Okay.

**MR FRANCIS QUENTIN CALLARD:** And I will show where this comes through now.

**CHAIRPERSON:** Okay.

**MR FRANCIS QUENTIN CALLARD:** In fact this is part of that exercise.

**CHAIRPERSON:** Yes okay.

**ADV MAHLAPE SELLO:** You – before we dated or we provided dates to these various columns you had indicted there is an arrow that leads to that 3.3,65 odd at line 26.

**MR FRANCIS QUENTIN CALLARD:** Yes.

10 **ADV MAHLAPE SELLO:** Under Negotiations.

**MR FRANCIS QUENTIN CALLARD:** Yes.

**ADV MAHLAPE SELLO:** And the Chair was just reminding that you are moving on to that point now.

**MR FRANCIS QUENTIN CALLARD:** Yes.

**ADV MAHLAPE SELLO:** You have not forgotten it please?

**MR FRANCIS QUENTIN CALLARD:** No.

**ADV MAHLAPE SELLO:** Thank you.

**CHAIRPERSON:** I think – I think he has just dealt with it.

**MR FRANCIS QUENTIN CALLARD:** Yes.

20 **CHAIRPERSON:** Yes.

**ADV MAHLAPE SELLO:** Okay.

**CHAIRPERSON:** It was back – it was the arrow at page 625.

**ADV MAHLAPE SELLO:** 625.

**CHAIRPERSON:** Ja and he says where there is yellow in the columns it means that those figures need a lot of scrutiny.

**MR FRANCIS QUENTIN CALLARD:** In depth interrogation.

**CHAIRPERSON:** In depth interrogation and what we are doing is part of that exercise.

**ADV MAHLAPE SELLO:** Okay. I hope the Chair and Mr Callard are not talking past one another but it shall become clarified soon. I have a sneaky suspicion that they are but...

**CHAIRPERSON:** No no do not.

**MR FRANCIS QUENTIN CALLARD:** I think we are

**CHAIRPERSON:** I think we understand each other.

10 **MR FRANCIS QUENTIN CALLARD:** We understand.

**ADV MAHLAPE SELLO:** No as long as you understand each other Chair.

**CHAIRPERSON:** But we do not want to leave you behind.

**ADV MAHLAPE SELLO:** I will try and catch up Chair. I will play catch-up. Mr Callard.

**MR FRANCIS QUENTIN CALLARD:** Okay. So to recap.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** On page 625.

**ADV MAHLAPE SELLO:** Yes.

20 **MR FRANCIS QUENTIN CALLARD:** At the – near the bottom of the page we have additional cost to add to base price.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** With the top of that arrow 3.765 million.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** If we turn over to page 626.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** There are two columns there one is headed CNR and the other headed GE. The CNR one is in the centre of the page.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** The CNR column again gives the same break down of the price as we have seen earlier in negotiations and the media as set out in the total cost at the bottom we have 42 875  
10 million for a CNR Locomotive.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** At the top of that column we see that arrow coming down again.

**ADV MAHLAPE SELLO:** Hm.

**MR FRANCIS QUENTIN CALLARD:** And it comes up to 3765.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** And if we look to the left hand side we will see that is the exchange rate impact on locomotives.

**ADV MAHLAPE SELLO:** Yes.

20 **MR FRANCIS QUENTIN CALLARD:** That is the exchange rate impact on the locomotive up to the time of award. If that is – exchange rate impact of the locomotive at 375 million up to time of the award and it is now included this total make-up of the price and we turn back over the page and I have highlighted what I believe to be unexplained variations in the foreign content. This brings to me this 375 into question.

**ADV MAHLAPE SELLO:** Hm.

**MR FRANCIS QUENTIN CALLARD:** Mr Chair as I use this as one example because I find this type of inconsistency across many of the spread sheets but I highlight this as one key example of this. May I then return back to page 626?

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** And by way of illustration if we were to assume that the GENC and our locomotives are relatively similar. They are both diesel locomotives with equivalent power and  
10 output. On page 626 you will see cells marked in beige, a deep beige, a light brown.

**ADV MAHLAPE SELLO:** Hm.

**MR FRANCIS QUENTIN CALLARD:** And I have put – highlighted that as a percentage of BAFO. And I make the comment ‘there is a wide variation in percentage increases on the BAFO prices which is unusual’. We compare a base GE price of 24 million rounded with a base CNR price of 27 million rounded and we have seen that.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** Yet one would on the reasonable  
20 assumption that the local content or the foreign content of the locomotive may vary by one or two percent. Not to say that everybody will be exactly the same. But the exchange rate impact on the BAFO of CNR is of that 3.7 million we have been talking about.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** That is 13.8% of the BAFO price.

Similarly for General Electric it is 8.23%. That is I contend – and that is quite a variation. If we look at the escalation up to signature date. Now escalation is the South African escalation with – with the imported escalation. But given the imported escalation as we have mentioned in the business case and elsewhere that is pretty stable and flat and we have said 2%. The escalation up to signature date for CNR of that 3.4 million is 12.8%.

**ADV MAHLAPE SELLO:** Hm.

**MR FRANCIS QUENTIN CALLARD:** By comparison the GE escalation  
10 as recorded here and please I am making no assumptions these figures are correct. I am purely saying what is recorded and what is shown as – makes up the price. The GE escalation is 1. – is 2% effectively that difference is significant.

**ADV MAHLAPE SELLO:** Yes.

**CHAIRPERSON:** You – you said you make no assumption I thought you actually do make the assumption that they are correct?

**MR FRANCIS QUENTIN CALLARD:** They...

**CHAIRPERSON:** Otherwise you cannot – you cannot do this exercise.

**MR FRANCIS QUENTIN CALLARD:** The figures are what are reflected  
20 into the final prices because these final – these are the final prices.

**CHAIRPERSON:** Yes but what you mean is you have not gone behind that to check if they are correct?

**MR FRANCIS QUENTIN CALLARD:** I have not gone behind.

**CHAIRPERSON:** So you actually assume that they are correct? You said you do not assume if they are correct. You said you make no

assumption that they are correct.

**MR FRANCIS QUENTIN CALLARD:** I have not –

**CHAIRPERSON:** Ja.

**MR FRANCIS QUENTIN CALLARD:** Mr Chair we have not been able to get behind these figures.

**CHAIRPERSON:** Yes so you assume that they are correct?

**MR FRANCIS QUENTIN CALLARD:** Ja.

**CHAIRPERSON:** Or am I misunderstanding you? If you have not checked whether they are correct you – but you work on the basis that  
10 they are correct we would say you assume that they are correct, is it not or am I missing something in what you said?

**MR FRANCIS QUENTIN CALLARD:** Let me just say this Mr Chairman. The figures as presented.

**CHAIRPERSON:** Yes.

**ADV MAHLAPE SELLO:** Ja.

**MR FRANCIS QUENTIN CALLARD:** Show significant variations and unexplained variations.

**CHAIRPERSON:** Yes.

**MR FRANCIS QUENTIN CALLARD:** That is the point I would ...

20 **CHAIRPERSON:** Okay, yes, yes you make a conclusion on the basis of the figures as they are presented.

**MR FRANCIS QUENTIN CALLARD:** Are presented yes.

**CHAIRPERSON:** Whether they are correct or not you do not know but you – what you can justify if your conclusion?

**MR FRANCIS QUENTIN CALLARD:** Yes.

**CHAIRPERSON:** Ja.

**MR FRANCIS QUENTIN CALLARD:** Yes.

**ADV MAHLAPE SELLO:** So then if...

**CHAIRPERSON:** I think we understand each other Mr Callard.

**ADV MAHLAPE SELLO:** When we deal – when you deal with that page the two columns and I take it now we understand the two columns are there. One headed CNR and the other headed GE on the right?

**MR FRANCIS QUENTIN CALLARD:** Yes.

**ADV MAHLAPE SELLO:** Those columns and the...

10 **CHAIRPERSON:** And the white space in between Ms Sello.

**ADV MAHLAPE SELLO:** The white spaces does not count – no Chair. This time it is not a column I can tell. The information contained in the respective columns is derived from the documentation. You have uplifted it as it is?

**MR FRANCIS QUENTIN CALLARD:** This is as it comes from the spreadsheet.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** What I have added to this is...

**ADV MAHLAPE SELLO:** The comment in the centre?

20 **MR FRANCIS QUENTIN CALLARD:** The comment in the centre.

**ADV MAHLAPE SELLO:** Where you express a view that you find the increase is unusual?

**MR FRANCIS QUENTIN CALLARD:** Yes.

**ADV MAHLAPE SELLO:** What you also have added are the beige portions on either side of the column?



**MR FRANCIS QUENTIN CALLARD:** Correct.

**ADV MAHLAPE SELLO:** Which is a calculation of the percentage adjustment that each figure represents relative to the BAFO?

**MR FRANCIS QUENTIN CALLARD:** Correct.

**ADV MAHLAPE SELLO:** Okay. But whether or not the actual figures inputted there are correct you have not done that calculation, that determination?

**MR FRANCIS QUENTIN CALLARD:** Correct.

**ADV MAHLAPE SELLO:** Okay.

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

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** I have to add this because it cannot find the – the logic that would support some of these figures.

**ADV MAHLAPE SELLO:** Hm.

**MR FRANCIS QUENTIN CALLARD:** We have not found the logic that would support some of these – many of these figures. That – I use that to show the inconsistency in the diesels.

**ADV MAHLAPE SELLO:** Yes. And before you move off that entry 3 escalation up to signature date you have 3498 odd for CNR, right?

20 **MR FRANCIS QUENTIN CALLARD:** 3...

**ADV MAHLAPE SELLO:** An escalation up to signature date?

**MR FRANCIS QUENTIN CALLARD:** Escalation up to sig – yes 349.

**ADV MAHLAPE SELLO:** And that is what the escalation would be for CNR?

**MR FRANCIS QUENTIN CALLARD:** Yes.

**ADV MAHLAPE SELLO:** For GE under the same item you have 484?

**MR FRANCIS QUENTIN CALLARD:** That is what is shown on the piece of paper?

**ADV MAHLAPE SELLO:** Absolutely.

**MR FRANCIS QUENTIN CALLARD:** Yes.

**ADV MAHLAPE SELLO:** I accept.

**MR FRANCIS QUENTIN CALLARD:** I do not want the word you there.

**ADV MAHLAPE SELLO:** No, no. Alright it – 484 is reflected?

**MR FRANCIS QUENTIN CALLARD:** Correct.

10 **ADV MAHLAPE SELLO:** As an escalation up to signature date?

**MR FRANCIS QUENTIN CALLARD:** Yes, yes.

**ADV MAHLAPE SELLO:** Regard being heard to the – before I say – your analysis of that is that for GE the escalation would represent 1.99% of BAFO?

**MR FRANCIS QUENTIN CALLARD:** Of BAFO price yes.

**ADV MAHLAPE SELLO:** For CNR it would represent 12.8%?

**MR FRANCIS QUENTIN CALLARD:** Yes.

**ADV MAHLAPE SELLO:** Now regard being had to the fact that the closing date was the same.

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

**ADV MAHLAPE SELLO:** The bids came in more or less on the same dates?

**MR FRANCIS QUENTIN CALLARD:** Yes.

**ADV MAHLAPE SELLO:** And that signature date would have been the same?

**MR FRANCIS QUENTIN CALLARD:** Yes.

**ADV MAHLAPE SELLO:** Can you explain why the impact of escalation for the one would be 1.99% and for the other would be 12.8%.

**MR FRANCIS QUENTIN CALLARD:** I cannot explain it.

**ADV MAHLAPE SELLO:** Oh okay. Thank you.

**MR FRANCIS QUENTIN CALLARD:** And that is why I described elements of these figures as being anomalous and deserving of further interrogation and investigation. I believe these figures cannot be explained or I certainly cannot explain the [indistinct] of these figures.

10 **ADV MAHLAPE SELLO:** Yes. And CNR and GE were competitors for – in this bid?

**MR FRANCIS QUENTIN CALLARD:** Yes, yes.

**ADV MAHLAPE SELLO:** Another glaring one correct me if I am wrong is item 6 batch pricing adjustment. For CNR it is 1%, for GE oh no they have reverse roles it is now 12.98%. Now and I take it you cannot explain that as well?

**MR FRANCIS QUENTIN CALLARD:** Cannot explain it.

**ADV MAHLAPE SELLO:** If you were to guide the Chair who must be turn to for an explanation?

20 **MR FRANCIS QUENTIN CALLARD:** I make the point later in my statement.

**CHAIRPERSON:** Is that other than GE and CNR?

**ADV MAHLAPE SELLO:** Other than GE and CNR it is – they – those who inputted these figures into the excel spreadsheets to try and explain to us why this anomaly. To whom would you suggest we turn?

**MR FRANCIS QUENTIN CALLARD:** May I refer to paragraph 2.11.1 of my statement.

**ADV MAHLAPE SELLO:** Say the number again please?

**MR FRANCIS QUENTIN CALLARD:** 2.11.1

**ADV MAHLAPE SELLO:** Okay

**MR FRANCIS QUENTIN CALLARD:** Top of page 56.

**ADV MAHLAPE SELLO:** We at 56 at the top paragraph.

**MR FRANCIS QUENTIN CALLARD:** Sorry I – let me go to 2.11. 2.11 please bottom of page 55.

10 **ADV MAHLAPE SELLO:** Okay.

**MR FRANCIS QUENTIN CALLARD:** Mr Jooste Laher is the primary author of these two excel spreadsheets.

**ADV MAHLAPE SELLO:** Yes.

**CHAIRPERSON:** I am sorry first you said 2.11.1?

**MR FRANCIS QUENTIN CALLARD:** 2.11.

**CHAIRPERSON:** And then?

**ADV MAHLAPE SELLO:** And then we back tracked a bit.

**CHAIRPERSON:** Oh.

**MR FRANCIS QUENTIN CALLARD:** Bottom of the page.

20 **CHAIRPERSON:** Bottom to 2.11.

**MR FRANCIS QUENTIN CALLARD:** Chair you asked me who should we turn to?

**ADV MAHLAPE SELLO:** Ja.

**MR FRANCIS QUENTIN CALLARD:** Sorry Counsel you asked me who should we turn to? I say that Mr Laher is the primary author of these

two excel spreadsheets.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** He was also a signatory to the BAFO evaluation of the 15 January 2014 and he was furthermore a member of the negotiation team for the 1064 locomotives comprising inter alia Mr Molefe, Mr Singh, Mr Gama, Mr Pita, Mr Giani, Ms Mdletshe and Mr Ndiphiwe Silinga who was the general manager Group Legal Services. But with knowledge of this spreadsheets and viewpoint and this was – I turn over to page 56. I was disappointed that the ...

10 **CHAIRPERSON:** I am sorry turn over to?

**MR FRANCIS QUENTIN CALLARD:** To page 56.

**CHAIRPERSON:** Oh okay.

**MR FRANCIS QUENTIN CALLARD:** 2.11.1.

**CHAIRPERSON:** Okay but you – have you just made the point in regard to paragraph 2.11 that it is Mr Laher as the author of the two spreadsheets that we should tend to?

**MR FRANCIS QUENTIN CALLARD:** For the detailed explanation yes.

**CHAIRPERSON:** Yes.

**MR FRANCIS QUENTIN CALLARD:** I see at that point.

20 **CHAIRPERSON:** Yes. Is Mr Laher still with Transnet or is he [indistinct]?

**MR FRANCIS QUENTIN CALLARD:** Yes he is.

**CHAIRPERSON:** He is still there?

**MR FRANCIS QUENTIN CALLARD:** Yes.

**CHAIRPERSON:** Okay alright.

**ADV MAHLAPE SELLO:** Yes Chair.

**CHAIRPERSON:** Okay.

**ADV MAHLAPE SELLO:** Thank you Chair.

**MR FRANCIS QUENTIN CALLARD:** And...

**CHAIRPERSON:** Is he one of the witnesses coming or not?

**ADV MAHLAPE SELLO:** The engagements have...

**CHAIRPERSON:** Not in the list.

**ADV MAHLAPE SELLO:** Have been had with Mr Laher.

**CHAIRPERSON:** Yes.

10 **ADV MAHLAPE SELLO:** We will address the Chair as to how...

**CHAIRPERSON:** Yes okay.

**ADV MAHLAPE SELLO:** When and – to present Mr Laher before you  
Chair.

**CHAIRPERSON:** Okay alright.

**MR FRANCIS QUENTIN CALLARD:** In my paragraph 2.11.1.

**ADV MAHLAPE SELLO:** Yes.

20 **MR FRANCIS QUENTIN CALLARD:** At the top of page 56. With this  
knowledge which I have gleaned from the spreadsheet and similar  
through the electrics I was disappointed that the exercise undertaken in  
January 18 in good faith to determine the increases. It was undertaken  
in good faith but Mr Laher with full knowledge of the pricing, detail and  
negotiations chose not to share this knowledge including the  
spreadsheets and evaluation reports with the members of the team to  
arrive at an honest and accurate assessment of the increase in the ETC  
from 38.6 billion to around 49.55 billion or 54 billion if the options are

included. That is...

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** We could explore further the electrics and the like but I make the point in the diesels.

**ADV MAHLAPE SELLO:** [Mumbling}.

**CHAIRPERSON:** Okay I am sorry I am trying to understand the reference to in good faith in the second line.

**MR FRANCIS QUENTIN CALLARD:** I was contracted in ...

**ADV MAHLAPE SELLO:** He was acting in ...

10 **CHAIRPERSON:** What you mean is the exercise in which you were involved.

**MR FRANCIS QUENTIN CALLARD:** The exercise in January 2018

**CHAIRPERSON:** Was in good faith that exercise?

**MR FRANCIS QUENTIN CALLARD:** I came there in good faith to conduct this exercise.

**CHAIRPERSON:** Yes.

**MR FRANCIS QUENTIN CALLARD:** We had this team of which Mr Muller and Mr Laher were part of the team. He had full knowledge of the spreadsheet and I indicated that he ...

20 **CHAIRPERSON:** Yes.

**MR FRANCIS QUENTIN CALLARD:** Did not wish to share this spreadsheet.

**CHAIRPERSON:** Yes.

**MR FRANCIS QUENTIN CALLARD:** When I eventually gained access to the spreadsheet.

**CHAIRPERSON**: Yes.

**MR FRANCIS QUENTIN CALLARD**: And was able to undertake this exercise and see what was happening.

**CHAIRPERSON**: Yes.

**MR FRANCIS QUENTIN CALLARD**: I was disappointed that the spreadsheet was not shared.

**CHAIRPERSON**: Yes. Had not. Yes, no, no that is fine.

**MR FRANCIS QUENTIN CALLARD**: That is the point I was making Mr Chair.

10 **CHAIRPERSON**: Okay thank you.

**ADV MAHLAPE SELLO**: So if we understand correctly the spreadsheets do demonstrate how the price moves from 38 billion to 49 billion?

**MR FRANCIS QUENTIN CALLARD**: Yes.

**ADV MAHLAPE SELLO**: Okay.

**CHAIRPERSON**: Which is what you were trying to establish?

**MR FRANCIS QUENTIN CALLARD**: Yes.

**CHAIRPERSON**: Yes.

**ADV MAHLAPE SELLO**: Okay.

20 **CHAIRPERSON**: And that is why you cannot understand why he did not share the spreadsheets with you?

**MR FRANCIS QUENTIN CALLARD**: Yes.

**CHAIRPERSON**: Hm.

**ADV MAHLAPE SELLO**: Mine is slightly different Chair is if the spreadsheets.



**CHAIRPERSON:** Yes.

**ADV MAHLAPE SELLO:** Established precisely that point what was the point of undertaking the exercise because it just takes reference by Mr Laher to the very spreadsheets at his disposal and he will have a key understanding of how 49 billion is arrived at, is that not the case?

**MR FRANCIS QUENTIN CALLARD:** That should have been the case yes.

**ADV MAHLAPE SELLO:** So there is – there are – there is no further investigation or calculation you had to do to explain the jump from 38  
10 to 49 billion? All that information is in the spreadsheets already?

**MR FRANCIS QUENTIN CALLARD:** With the...

**ADV MAHLAPE SELLO:** May I paraphrase? Can I – I would like to rephrase that please?

**MR FRANCIS QUENTIN CALLARD:** Yes.

**ADV MAHLAPE SELLO:** If Mr Laher had regard to the spreadsheets at his disposal would he have had a clear understanding of how the ETC moves from 38 to 49 billion which is the question he had posed to you?

**MR FRANCIS QUENTIN CALLARD:** I – if I may answer in a slightly convoluted manner.

20 **ADV MAHLAPE SELLO:** Okay.

**MR FRANCIS QUENTIN CALLARD:** The elements of the price movement or makeup from 39 to 49 or 54 whichever figure you want...

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** Are set out in here.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** I made the point earlier that there are anomalies here that I cannot explain and I believe it very difficult to explain. It is possible that Mr Laher did not share the spreadsheet because he did not wish to explain the anomaly or did not wish to be questioned on the anomaly and that is possibly why the spreadsheet was restricted.

**CHAIRPERSON:** Just to remind me he was the one that – was he the one that asked that the exercise be done?

**MR FRANCIS QUENTIN CALLARD:** No it was Mr Garry Pita and Mr  
10 Nomfuyo Galeni who asked that the exercise be done.

**CHAIRPERSON:** Yes. And do you know whether they were aware of the existence of these spreadsheets at the time that you were asking to see the spreadsheets?

**MR FRANCIS QUENTIN CALLARD:** I do not know if they were aware.

**CHAIRPERSON:** Yes.

**MR FRANCIS QUENTIN CALLARD:** I do not – it is my impression and recollection from the interactions we had that they were not aware.

**CHAIRPERSON:** Yes.

**MR FRANCIS QUENTIN CALLARD:** Because my recollection is that in  
20 my engagement with Mr Nomfuyo Galeni for access to the spreadsheet she was not aware – she gave the – I was under the impression from my interaction she was not aware of the existence of this particular spreadsheet.

**CHAIRPERSON:** You mean even the Chief Financial Officer was not aware?

**MR FRANCIS QUENTIN CALLARD:** Of ...

**CHAIRPERSON:** That is the impression you got?

**MR FRANCIS QUENTIN CALLARD:** That is the impression I got yes.

**CHAIRPERSON:** Yes.

**MR FRANCIS QUENTIN CALLARD:** Be ...

**CHAIRPERSON:** Yes just to go back to Ms Sello's question. As I understand it I think what she wanted to find out but if – if he is not the one that asked that the – the exercise be done maybe that is ...

**ADV MAHLAPE SELLO:** Yes.

10 **CHAIRPERSON:** The explanation to her question is ...

**ADV MAHLAPE SELLO:** (Intervenes).

**CHAIRPERSON:** Is that it was somebody else that asked that the question – the exercise be done but maybe to follow up on that question if Mr Laher understood the spreadsheets the way you understood them after you have had access to them then except for the issue of confidentiality that I understand he raised then his response when he heard that this exercise was being done should have been – there is a spreadsheet that explains and share it with everybody.

**MR FRANCIS QUENTIN CALLARD:** That ...

20 **CHAIRPERSON:** So except for the fact that he might not have wanted you and maybe the others to know about the spreadsheets that is what – that is the reaction one would have expected if he was aware of these and he understood the contents of the spreadsheets the way you understand them.

**MR FRANCIS QUENTIN CALLARD:** And that was the essence of my

point in 2011.1 Mr Chair.

**CHAIRPERSON:** Yes.

**MR FRANCIS QUENTIN CALLARD:** Yes.

**CHAIRPERSON:** Yes, yes.

**ADV MAHLAPE SELLO:** But Mr Callard I think it goes further than that if I may. At 197 having been requested by Galeni and Pita to do this through reconciliation at your paragraph 196 ...

**MR FRANCIS QUENTIN CALLARD:** Yes.

**ADV MAHLAPE SELLO:** You state at 197 and I quote:

10                    “I was part of a team that primarily comprised  
                         Yousuf Laher and Mohammed Moola ...”

**MR FRANCIS QUENTIN CALLARD:** Yes.

**ADV MAHLAPE SELLO:**        “...Executive Manager Finance  
                         Freight ...”

**MR FRANCIS QUENTIN CALLARD:** Yes.

**ADV MAHLAPE SELLO:**        “...and the purpose was to show  
                         conclusively that forex hedging and escalation were  
                         included in the business case.”

**MR FRANCIS QUENTIN CALLARD:** Correct.

20    **ADV MAHLAPE SELLO:**    And in order to undertake that exercise  
                         reference is then had to the spreadsheets which contain that  
                         information. So it comes back to the same point. so although the  
                         request was not from Mr Laher, Mr Laher participated in a process to  
                         answer a question that could very well have been answered by  
                         provision of the ...

**MR FRANCIS QUENTIN CALLARD:** *Ja*, the spreadsheets.

**ADV MAHLAPE SELLO:** Spreadsheets. Is that a fair summation?

**MR FRANCIS QUENTIN CALLARD:** Fair summation.

**ADV MAHLAPE SELLO:** Okay.

**CHAIRPERSON:** Do you know of any reason why Mr Laher despite knowing of the existence of these spreadsheets he might not have understood the – the spreadsheets. In other words – I mean - for example my question goes to if something really requires numbers if – if somebody is an accountant you would – he would know that or she  
10 would know that quite easily. Therefore you can exclude lack of understanding of those figures but if it is somebody maybe that requires knowledge of numbers and they are not good at numbers you might say okay maybe he did have them but did not understand them.

**MR FRANCIS QUENTIN CALLARD:** It is my understanding Mr Chair that Mr Laher is a qualified chartered accountant.

**CHAIRPERSON:** So – so that explanation can be excluded that he might not have understood numbers here. Okay, thank you.

**ADV MAHLAPE SELLO:** Thank you Chair. Your statement then further deals with the same – similar exercise done for the electrics?

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

**ADV MAHLAPE SELLO:** And it follows the same logic?

**MR FRANCIS QUENTIN CALLARD:** It follows the same logic and the same (intervenes).

**ADV MAHLAPE SELLO:** And the same anomalies that you have identified in respect of diesel you find in electric as well?

**MR FRANCIS QUENTIN CALLARD:** Yes. Not every figure is absolutely traceable through from the top to the bottom as I – as I have done here but they are of such a similarity that they add to that. I would like to add one further point ...

**ADV MAHLAPE SELLO:** Yes sir.

**MR FRANCIS QUENTIN CALLARD:** To these spreadsheets however.

**CHAIRPERSON:** Before you add it - and please do not forget the point - before you add it after you had had a chance to analyse the spreadsheets and realised that Mr Laher must have known or knew ...

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

**CHAIRPERSON:** That – you know – you were engaging in an exercise that really was not necessary. Did you by any chance confront him and say why did you not tell us about this and why did you allow this exercise to happen because otherwise if – if he did not want you to know – to know the information in the spreadsheets he could have said well I know how the price has changed. There is no need to do the exercise but I cannot share the information with you. Maybe I will share it with whoever has a right to know about it.

**MR FRANCIS QUENTIN CALLARD:** Yes. I would like to ...

20 **CHAIRPERSON:** My question is whether you were able at any stage to ask him why – why do you waste our time.

**MR FRANCIS QUENTIN CALLARD:** Could I answer that perhaps later Mr Chair?

**CHAIRPERSON:** That is fine, yes.

**MR FRANCIS QUENTIN CALLARD:** I would just like to cover that.

**CHAIRPERSON:** Because ...

**MR FRANCIS QUENTIN CALLARD:** I will certainly address that point.

**CHAIRPERSON:** Yes.

**MR FRANCIS QUENTIN CALLARD:** (Intervenes).

**CHAIRPERSON:** As long as you deal with it. That is fine *ja*.

**MR FRANCIS QUENTIN CALLARD:** Hm.

**ADV MAHLAPE SELLO:** You wanted to point out one other thing in respect of the spreadsheets?

**MR FRANCIS QUENTIN CALLARD:** Yes. I just which to turn up an  
10 electric spreadsheet.

**ADV MAHLAPE SELLO:** Okay. According to your 207 that should be – my apologies – your 201 I think. They should start at 67 to 72. Is that – are you looking for that annexure – annexures in that range?

**MR FRANCIS QUENTIN CALLARD:** Hm.

**CHAIRPERSON:** Where are we going now?

**ADV MAHLAPE SELLO:** He is first trying to locate ...

**MR FRANCIS QUENTIN CALLARD:** If I could take you to – to Annexure 70 please “Negotiations”?

**ADV MAHLAPE SELLO:** 7-0?

20 **CHAIRPERSON:** 7-0?

**ADV MAHLAPE SELLO:** Okay.

**MR FRANCIS QUENTIN CALLARD:** Annexure 7-0 page 606.

**ADV MAHLAPE SELLO:** Yes.

**CHAIRPERSON:** Yes.

**MR FRANCIS QUENTIN CALLARD:** We have been asked – the

increase in the price of the 1 064 from the 38.6 to the 54 billion and the price – increase in the price per locomotive up to 54 billion - million per locomotive has already been extensively aired.

**ADV MAHLAPE SELLO:** Hm.

**MR FRANCIS QUENTIN CALLARD:** Page 606 and it is titled “Negotiations” and it is from the Negotiations Electrics Sheet 17 March ...

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** It is a side bar calculation.

10 **ADV MAHLAPE SELLO:** Hm.

**MR FRANCIS QUENTIN CALLARD:** And you will see there – there is also a price of make-up for locomotives following the similar format to what we have seen beforehand - BAFO, new price and final cost.

**ADV MAHLAPE SELLO:** Okay.

**MR FRANCIS QUENTIN CALLARD:** On these negotiation sheets I would just like to draw the final figures there. We see a final figure at cost after TE scope.

**ADV MAHLAPE SELLO:** Huh-uh.

20 **MR FRANCIS QUENTIN CALLARD:** Bombadier 60 million per locomotive.

**ADV MAHLAPE SELLO:** Huh-uh.

**MR FRANCIS QUENTIN CALLARD:** CSR 55 million per locomotive moving later on to 59 million per locomotive and 55 million per locomotive. It is anomalous that the negotiations per locomotive would take us up to that price per locomotive and the logic that would take us



to that price is missing.

**ADV MAHLAPE SELLO:** Huh-uh.

**MR FRANCIS QUENTIN CALLARD:** And for me it – from this it begs the question as to how the negotiations were conducted.

**ADV MAHLAPE SELLO:** So if – if I may. Let us take the – the first table or box. Is that – what does that box represent? Is that the price as at which point?

**MR FRANCIS QUENTIN CALLARD:** I cannot say at which point and I cannot interpret those figures 20/7 – those figures above the  
10 Bombadier box ...

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** But you will see that the cost at the bottom of that column ...

**ADV MAHLAPE SELLO:** I see it is 60.

**MR FRANCIS QUENTIN CALLARD:** 60 million per locomotive.

**ADV MAHLAPE SELLO:** And as I go into the second box do I interpret the – the number against cost after TE scope of 59 as a reduction after 60?

**MR FRANCIS QUENTIN CALLARD:** Yes.

20 **ADV MAHLAPE SELLO:** Is there a correlation between the two?

**MR FRANCIS QUENTIN CALLARD:** I cannot talk to any possible correlation. I merely highlight that this a side bar calculation.

**ADV MAHLAPE SELLO:** Okay.

**MR FRANCIS QUENTIN CALLARD:** Of a cost per locomotive which is out of the ordinary to anything which we had been dealing with and it is

considerably higher than that which we have – we questioning the price up to 54 billion in the price increase per locomotive. So a side bar calculation which has a price of 60 million per locomotive or 59 million per locomotive I do not understand.

**ADV MAHLAPE SELLO:** Yes.

**CHAIRPERSON:** To the extent that what you have been able to pick up here with regard to the increase of the price from 38 to 50, 49, 50, 54 to the extent that you have picked up figures that are inexplicable as far as you are concerned which may mean that Transnet was put at a  
 10 risk. Its interests were not properly looked after by people who were supposed to pick these things up. Who ultimately at Transnet should have picked up these things and who ultimately – when I say ultimately – it might be somebody quite high up. There may be - but there may be others who below that body or that person should have picked these things up because part of their job was to check these things and because if it was part of their job to check these things properly and pick these things up and they did not do that. One within the context of what we are dealing with it maybe that for some it was gross negligence but for maybe others it maybe that it was much more. It  
 20 was not just negligence. It was part of a scheme. So – so it becomes important to – to pin down the people who may have been part of the scheme and may have put Transnet at risk by allowing and approving figures which should not have been approved because they were unjustified.

**MR FRANCIS QUENTIN CALLARD:** I described to Mr Chair that the

process followed two phases. The first phase was the selection of the bidders and I have described why my concerns regarding the selection of the bidders. The second phase was the negotiation phase with the selected OEMs. The negotiation phase took place or under the auspices of a Negotiation Team which the members were mandated with signed mandates by Mr Brian Molefe the Chief Executive. The Negotiation Team collectively – individually and collectively did the negotiations. I cannot talk to the role that each one played individually within the Negotiation Team but ...

10 **CHAIRPERSON**: But the leader of the Negotiation Team was ...?

**MR FRANCIS QUENTIN CALLARD**: It is my understanding that it was – I think the leader – the – I know one of the joint Chairs. I know Mr Jiyane was a joint Chair of the Negotiation Team.

**CHAIRPERSON**: Yes.

**MR FRANCIS QUENTIN CALLARD**: I cannot say who the ...

**CHAIRPERSON**: Who the other.

**MR FRANCIS QUENTIN CALLARD**: I cannot recall who the leader was.

**CHAIRPERSON**: *Ja*, okay, okay.

**MR FRANCIS QUENTIN CALLARD**: I need a moment or two for that.

20 **CHAIRPERSON**: Hm.

**MR FRANCIS QUENTIN CALLARD**: But the Negotiation Team collectively were operating under or should have operated under a mandate to achieve the best possible price for Transnet whether they did I think it is my – in answer to your question – the Negotiation Team should answer for the price increase.

**CHAIRPERSON:** Okay, thank you. Other than the Negotiation Team there would be somebody else probably who had to sign off to say this is fine who would not be in the Negotiation Team?

**MR FRANCIS QUENTIN CALLARD:** No it – negotiation – letters signed by Mr Molefe appointed Mr Singh and Mr Gama as members of the Negotiation Team as well although I understand they were not there full time ...

**CHAIRPERSON:** Yes, yes.

**MR FRANCIS QUENTIN CALLARD:** But they were part of that  
10 Negotiation Team.

**CHAIRPERSON:** But in the end Mr Brian Molefe would have been the one to say whether a particular price was acceptable. So in other words the Negotiation Team if they thought a price would be – is acceptable they would have to report to him?

**MR FRANCIS QUENTIN CALLARD:** Correct.

**CHAIRPERSON:** And if he thought the price was not right then he would say no but if he thought it was right then he would – he would approve?

**MR FRANCIS QUENTIN CALLARD:** Correct. It is my absolute  
20 understanding that that is – was the chain of command. We had a Negotiation Team. The Negotiation Team reported on a fairly regular basis. I believe it was on a daily basis - I believe it was a daily basis to Mr Singh.

**CHAIRPERSON:** Yes.

**MR FRANCIS QUENTIN CALLARD:** How he took it further on a daily

basis ...

**CHAIRPERSON:** Yes.

**MR FRANCIS QUENTIN CALLARD:** I am not sure.

**CHAIRPERSON:** *Ja.*

**MR FRANCIS QUENTIN CALLARD:** But the end result of the negotiations from the Negotiation Team resulted in these prices.

**CHAIRPERSON:** Yes, okay thank you. May we take the tea adjournment and we will resume at half past 11? We adjourn.

**ADV MAHLAPE SELLO:** Thank you Chair.

10 **REGISTRAR:** All rise.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Yes, you may proceed Ms Sello.

**ADV MAHLAPE SELLO:** Thank you Chair. We have dealt with your paragraph under analysis of March 17 negotiation spreadsheet, Mr Callard and you've taken us through your Annexure 78, 79, 80, the comparisons you made based on the worksheets you actually received. Before we leave that topic, you state at your paragraph 208.7 at page 55 that some formulas used in the negotiation worksheets have  
20 hallmarks of reverse engineering to achieve a desired result, do you see that?

**MR FRANCIS QUENTIN CALLARD:** Yes.

**ADV MAHLAPE SELLO:** And in the last line of that paragraph you state,

“This particularly applies to the foreign exchange component

and cells coloured in yellow”,

Now I need you to explain to the Chair what you mean by reverse engineering and for that purpose perhaps it might assist if we use an Annexure we’ve already used in the hearing Annexure 78 at page 625. Now with reference to that Annexure could you explain exactly what you mean by reverse engineering to achieve a desired result and what you – cause of the desired result was? 78 is the negotiation spreadsheet for diesels.

**CHAIRPERSON:** I’m sorry from which paragraph Ms Sello did you  
10 start?

**ADV MAHLAPE SELLO:** I’m reading at 208.7 Chair at page 55, top of page 55.

**CHAIRPERSON:** Okay.

**ADV MAHLAPE SELLO:** At that paragraph Mr Callard introduces a concept of reverse engineering to achieve a desired result.

**CHAIRPERSON:** Yes.

**ADV MAHLAPE SELLO:** And then he does so with reference to the cells coloured in yellow. I then want him to explain what exactly he means in that paragraph, by reverse engineering, firstly and to explain  
20 what desired result he said applied and to do so with a reference to an Annexure that we’ve worked on already, which is Annexure 78 the negotiations worksheet for diesels.

**CHAIRPERSON:** Yes, thank you.

**MR FRANCIS QUENTIN CALLARD:** The...(intervention).

**ADV MAHLAPE SELLO:** Just a second the Chair should – to locate

the Annexure, Annexure 78 Chair at page 625.

**CHAIRPERSON:** I've got it.

**ADV MAHLAPE SELLO:** Yes Mr Callard.

**MR FRANCIS QUENTIN CALLARD:** Okay, if I may illustrate the concept of reverse engineering by using, perhaps a – an example, if we have a – we are given a price of a locomotive and we know the escalation going forward, we take CPI going forward for example and over a two year period then the final price we would pay is a straightforward calculation, from here's the base price of the locomotive, apply the CPI forward and I get the final price of the locomotive. Reverse engineering would apply when I have a base price of a locomotive but I for example, I'm now negotiating on the final outcome price, I choose a final outcome price and then I reverse engineer to determine the effect of the escalation. So where is the escalation and forward Forex hedging should be derived quantities based on known formula that are derived. Reverse engineering would apply when one chooses a final price and then works backwards to achieve some figures which would tend to justify that price, that would – it's illustrative of the concept reverse engineering.

20 It is not visible immediately from the spreadsheets here but if one examines the excel spreadsheets in their raw format and one looks at the formulas on those excel spreadsheets one can see that a number of figures have been reverse engineered where a figure you would expect to be the outcome of a calculation is given as the result and it is used to derive what should have been a given like CPI for example and

we have seen escalation figures used here that have been quite high. In reference to this sheet and others we've already highlighted the variations in the movement of the exchange rate, what I've said were anomalous movements in the exchange rate across the CNR diesels from the US Dollars, we've highlighted that already, the first three columns where it goes from 484 000 to 493 00 then to US Dollars 918 – the Euros, apologies if I'm going too fast the Euros are on line 20 go from 993 down to 325 up to 374.

**CHAIRPERSON:** 774, 374 or 774?

10 **MR FRANCIS QUENTIN CALLARD:** 774.

**CHAIRPERSON:** Ja okay I think I heard 374 but maybe I didn't hear correctly.

**MR FRANCIS QUENTIN CALLARD:** I'm sorry, possibly I was...(intervention).

**CHAIRPERSON:** Okay.

**MR FRANCIS QUENTIN CALLARD:** If one wishes to influence the price at the bottom of those two columns in yellow.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** Then one would choose to use  
20 those prices to achieve a desired end result price and that is an example of what I mean by reverse engineering to achieve a desired price. So if one wanted to achieve, at the bottom of column 2, 30.4million rounded then a way of achieving that low price and see there is a significant reduction in that price.

**ADV MAHLAPE SELLO:** Yes.



**MR FRANCIS QUENTIN CALLARD:** Would be to artificially lower the foreign content because that would then result in the lower price and that would be an example of reverse engineering.

**CHAIRPERSON:** Can one explain your concept of reverse engineering in this way, that you first decide what the final amount is or should be that you want to achieve and then once you know what that amount is then you go back to the various components that make up the amounts and find one or more components that might be easy to play around with and therefore – and then increase one or more of those in  
10 order to achieve the result that you have already identified?

**MR FRANCIS QUENTIN CALLARD:** That is exactly the example I'm trying to illustrate Mr Chair, exactly that example.

**CHAIRPERSON:** Okay alright thank you.

**MR FRANCIS QUENTIN CALLARD:** I was trying to illustrate it at a single level, you have taken it to the full locomotive price.

**CHAIRPERSON:** No, no that's fine I was – I wanted to check whether I understood it correctly so that one could apply it to any other item if need arises to say what's the general principle or explanation for it, okay.

20 **ADV MAHLAPE SELLO:** And Mr Callard you say that this reverse engineering is not visible in the PDF format of your Annexures?

**MR FRANCIS QUENTIN CALLARD:** No, no.

**ADV MAHLAPE SELLO:** So in order for the Chair to satisfy himself that there has been a case of reverse engineering you suggest that we look at the actual excel spreadsheets or the spreadsheets that make up

the negotiations for diesel and/or locomotive as the case – and electric as the case may be.

**MR FRANCIS QUENTIN CALLARD:** If one looks at the actual excel files on a computer which then demonstrates how the formulas are made up and that is what illustrates the reverse engineering.

**ADV MAHLAPE SELLO:** I don't know if you are able to help us now that – you cannot because you don't have the documents before you, once again are you able to advise who we may turn to so the Chair may satisfy himself that there is some element of reverse engineering, to  
10 assist us to work through those spreadsheets?

**MR FRANCIS QUENTIN CALLARD:** Excuse me are you looking for a name of a person or an entity?

**ADV MAHLAPE SELLO:** Yes, who may guide us, they won't show us reverse engineering but if we were to pursue your concept who do you suggest we sit down with, working through the excel spreadsheets to satisfy ourselves that the concept that you now referred to is applicable in some or other regard?

**MR FRANCIS QUENTIN CALLARD:** I could show you personally but also the actuaries that were engaged by MNS would also be able to  
20 demonstrate the same concepts yes.

**ADV MAHLAPE SELLO:** Okay.

**CHAIRPERSON:** But the starting point may well be people who put in the figures, if they can't explain to say, what's your explanation for this in the light of your evidence.

**MR FRANCIS QUENTIN CALLARD:** Yes.

**CHAIRPERSON:** And they may or may not be able to explain it but that's one way or a component of finding out.

**MR FRANCIS QUENTIN CALLARD:** Certainly, it would have to be – they would have to be asked specifically on this spreadsheet, please have a look at this formulae can you explain this formulae, how it was derived, what was the makeup of this formulae, where did you get the figures please show – get the figures from, please indicated the traceability of those figures through whatever documentation to come to that figure, that would be the exercise to be followed.

10 **CHAIRPERSON:** Yes okay.

**ADV MAHLAPE SELLO:** Yes thank you very much, we will certainly pursue that.

**CHAIRPERSON:** So, it might be a good thing to have a notary as you say...(intervention).

**ADV MAHLAPE SELLO:** Actuary Chair, sorry actuary you said notary.

**CHAIRPERSON:** Oh, see they both end with a "ary".

**ADV MAHLAPE SELLO:** Absolutely.

20 **CHAIRPERSON:** No thank you, I meant actuary, notary is somebody else. One way is to bring in an actuary but it may well – I mean as I see it even the actuary might just be able to explain how much it is – how much difficult it is to explain the jump from that figure to that figure but in the end, one might just have to make an inference to a certain – in regard to a certain component the figures were inflated or something like that.

**MR FRANCIS QUENTIN CALLARD:** Yes I think what one would ask an actuary to do would be to please show me the logical progression and change in the prices and demonstrate that they followed a reasoned sequence of events and/or traceable documentation to arrive at the final price, if that...(intervention).

**CHAIRPERSON:** Ja I think that it goes to the question of whether there's a logical explanation or whether there's – if it can be explained in any rational way that the jump and what might appear to be inconsistency and so on.

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

**CHAIRPERSON:** Ja okay, alright.

**ADV MAHLAPE SELLO:** Thank you Chair.

**MR FRANCIS QUENTIN CALLARD:** May I just – because we have not got it into the record 208.2...(intervention).

**ADV MAHLAPE SELLO:** Maybe deal with the entire 208.

**MR FRANCIS QUENTIN CALLARD:** Entire 208?

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** This is really a summary of what I have stated before – what we have covered before.

20 **ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** But on examination I could not credit that the figures in the spreadsheet were a true reflection of the real cost to the locomotives for the following reasons.

**ADV MAHLAPE SELLO:** At page 54?

**MR FRANCIS QUENTIN CALLARD:** At page 54.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** 208.1, “The escalation costs were inflated and I could not correlate these with any of the locomotive modelling I’d previously done.

2) There were unexplained variations in the foreign exchange component affecting the locomotive price as a change between the worksheets of base cost, base cost excluding options, base costs excluding TE and negotiations”.

**CHAIRPERSON:** But we don’t need to go through that if we’ve already  
10 covered it, so only that which we might have left out.

**MR FRANCIS QUENTIN CALLARD:** Only that which we have not covered Mr Chair, is 208.6, the diesel price contains – sorry it was the local content version that I was looking for, 208.4 if I may.

**CHAIRPERSON:** Yes.

**MR FRANCIS QUENTIN CALLARD:** “The foreign exchange components amounts used in the final negotiations spreadsheet would cause some locomotives, CSR and Bombardier not to meet the local content requirements”.

**ADV MAHLAPE SELLO:** Please explain.

20 **MR FRANCIS QUENTIN CALLARD:** The point I’m making here is that if the foreign exchange amounts are correct or if they are correct then the local content does not meet requirements. If I may go back please to the – let’s go to the diesels as it’s a familiar one and that would be...(intervention).

**CHAIRPERSON:** Is that Annexure 67?

**MR FRANCIS QUENTIN CALLARD:** Annexure 62...(intervention).

**ADV MAHLAPE SELLO:** 78...(intervention).

**MR FRANCIS QUENTIN CALLARD:** Annexure 78 page 625 please.

**CHAIRPERSON:** Okay, yes.

**MR FRANCIS QUENTIN CALLARD:** Annexure 78 page 625, and I'm looking immediately to the right of the third small column which is negotiations, bidder one, CNR and we'll see there is some beige workings in that white space.

**ADV MAHLAPE SELLO:** Yes.

10 **MR FRANCIS QUENTIN CALLARD:** And if we look there, we will see – if we look across from line 19 it has – line 19 – sorry line 18 my apologies, total import content percentage per declaration and the figure given in the third column there is 38.9 percent.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** Across all the variations of foreign exchange, that figure of 38.9 percent has not changed, that is what was declared. If we look at the two lines above it we see that those figures have changed in – those figures have changed but the nature of that change does not appear to reflect the variations in the  
20 foreign exchange amounts.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** In fact, if anything, despite the significant increase in the foreign exchange amounts in the negotiation's column, that is the third column, we will see that the import content per first declaration and second declaration remains the

same, now changing the foreign component one would reasonably expect by virtue of these formulae to change the foreign component and we see there that it does not change. A side-bar calculation, and tis is my calculation in the beige – in the white space using the figures presented in the third column the imported content moves up to 64%, 64.2% which is outside the local content stipulations of the Department of Trade and Industries and on that basis should have disqualified them. I presented on the base on these figures as presented which make up – and we see how they go – feed through to the final elements  
 10 that local – that imported content does not hold, similar arguments hold for the electrics as well.

**ADV MAHLAPE SELLO:** Thank you. That then brings you to the end of the issues you wanted to address regarding the evaluations and the BAFO negotiation on both the diesels and electrics.

**MR FRANCIS QUENTIN CALLARD:** Yes.

**ADV MAHLAPE SELLO:** You proceed then from your paragraph 29 to share certain observations and draw conclusions from paragraph 209, my apologies Chair, page 55. You make certain observations and your draw conclusions which you list there, you don't have to read verbatim  
 20 what is set out in that paragraph but perhaps you might want to highlight key observations and what conclusions are to be drawn from the evidence you have provided.

**MR FRANCIS QUENTIN CALLARD:** Thank you, the essential component is that adding back the TE component as we will see was done in the – has been done in the electric locomotives we have not

demonstrated that here but it's visible in the spreadsheets, significantly increases the base price of the locomotive and we see how it was initially taken out. We've mentioned earlier that the BAFO prices of the 15<sup>th</sup> January memorandum from the CFET Finance cannot be used as a basis for determining the total estimated cost because of what has been – what is omitted.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** And I submit that without the detailed knowledge and understanding and in-depth analysis of this, 10 that a reader without access to these documents, the average reader would interpret the BAFO prices of the 15<sup>th</sup> of January and the memo to the loco Steering Committee as a reasonable basis for comparison and it's an open question whether the evaluation – the electric locomotives or what the evaluation of the electric locomotives would have been if the base price i.e. before the TE adjustment had been used as a basis for price evaluation.

**ADV MAHLAPE SELLO:** Is it possible though to conclude that as a bare minimum CSR would have come in at a higher price?

**MR FRANCIS QUENTIN CALLARD:** Certainly both CSR and 20 Bombardier, on that evaluation would have had a higher price comparable to what was subtracted from their price by the impact – virtue of the impact of TE. So had that been put in as a basis for evaluation on the real cost to the locomotive, the outcome of the evaluation may have been different.

**ADV MAHLAPE SELLO:** Yes.



**MR FRANCIS QUENTIN CALLARD:** I've already covered the member of the negotiation team. I would just add one other point which is an anomaly that when we showed the breakdown of the locomotive prices, this included the necessary options to develop a locomotive which was fit for purpose, ready for use, ex-works but in the ETC increase requested by Mr Molefe to the BADC and that was from the 38 to the 54billion, there was this amount in there of – and I read from 212.1,

10                    "it included contingencies of 4.9million which would include options and he – I quote from that document, electronically controlled pneumatic breaking and wire distributed power etcetera".

Now those options were previously included in the negotiations – sorry in the evaluation pricing. One would reasonably have expected that those would have been part of the consideration of the final cost of the locomotive because that is what makes it fit for purpose.

**ADV MAHLAPE SELLO:** Now on this construction are you suggesting that it would appear that the options were costed twice?

**MR FRANCIS QUENTIN CALLARD:** It is...(intervention).

20                    **ADV MAHLAPE SELLO:** If they constitute part of the 4.9billion as part of contingencies and yet were part of the makeup of the original – of the actual cost of the locomotive, does that constitute counting the options twice or accounting for them twice or would that be too simplistic an approach?

**MR FRANCIS QUENTIN CALLARD:** Um, I – to answer that one specifically I just need to refer back to Mr Molefe's memorandum but if

the – if the base price which is used from the memo while it excluded TE included those options and that we have seen already it included those options while it excluded the impact of TE is carried forward, yet we have the options counted again, a second time in this – yes that is so. The options were definitely in there in the base price which we've seen on the 15<sup>th</sup> of January.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** The options were in there, while it excluded the impact of TE but options were in there yes and we are  
10 now adding a further amount here for options.

**ADV MAHLAPE SELLO:** Okay thank you.

**MR FRANCIS QUENTIN CALLARD:** And my point – I go back to 212.3 inexplicably these required options were omitted during the negotiation stage and they were an extensive part of the evaluation stage, they were omitted during the negotiation stage and left to be added later under contingencies.

**ADV MAHLAPE SELLO:** Can you explain – well you did say inexplicably, ja, I withdraw the question, yes please continue.

**MR FRANCIS QUENTIN CALLARD:** No I think that's what is for the  
20 record.

**ADV MAHLAPE SELLO:** Alright you then have a following chapter headed, Report to Gama and others.

**MR FRANCIS QUENTIN CALLARD:** Without detailing the whole report counsel, when I became aware of the import and content of this – these two spreadsheets I contacted Mr Gama, said please could I

meet with him, he asked, please send me a report on what I wanted to meet about, I explained the nature of my concerns. I prepared a report which I sent to him, we met, I met with him and Mr Dipiwe Salinca?, in Mr Gama's offices, I'd sent the report earlier, the email trace of those – where I sent those reports is in the file, after the meeting I then forwarded the same reports to Mr Salinca, I then jumped back to item in my paragraph 217 that Mr Gama undertook to take up this matter with the Chair of the Audit Committee, the following day I emailed Mr Salinca copies of the memorandum that I'd emailed Mr Gama but I

10 heard nothing further from Transnet on the matter it went quiet.

**ADV MAHLAPE SELLO:** And you reference Annexure 86 and 87, these are the reports in respect of the electrics and diesels respectively.

**MR FRANCIS QUENTIN CALLARD:** Correct.

**ADV MAHLAPE SELLO:** And in the report do you highlight the issues that you are now sharing with the Chair, the anomalies and the fact that you cannot justify the jump from the business case estimated total cost of 38billion to 49billion or 54billion or as the case may be.

**MR FRANCIS QUENTIN CALLARD:** That was the essence of my

20 reports, my reports at the time were crafted and drafted on the basis of what I knew then and only from an analysis of the spreadsheets, I did not have access to all the information that I have presented now. So, they are incomplete in some respects in terms of they cannot be directly compared to here but they indicate the overall thrust of the point that, here the spreadsheets give the full story and there are these

unexplained anomalies in the spreadsheets, that was the thrust of my reports.

**ADV MAHLAPE SELLO:** Okay thank you. You may proceed.

**MR FRANCIS QUENTIN CALLARD:** To conclude in remarks?

**ADV MAHLAPE SELLO:** Yes. Well before you get to go – if that was all your conversations.

**MR FRANCIS QUENTIN CALLARD:** That was...

**ADV MAHLAPE SELLO:** Or engagements with Mr Gama and others.

**MR FRANCIS QUENTIN CALLARD:** Yes.

10 **ADV MAHLAPE SELLO:** I see you reference Mr Gama and communication with Mr Silinga – it is a Mr right? Yes Mr Silinga.

**MR FRANCIS QUENTIN CALLARD:** Yes.

**ADV MAHLAPE SELLO:** You recall the Chair I think asked you about the excel spreadsheets?

**MR FRANCIS QUENTIN CALLARD:** Yes.

**ADV MAHLAPE SELLO:** You had indicated that Mr Laher had been of the view that you cannot have access to them because they are confidential but you nonetheless succeeded?

**MR FRANCIS QUENTIN CALLARD:** Correct.

20 **ADV MAHLAPE SELLO:** Did you after working on the spreadsheets have – ever have occasion to engage Mr Laher on these spreadsheets?

**MR FRANCIS QUENTIN CALLARD:** Yes I did.

**ADV MAHLAPE SELLO:** In what form and what was the outcome of that engagement?

**MR FRANCIS QUENTIN CALLARD:** I and others met with Mr Laher at

the offices of MNS Attorneys. I cannot recall the exact day but it was to discuss the spreadsheets in particular.

**CHAIRPERSON**: Give us an estimate of around about when you think it was when you met him? Mid-year, last year or later?

**MR FRANCIS QUENTIN CALLARD**: It would have been towards the end of last year and my.

**CHAIRPERSON**: 2018.

**MR FRANCIS QUENTIN CALLARD**: And my estimate it was about October / November of last year.

10 **CHAIRPERSON**: 2018 ja.

**MR FRANCIS QUENTIN CALLARD**: 2018 yes.

**CHAIRPERSON**: Okay.

**ADV MAHLAPE SELLO**: Yes.

**MR FRANCIS QUENTIN CALLARD**: The essence of that conversation was that Mr Laher could not explain the anomalies which I had or – highlighted here because we discussed the same anomalies on a – that I have discussed here and he – ja he could not explain the anomalies or could not – would not. I – did not explain the anomalies.

**CHAIRPERSON**: Did you – did he offer some explanation that you  
20 found impossible or he just kept quiet?

**MR FRANCIS QUENTIN CALLARD**: The explanation that he offered when we – and we highlighted that he was a member of the negotiation team and the explanation that he highlighted was he was just inputting the numbers.

**CHAIRPERSON**: He was just?

**MR FRANCIS QUENTIN CALLARD:** Inputting the numbers. Capturing the numbers.

**CHAIRPERSON:** Just plucking them from the tree or what?

**MR FRANCIS QUENTIN CALLARD:** I – and repeating as close as I can to his words, he was just there inputting the numbers, implying that he was taking direction on putting the numbers into the spreadsheet. I asked him specifically did you not question the numbers and he said no? The example which I have given on the foreign exchange component if I remember – recall correctly and please – this is not  
10 written he said was – it was not his role to question the local or foreign content. We

**CHAIRPERSON:** Did he – did he – did you ask him and I do not know if I am repeating this question, did you ask him why did you say this was confidential this spreadsheet – these spreadsheets were confidential because this was information that in the exercise we were doing we needed to see? What the basis was or foreseeing. In other words did you ask him the basis for him saying these spreadsheets were confidential?

**MR FRANCIS QUENTIN CALLARD:** I cannot recall that I asked – we  
20 asked him that question, why he said that Mr Chair.

**CHAIRPERSON:** Hm.

**MR FRANCIS QUENTIN CALLARD:** The others did not – I cannot recall the others in the party at that meeting.

**CHAIRPERSON:** Hm.

**MR FRANCIS QUENTIN CALLARD:** Knew the detail of that

background.

**CHAIRPERSON**: Yes.

**MR FRANCIS QUENTIN CALLARD**: I do not believe I asked him that question.

**CHAIRPERSON**: Yes.

**MR FRANCIS QUENTIN CALLARD**: Specifically.

**CHAIRPERSON**: And you never heard why it was thought the spread sheets were confidential?

**MR FRANCIS QUENTIN CALLARD**: Confidential.

10 **CHAIRPERSON**: So even in other words even if you did not ask him you did not by any chance hear from anybody what the basis may have been for – for him saying that it was confidential – they were confidential?

**MR FRANCIS QUENTIN CALLARD**: No.

**CHAIRPERSON**: No.

**MR FRANCIS QUENTIN CALLARD**: No.

**CHAIRPERSON**: Okay.

**MR FRANCIS QUENTIN CALLARD**: I – we passed on that I wanted to get – we wanted to get an understanding.

20 **CHAIRPERSON**: Yes.

**MR FRANCIS QUENTIN CALLARD**: How do you understand the spreadsheets and please explain to us and we did not get a satisfactory explanation.

**CHAIRPERSON**: Yes. Well Ms Sello may or may not know but it would be important to establish his basis for saying they were confidential.

Was it because somebody higher up had said they – certain people must not see them even within the – within – people were trying to help Transnet or was it his own decision as to – to – as to who should or could or could not see them?

**MR FRANCIS QUENTIN CALLARD:** Certainly because the if I may Mr Chair because the spreadsheet do contain the confidential information of the bidders in terms of their pricing.

**CHAIRPERSON:** Hm.

**MR FRANCIS QUENTIN CALLARD:** That would be one explanation that  
10 could be offered for now wanting to share them.

**CHAIRPERSON:** Hm.

**MR FRANCIS QUENTIN CALLARD:** It...

**CHAIRPERSON:** But that is if one is talking about people, outside people not to if one is talking about people from within Transnet or people asked by Transnet to look into the issues.

**MR FRANCIS QUENTIN CALLARD:** There was – there was a very strict wall – fire wall around the information relating to the tenders at that time. In fact consistently. It was just fortunate that one I could access this spreadsheet which brought to light I believe the inconsistencies.

20 **CHAIRPERSON:** Yes but what I am saying is the – the issue of not wanting to expose the pricing as I understand it.

**MR FRANCIS QUENTIN CALLARD:** Ja.

**CHAIRPERSON:** Cannot apply to the group that you were part of that was given as I understand the position by Transnet the task of looking at this, could it?



**MR FRANCIS QUENTIN CALLARD:** I – while I agree with your sentiments.

**CHAIRPERSON:** Do feel free to say whatever it is that may lead you to explain his conduct if you think there may be room. I just want to see if – I am keen to understand if the labelling the words – these spreadsheets.

**MR FRANCIS QUENTIN CALLARD:** Ja.

**CHAIRPERSON:** As confidential may have been just a genuine thing or may have been part of a certain scheme?

10 **MR FRANCIS QUENTIN CALLARD:** Ja. Any answer to that Mr Chair because the spreadsheets contain or contained figures which are unexplained I believe it was kept that way because do not want to be asked to explain figures which are generally unexplained.

**CHAIRPERSON:** Yes, yes.

**MR FRANCIS QUENTIN CALLARD:** Certainly with the best [indistinct] in the world.

**CHAIRPERSON:** Yes.

**MR FRANCIS QUENTIN CALLARD:** Myself and others cannot explain the variations in these figures.

20 **CHAIRPERSON:** Yes, yes. And on the face of it if that was the reason it was an illegitimate reason to say the least?

**MR FRANCIS QUENTIN CALLARD:** Well yes. I am hesitant to...

**CHAIRPERSON:** It is just that it does not – you seem reluctant to say yes.

**MR FRANCIS QUENTIN CALLARD:** But yes. Let me go so far as to

agree with you Chair. I expressed that as saying I was disappointed that the spreadsheets were not shared.

**CHAIRPERSON**: Yes.

**MR FRANCIS QUENTIN CALLARD**: But I – I am perhaps reluctant to attribute the root cause to an individual but certainly with the inconsistencies and anomalies which the spreadsheets exposed.

**CHAIRPERSON**: Yes

**MR FRANCIS QUENTIN CALLARD**: I could appreciate some people wanting to keep them not make them available to others.

10 **CHAIRPERSON**: Ja. Well we – we are not closing the door to a legitimate explanation for the confidentiality.

**MR FRANCIS QUENTIN CALLARD**: I do not want...

**CHAIRPERSON**: We leave the door open but to the extent that certain reasons might be the reasons we looking at whether they would be legitimate reasons or illegitimate reasons. But if it is other reasons we do not know we will hear when the right people come and explain.

**MR FRANCIS QUENTIN CALLARD**: I may be wrong in my assessment here.

**CHAIRPERSON**: Yes, yes.

20 **MR FRANCIS QUENTIN CALLARD**: And I would accept that but I present what I...

**CHAIRPERSON**: Yes.

**MR FRANCIS QUENTIN CALLARD**: Have seen from this thing.

**CHAIRPERSON**: Ja and you give your opinion.

**MR FRANCIS QUENTIN CALLARD**: Yes.

**CHAIRPERSON**: Or based on the analysis you have done.

**MR FRANCIS QUENTIN CALLARD**: Yes.

**CHAIRPERSON**: Thank you.

**ADV MAHLAPE SELLO**: And if I may just follow up on the Chair's question then. You gain access to these documents in January 2018?

**MR FRANCIS QUENTIN CALLARD**: Yes.

**ADV MAHLAPE SELLO**: During the financial analysis exercise?

**MR FRANCIS QUENTIN CALLARD**: Yes.

**ADV MAHLAPE SELLO**: This was four years after the contracts were  
10 concluded?

**MR FRANCIS QUENTIN CALLARD**: Yes contracts concluded March  
20?

**ADV MAHLAPE SELLO**: 14?

**MR FRANCIS QUENTIN CALLARD**: 14.

**ADV MAHLAPE SELLO**: Yes. So there could not have been any potential prejudice to any bidders? There were no longer – there was no longer an issue of bidders, the decision had been made?

**MR FRANCIS QUENTIN CALLARD**: No, no, this is post – way post event yes.

20 **ADV MAHLAPE SELLO**: Before we leave that and I know you would like to get to your closing remark – concluding remarks. There is an – paragraph we skipped which I think is important and in particular for how the commission goes forward on some of the issues you have raised at paragraph 214 page 56 at the bottom it starts.

**MR FRANCIS QUENTIN CALLARD**: Yes. As soon as I – as I became

aware of this – these spreadsheets and I then emailed – we are talking of 214 paragraph 214?

**ADV MAHLAPE SELLO:** 214 yes.

**MR FRANCIS QUENTIN CALLARD:** Yes. So on 27 February 2018 I emailed Ms Nomfuyo Galeni and I copied her on my emails to Mr Gama but I also requested that if she can please trace and freeze the laptop with the file reconciliation of inflation forex and TE scope 26 February 2014.xlsx. May I just explain that this is one of those files that is embedded or not embedded but linked to these excel spreadsheet files  
10 and I believe it – it would have given an indication of how some of those foreign exchange figures and escalation figures were derived at and I was trying to trace that file. So I asked please can you trace and freeze the laptop with the file – with this file name. I believe it should form part of the forensic audit. Someone in Supply Chain Services should have this file and it is often referenced in the two files that the lady in finance sent to us.

**ADV MAHLAPE SELLO:** Hm.

**MR FRANCIS QUENTIN CALLARD:** And the two files referred to were in March spreadsheets.

20 **ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** And later I was ready to – I was really disappointed to later hear that the laptop of Ms Mdletshe has gone missing. This is reference in the MNS Report. I believe it contained the files referred to above.

**ADV MAHLAPE SELLO:** Are you not aware of any other file having

contained those spreadsheets?

**MR FRANCIS QUENTIN CALLARD:** There may have been other files but that was a particular one as I was going through the soft copy of the spreadsheets there was a continuous referencing linking data to that file and that is why I wanted to trace that file to see what was the source material for some of those inflation forex and TE scope numbers that we were dealing with here.

**ADV MAHLAPE SELLO:** Yes I am posing a slightly different question if I may try again?

10 **MR FRANCIS QUENTIN CALLARD:** Sure sorry.

**ADV MAHLAPE SELLO:** Now that the calamity has befallen us and the laptop has gone missing that particular file is it your view that it could only be located in that laptop and what is the likelihood of it being available from another computer or laptop?

**MR FRANCIS QUENTIN CALLARD:** I think remote.

**ADV MAHLAPE SELLO:** Remote.

**MR FRANCIS QUENTIN CALLARD:** It is my understanding and it was common talk that there were six laptops that were stored in safekeeping which were the laptops that the negotiations – that the  
20 evaluation team were working on. I stress evaluation team. It is also my understanding through what we have heard that all of those laptops have gone missing. The last laptop that was remaining was the one of Ms Mdletshe and it is my understanding from the MNS Report that when they went to retrieve this laptop that it too was missing which ...

**ADV MAHLAPE SELLO:** Do you know if Transnet has been lucky

enough to at least locate any of the six missing laptops?

**MR FRANCIS QUENTIN CALLARD:** I do not know.

**ADV MAHLAPE SELLO:** Okay.

**CHAIRPERSON:** So the other day I heard evidence that about 1000 laptops or computers disappeared at Transnet and they were never traced and it was never traced who – what happened to them and who was responsible. So this is – today I hear of another six and in this case we are talking about computers, laptops that were said to have information that could help with – help with some investigation into  
10 some of these things.

**MR FRANCIS QUENTIN CALLARD:** I believe so.

**CHAIRPERSON:** And those two from what you understood were not traced?

**MR FRANCIS QUENTIN CALLARD:** Ja. I believe so Mr Chair. In the CFET Report of the 10 January it describes in the introduction to that report many of the security measures which they put in place to safeguard their information in that report and how they were not allowed to take laptops home or it – they describe in full the security measures so it was rather as I say disappointing to hear that the laptops had gone  
20 missing.

**CHAIRPERSON:** Thank you.

**ADV MAHLAPE SELLO:** Did you ever get to know how any of the laptops or Ms Mdletshe's laptop came up missing?

**MR FRANCIS QUENTIN CALLARD:** No, no.

**ADV MAHLAPE SELLO:** You did not know the circumstances that led

to that?

**MR FRANCIS QUENTIN CALLARD:** I do not know the circumstances no, no.

**ADV MAHLAPE SELLO:** We – you are now at from page 58 then you deal with your concluding remarks.

**MR FRANCIS QUENTIN CALLARD:** Than you.

**ADV MAHLAPE SELLO:** Yes.

**MR FRANCIS QUENTIN CALLARD:** I will paraphrase.

**ADV MAHLAPE SELLO:** Yes please.

- 10 **MR FRANCIS QUENTIN CALLARD:** What is in here rather than read them directly but the programmatic replacement of the general freight locomotive fleet was necessary and because the last batch of locomotives for General Freight had been bought in 1992 and the greater part of the fleet was way beyond its economic life and we had exhausted all the upgrade programmes we needed to get new locomotives to keep the fleet running. And certainly the market demand strategy was the catalyst for this and the change in strategy or responding from creating capacity to absorbing demand could have worked. It is unfortunate I can believe that the aggressive market
- 20 demand strategy was not backed up by a rigorous evaluation and adjustment as the market dictated. And this is with particular reference to the 100 locomotives Supply Chain Services I believe failed Freight Rail in its locomotive procurement process. With good intention it was to create a mechanism separating technical interests from the procurement process. But it failed Freight Rail and that it presumed to

be the final arbiter of what Freight Rail needed in its locomotives rather than a custodian of due process. My belief. It failed to create the mechanism in the 1064 locomotives for programmatic procurement adjusting delivery to changing market conditions. It did have some clauses relevant to that though. It failed to include essential options in the procurement of locomotives as we have seen here that in the final award options were not included it was to be added as variation orders later. And for whatever reason it decided on the type of locomotive to be procured and this is in the relation to the 100 without technical  
 10 consultation. I add that I do not know of anyone in Supply Chain Services ever read the 1064 locomotive business case. The aggressive procurement and the shortening of delivery from the 7 years to the 3 years...

**CHAIRPERSON**: Of course technical consultation refers to consultation with the technical team?

**MR FRANCIS QUENTIN CALLARD**: With technical team.

**CHAIRPERSON**: Ja.

**MR FRANCIS QUENTIN CALLARD**: Yes there was no consultation with the technical team that I was aware of.

20 **CHAIRPERSON**: Ja okay.

**MR FRANCIS QUENTIN CALLARD**: None of my colleagues were aware of – it was a surprise to all of them. The aggressive procurement of the locomotives and the shortening of the delivery from the 7 to the 3 years also severely impacted Transnet and Freight Rail. Transnet Engineering was never going to be ready to be or able to deliver the



locomotives in the accelerated time frame which we have described and Freight Rail itself did not have the capacity to absorb the accelerated delivery and the financial impact was massive with Transnet almost transgressing its cash interest cover and having to increase its foreign borrowings. The premise of the business case – of the business case that locomotive performance would improve with new more reliable and more powerful locomotives that was the premise. It is my understanding that the locomotive performance now as measured in terms of gross tonne kilometres is now worse than before the

10 acquisition process started. We shared a vision, my colleagues and I of recreating a sustainable, viable locomotive industry supplying between 600 – sorry between 60 and 100 locomotives annually to Freight Rail. Sadly that vision was not realised and from where we are now it may well be a decade or more before that opportunity may arise again. Thank you for the opportunity to present what I know from time and involvement and my thanks and gratitude to my colleagues and co-workers.

**CHAIRPERSON:** Take your time Mr Callard if you need – if you need me to adjourn for five minutes?

20 **MR FRANCIS QUENTIN CALLARD:** Could I have a minute please?

**CHAIRPERSON:** Five minutes?

**MR FRANCIS QUENTIN CALLARD:** Five minutes please?

**CHAIRPERSON:** Let us adjourn for five minutes.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON**: Yes Mr Callard.

**MR FRANCIS QUENTIN CALLARD**: Thank you Mr Chair and my apologies for the interruption.

**CHAIRPERSON**: No, no that is fine it is understandable.

**MR FRANCIS QUENTIN CALLARD**: I would just like to conclude that my thanks and gratitude also go to my colleagues and my co-railway workers with [indistinct] dust on their shoes and may they keep the wheels turning. If I may be permitted a quote from Charles Dickens in  
10 the Tale of Two Cities?

“It was the best of times, it was the worst of times.

It was an age of wisdom. It was the age of foolishness. It was the epoch of belief. It was the epoch of incredulity. It was the season of light. It was the season of darkness. It was the spring of hope. It was the winter of despair. We had everything before us. We had nothing before us. We were all going direct to heaven. We were all going direct the other way.”

20 Thank you.

**ADV MAHLAPE SELLO**: Thank you Chair.

**CHAIRPERSON**: That concludes?

**ADV MAHLAPE SELLO**: That would conclude the testimony of...

**CHAIRPERSON**: YEs.

**ADV MAHLAPE SELLO**: Mr Callard unless the Chair has got any

questions for Mr Callard?

**CHAIRPERSON**: Ja no, no we are done. I am concerned that I do not see Mr Molefe for the next witness.

**ADV MAHLAPE SELLO**: Mr Molefe?

**CHAIRPERSON**: Mr Mokoena?

**ADV MAHLAPE SELLO**: No Mr Mokoena is just around the corner.

**CHAIRPERSON**: I see Ms Molefe – Ms Molefe is responsible for that slip of the tongue.

**ADV MAHLAPE SELLO**: He is in the building. Oh. Chair as to  
10 regards Mr Callard we have issued a significant number of 33's arising from his testimony and his statement.

**CHAIRPERSON**: Hm.

**ADV MAHLAPE SELLO**: We are so far in receipt of one response and I am – perhaps it is appropriate I place it on record from Mr Yusaf Mohammed.

**CHAIRPERSON**: Hm.

**ADV MAHLAPE SELLO**: Mr Yusaf has not applied to cross-examine Mr Callard but he seeks to advance his version on some aspects of Mr Callard's testimony. This was received Tuesday and shared with Mr  
20 Callard yesterday. He has not had opportunity to correctly – properly apply his mind thereto. We request therefore Chair that I do not close the evidence of Mr Callard. He will come back at a time to be determined by the Chair to deal with Mr Mohammed's version and any other that we may in the interim receive.

**CHAIRPERSON**: Well we can closing or not closing is neither here nor

there. We can let him go.

**ADV MAHLAPE SELLO:** Yes Chair.

**CHAIRPERSON:** He will apply his mind and I take it he would supply you.

**ADV MAHLAPE SELLO:** Indeed Chair.

**CHAIRPERSON:** With a statement that deals with ..

**ADV MAHLAPE SELLO:** In response to that.

**CHAIRPERSON:** To that version and whether he needs to come back to deal with that may depend on what his response is.

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

**CHAIRPERSON:** If his response is I have no issues with this version or I agree with it there might be no need for him to come back. If there are issues then there may be a need. So I think it would just be on the basis that he will deal with that and as soon as he has reverted to you with his response then if there is a need for him to come and deal with it in the witness stand then arrangements will be made.

**ADV MAHLAPE SELLO:** May I indicate Chair that in the course of his testimony.

**CHAIRPERSON:** Hm.

20 **ADV MAHLAPE SELLO:** Mr Callard expanded on some averments he had made which read on their own in the statement did not seem to implicate certain persons which he expounded on in oral testing [indistinct] and that has resulted in us issuing further 33's.

**CHAIRPERSON:** Ja.

**ADV MAHLAPE SELLO:** So we are still in respect of some implicated

persons within the fourteen day period.

**CHAIRPERSON**: Ja.

**ADV MAHLAPE SELLO**: We will revert in about ten days or so to indicate whether we have received any other responses and we will take guidance from the Chair on how to deal with it.

**CHAIRPERSON**: Ja no that is fine.

**ADV MAHLAPE SELLO**: Thank you Chair.

**CHAIRPERSON**: Thank you very much Mr Callard for coming forward to assist. We appreciate it and chances are that you may be asked to  
10 come back.

**MR FRANCIS QUENTIN CALLARD**: Understood.

**CHAIRPERSON**: And I have no doubt you will be agreeable to that. Thank you very much you are excused.

**MR FRANCIS QUENTIN CALLARD**: Thank you Chair.

**CHAIRPERSON**: Thank you.

**ADV MAHLAPE SELLO**: Thank you Chair. Mr Mokoena had requested about three, five minutes for a change of the guard. I do not know if the Chair wants to sit here while he does so or? Everybody is ready it is just – so I removed my files and then he can step up to the...

20 **CHAIRPERSON**: Oh I saw that he was not here so I thought he might not be ready. So [indistinct].

**ADV MAHLAPE SELLO**: No he is ready.

**CHAIRPERSON**: Oh okay.

**ADV MAHLAPE SELLO**: He is ready to proceed Chair.

**CHAIRPERSON**: Okay shall we resume it is twenty to shall we resume

at twenty – at quarter to?

**ADV MAHLAPE SELLO:** Quarter to one?

**CHAIRPERSON:** Ja.

**ADV MAHLAPE SELLO:** Yes Chair I will let him know.

**CHAIRPERSON:** Okay.

**ADV MAHLAPE SELLO:** Thank you Chair.

**CHAIRPERSON:** We will adjourn and resume in five minutes which will be quarter to one.

**ADV MAHLAPE SELLO:** Thank you Chair.

10 **CHAIRPERSON:** We adjourn.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** I was nicely surprised Mr Mokoena to hear that it is not that you are not available. You are around.

**ADV PHILLIP MOKOENA SC:** I am Chair.

**CHAIRPERSON:** I thought – I thought maybe you thought we would take too long ...

**ADV PHILLIP MOKOENA SC:** No Chair.

**CHAIRPERSON:** With the previous witness.

20 **ADV PHILLIP MOKOENA SC:** I am here Chair.

**CHAIRPERSON:** Okay, alright. Thank you. I see that we will take a short time and then we will have to adjourn. It is okay but let us start.

**ADV PHILLIP MOKOENA SC:** Yes Chair. Chair the next witness that we are calling is Mr Robert Gonsalves and in leading ...

**CHAIRPERSON:** Is it Robert or Roberto?

**MR ROBERTO GONSALVES:** Roberto, *ja*.

**CHAIRPERSON:** Roberto.

**MR ROBERTO GONSALVES:** That is good Chair.

**CHAIRPERSON:** Okay.

**ADV PHILLIP MOKOENA SC:** Roberto Gonsalves and in leading his testimony Chair we will be referring to a file which we have taken the liberty of marking it as EXHIBIT BB3 – BB5 Chair.

**CHAIRPERSON:** Oh, *ja*. I was wondering.

**ADV PHILLIP MOKOENA SC:** It is BB5.

10 **CHAIRPERSON:** Yes.

**ADV PHILLIP MOKOENA SC:** I am having BB3 here because I will be referring to it just in passing.

**CHAIRPERSON:** Hm.

**ADV PHILLIP MOKOENA SC:** And Mr Chair in order to contextualise his evidence it may be important for us to remind ourselves of the testimony of Mr Mahomed which he testified on the same issues but from a perspective of a Transnet witness. He will be testifying on the same issues but being one other minority shareholders of a company that benefitted from that similar transaction. So his testimony becomes  
20 quite crucial in that – in that regard because the minority shareholders opposed and objected to those monies being paid to that entity. May we – Chair I did not even put before you the file of Mr Mahomed because I just want to – to deal with it in passing so that I can contextualise Mr Gonsalves testimony and simply to remind you that on page 3 Chair can simply make a note at paragraph 3.1 Mr Mahomed

informed the Chair in the following terms. He said that:

“While the benefit of hindsight and in (indistinct) I now understand that there was a system where a set of key role players both internal and external and Transnet Executives, Board Members and certain companies acted in concert to the detriment of Transnet’s best interest causing pecuniary losses to the company.”

And at 3.2 he said:

10           “Although much is detailed later in my submission I draw the Commission’s attention to the following instances of what I consider to be the most succinct illustration of the system.”

Among those Chair is the one of the relocation where at paragraph 3.2.5 Mr Mohamedy informed the Chair as follows:

“The Durban relocation process similarly followed a process of being approved by individuals within Transnet without any Committee review or approving the process.”

20   And he then referred us to Annexures 2, three and four where they contain a memorandum and demonstrating that an amount of relocation to the value of R647 million was actually advanced to the entity which Mr Gonsalves will be talking about. That is the context of Mr Gonsalves evidence Mr Chair.

**CHAIRPERSON:** (Intervenes).



**ADV PHILLIP MOKOENA SC:** In as far as the Rule 3.3 Notices are concerned Chair we have complied with same. I am informed that there is Counsel for the CNR and for Mr Wang whom we will allow the opportunity to place themselves on record.

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

**ADV ZIYAAD MINTY:** Thank you very much Chair. Good afternoon to you.

**CHAIRPERSON:** Good afternoon.

**ADV ZIYAAD MINTY:** My name is Ziyaad Minty from the Johannesburg  
10 Bar ...

**CHAIRPERSON:** Huh-uh.

**ADV ZIYAAD MINTY:** On behalf of CNR and Mr Jeff Wang instructed by Thomson Wilks.

**CHAIRPERSON:** Thank you.

**ADV ZIYAAD MINTY:** Thank you Chair.

**CHAIRPERSON:** Thank you.

**ADV PHILLIP MOKOENA SC:** Mr Chair we are then ready to proceed with the evidence of Mr Gonsalves. May the witness be sworn in?

**CHAIRPERSON:** Yes, thank you. While the Registrar is proceeding  
20 there I say this for the benefit of Ms Molefe I think Mr Mohammed Mohamedy is one of the witnesses who may have dealt with the issue that – relating to the witness after this witness.

**REGISTRAR:** Please state your full names for the record.

**MR ROBERTO GONSALVES:** Roberto Gonsalves.

**REGISTRAR:** Do you have any objections to taking the prescribed

oath?

**MR ROBERTO GONSALVES:** No, I do not.

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

**MR ROBERTO GONSALVES:** Yes, I do.

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

**MR ROBERTO GONSALVES:** So help me God.

10 **MR ROBERTO GONSALVES:** (duly sworn, states)

**ADV PHILLIP MOKOENA SC:** Mr Gonsalves you will see that there is a file that has been placed before you and it is marked as EXHIBIT BB5. If you open the file you will see that it contains a folder and immediately after the folder it must be an index and that index will assist you to navigate through the various documents that you will be canvassing during your evidence. Now could you please turn to a document immediately after the index and please identify same for the Chair.

20 **MR ROBERTO GONSALVES:** Is that the statement that you are referring to Counsel?

**ADV PHILLIP MOKOENA SC:** Yes. You will let me know is that a statement that you find there.

**MR ROBERTO GONSALVES:** Correct Counsel.

**ADV PHILLIP MOKOENA SC:** Yes and if you could please turn to page 17 – 1-7. Is that your signature appearing there?

**MR ROBERTO GONSALVES:** Yes it is Counsel.

**ADV PHILLIP MOKOENA SC:** Yes and when was that statement signed?

**MR ROBERTO GONSALVES:** On 14 April 2019.

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

**MR ROBERTO GONSALVES:** Yes, I do.

**ADV PHILLIP MOKOENA SC:** Yes. May you then proceed to share with us your qualifications?

10 **MR ROBERTO GONSALVES:** Counsel I am Chartered Accountant. I – if you want some more background about ...

**ADV PHILLIP MOKOENA SC:** Yes. Can you also give us background?

**MR ROBERTO GONSALVES:** Okay.

**ADV PHILLIP MOKOENA SC:** Yes.

**MR ROBERTO GONSALVES:** Okay. Chair my name is Roberto Gonsalves but I am known as Robbie Gonsalves throughout the file you will see. I am a Chartered Accountant.

**CHAIRPERSON:** Oh, I am sorry. Is the spelling correct?

**MR ROBERTO GONSALVES:** The spelling is correct.

20 **CHAIRPERSON:** But – but the way you pronounce the surname is you do not pronounce the V?

**MR ROBERTO GONSALVES:** Gonsalves. No you pronounce it.

**CHAIRPERSON:** Oh you pronounce it. Gonsalves, okay thank you. Okay.

**MR ROBERTO GONSALVES:** Chair I am a Chartered Accountant. I

joined Cadiz Corporate Solutions in – towards the end of 1998. Prior to that I was with Pricewaterhouse and I left PricewaterhouseCoopers as a Partner in 1998. I have been with – I was with the Cadiz Group for over 20 years. The Managing Director of the Corporate Advisory Business called Cadiz Corporate Solutions and then in January this year Cadiz Corporate Solutions was acquired by the Mergence Group and we are known as Mergence Corporate Solutions today but you will see throughout the evidence the reference to Cadiz Corporate Solutions.

- 10 **ADV PHILLIP MOKOENA SC:** Yes. Mr Gonsalves the Chair has heard testimony of various witnesses from Transnet who dealt with the acquisition of the 1 064 locomotives and from the – your employment history it is quite clear that you were never at any stage employed by Transnet. Am I correct?

**MR ROBERTO GONSALVES:** That is absolutely correct Chair.

**ADV PHILLIP MOKOENA SC:** Yes. You will be adducing the evidence before the Chair as one of the minority Directors of an entity that benefited from Transnet?

**MR ROBERTO GONSALVES:** That is correct Chair.

- 20 **ADV PHILLIP MOKOENA SC:** Yes. Now you preface your evidence if you may go to page 1 with particular reference to paragraph 4. You preface your evidence by the events of July 2012 pertaining to this acquisition of the locomotives. Could you please in your own words tell the Chair how you were involved or the entity that you belonged to was involved in this transaction?

**MR ROBERTO GONSALVES:** Sure. Chair I think it is well known that in July 2012 Transnet issued an open tender for the 1 064 locomotives – 1 064 locomotives – and that was split into 465 diesel locomotives and 599 electric locomotives. We formed – Cadiz Corporate Solutions formed part of a consortium with China North Railways – CNR. I must just clarify one thing. CNR and CSR subsequently merge in China and are known as CRRC but at that time it was CNR. So the consortium was made up of CNR, Cadiz, Global Rail – another entity – and then **Endinamix** which was the BEE shareholder.

- 10 **ADV PHILLIP MOKOENA SC:** Chair this is a quite interesting time to start with a witness and maybe it is the time when I am saying that it is a time to adjourn for lunch as well.

**CHAIRPERSON:** Well I was wondering whether we should adjourn at one or we should just go on maybe until quarter past and then – just so that we ...

**ADV PHILLIP MOKOENA SC:** We had (intervenes).

**CHAIRPERSON:** Pardon.

**ADV PHILLIP MOKOENA SC:** With the fresh legs on his food. We are prepared to proceed Chair.

- 20 **CHAIRPERSON:** *Ja*, let us go on until quarter past one. Is that fine with you?

**MR ROBERTO GONSALVES:** Go Chair, proceed.

**CHAIRPERSON:** Yes.

**ADV PHILLIP MOKOENA SC:** Yes.

**CHAIRPERSON:** *Ja*, okay.

**ADV PHILLIP MOKOENA SC:** You also outline for the Chair the structure of this CNRRSSA. Could you please proceed doing so from paragraph 6 and the following paragraphs?

**MR ROBERTO GONSALVES:** Chair perhaps let me start off with the shareholding.

**ADV PHILLIP MOKOENA SC:** Yes.

**MR ROBERTO GONSALVES:** So the entity is – was known as CNR Rolling Stock South Africa. It is quite a mouthful – CNRRSSA. When the merger happened between CNR and CSR in China it became known  
10 as CRRC SA Rolling Stock. So that was CRRCSARS which is also another mouthful. I am probably going to refer to it as CRN South Africa.

**ADV PHILLIP MOKOENA SC:** Yes.

**MR ROBERTO GONSALVES:** So that we know that that is the local entity through which CNR operated in South Africa.

**ADV PHILLIP MOKOENA SC:** Okay.

**MR ROBERTO GONSALVES:** If you look at the shareholding in CNR South Africa 66 percent is held by CNR which is now CRRC. 30 percent held by Endinamix the BEE shareholder, 2 percent by Global  
20 Railway Africa and the other 2 percent by Cadiz Corporate Solutions. In terms of the Board of Directors of that company. There are seven Directors. Endinamix has one Director and a gentleman by the name of Lulamile Xate. He is a Director on that Board as a Non-Executive Director. Rowlen von Gericke a Non-Executive Director represents Global and then I represent Cadiz Corporate Solutions. The other four

Directors are Jeff Wang. His Chinese is Jun (?) Wang, but his English name is Jeff Wang. There is another gentleman by the name of Tau Yu. Tony Yu is his English name and then Feng Yu and Jun (?) Chow. Feng Yu and Gang Chow are based in China. So they have never ever attended meetings. They have dialled in for all Board Meetings. Jeff Wang is the Managing Director and Tony Yu was the Financial Director. I understand that he is about to be replaced or has been replaced.

**ADV PHILLIP MOKOENA SC:** Yes. You also deal with the  
10 shareholding in Endinamix and give us the structure.

**MR ROBERTO GONSALVES:** So Chair Endinamix owns 30 percent in CNR South Africa. The shareholders in Endinamix are: Linotando owns 20 percent, Kopano Ke Matla owns 20 percent, Makana Investment Corporation owns 20 percent, Azon Rail owns 13.33 percent, Lanetta (?) Investments owns 6.67 percent, Global Railway Africa owns 10 percent and Cadiz Corporate Solutions owns 10 percent.

**ADV PHILLIP MOKOENA SC:** Ja. Now in terms of the day to day running of an entity – you know – who was responsible for those activities?

20 **MR ROBERTO GONSALVES:** So Chair the companies operated through Jeff Wang who is a Managing Director and Tony Yu as a Financial Director. Rowlen von Gericke, Lulamile Xate and myself are Non-Executive Directors. So we are not involved in the operations whatsoever. We have - we attend Board Meetings only and maybe have done one or two site visits as part – part of that Board Meeting.

**ADV PHILLIP MOKOENA SC:** Yes. Now from paragraph 11 you start now dealing with the events commencing from 9 August 2012 directly relevant to the subject at hand. Can you please proceed to deal with same onwards?

**MR ROBERTO GONSALVES:** Sure. Chair so on 9 August 2012 the CNR Consortium - at that stage it was incorporated. It was an unincorporated joint venture. It was only incorporated once the tender was awarded. So that was made up of CNR, Global Rail, Endinamix and Cadiz. They informed Transnet that they would tender for both the  
10 electric and the diesel locomotives. I understand that CNR was probably of the four OEMs probably the only party capable of manufacturing both the diesel and the electric locomotives. Then on 30 April 2013 Chair CNR Consortium submitted a tender to Transnet for both diesel and the electric locomotives and then on – I think – it is 17 April the tender was actually awarded to – to CNR South Africa for 232 diesel locomotives. I think in my statement in paragraph 13 that is a slight error Chair. Where it says ...

**CHAIRPERSON:** I am sorry. I am sorry. Did you say 17 April just now or was it 30 April? I see 17 March in the statement. So I am trying to  
20 see if ...

**MR ROBERTO GONSALVES:** I think it is probably 17 March 2014 Chair.

**CHAIRPERSON:** Ja, okay.

**MR ROBERTO GONSALVES:** Correct, 17 March 2014.

**CHAIRPERSON:** Okay.



**ADV PHILLIP MOKOENA SC:** You wanted to effect a minor change on paragraph 13?

**MR ROBERTO GONSALVES:** Yes, (intervenes).

**ADV PHILLIP MOKOENA SC:** (Intervenes)?

**MR ROBERTO GONSALVES:** Yes. I just wanted to inform the Chair that of the 465 diesel locomotives 232 were awarded to CNR South Africa. The other 233 went to General Electric.

**ADV PHILLIP MOKOENA SC:** Yes.

**MR ROBERTO GONSALVES:** In paragraph 13 it says Bombardier. So  
10 that is an error. Bombardier was based in Bayhead with CNR. That is where the confusion came in.

**ADV PHILLIP MOKOENA SC:** So where there is a word Bombardier it should be replaced by what?

**MR ROBERTO GONSALVES:** General Electric.

**ADV PHILLIP MOKOENA SC:** General Electric. Chair we will affect the necessary amendment and make sure that we replace your page accordingly.

**CHAIRPERSON:** Yes. No that is fine.

**ADV PHILLIP MOKOENA SC:** Now ...

20 **CHAIRPERSON:** We do not - I do not know if you were here. We do not know want anything similar to what we had about a few days ago. Okay, alright.

**ADV PHILLIP MOKOENA SC:** Yes.

**CHAIRPERSON:** In regard to mixing up names.

**ADV PHILLIP MOKOENA SC:** We understand Chair.

**CHAIRPERSON:** Hm.

**ADV PHILLIP MOKOENA SC:** May I now refer you to folder one Chair - and we leave Annexure 1 – it is on page 19. Are you there?

**CHAIRPERSON:** Yes.

**ADV PHILLIP MOKOENA SC:** Could you please identify that document for us Mr Gonsalves?

**MR ROBERTO GONSALVES:** Chair this the local – Locomotive Supply Agreement - the LSA - that was executed on 17 March 2014.

**ADV PHILLIP MOKOENA SC:** Yes and may I refer you to page 178 and  
10 if you could please identify for us the respective individuals who appended their signatures on that document and also refer to the date as to when those signatures were appended?

**MR ROBERTO GONSALVES:** Chair the agreement was signed – the Locomotive Supply Agreement – was signed by Transnet on 17 March 2014 and it was signed by Brian Molefe as the Chief Executive Officer and it was signed by CNR by Jeff Wang/Wang Gang on 17 March 2014.

**ADV PHILLIP MOKOENA SC:** Yes. While we are still dealing with that document I know that it will become paramount at a later stage of your  
20 evidence may I then refer you to page 27? Now you have a definition of a contract facility. If you can read same into the record and give us your understanding of same and why it will be important to the evidence that you will be adducing before the Chair.

**MR ROBERTO GONSALVES:** Sure. Chair when the price was being built up for the – for the tender in respect of the 232 diesel locomotives

it has always been done on the basis that the locomotives were going to be assembled and manufactured in Koedoespoort in Pretoria and you will see the contractor facility definition in the agreement means:

“The facility at Koedoespoort Gauteng or Bayhead Durban as notified in writing by the contractor to the company.”

By the time we had – we signed this on 17 March 2014 CNR knew that they were going to be manufacturing in Bayhead Durban. They had already been informed and as a matter of fact there was an amended  
10 and reinstated Locomotive Supply Agreement. We never ever saw the signed copy of that. We just saw drafts of it and in the drafts that we saw that contractor facility definition was amended to say:

“It means Bayhead Durban as notified in writing by the company to the company. So by the contractor to the company.”

So the important thing is when this was signed the facility – the contractor facility was Bayhead in Durban.

**ADV PHILLIP MOKOENA SC:** Yes. May I then refer you to page 3-0 – 30? You will see also there that there is a definition of delivery point.  
20 Can you please also read that into the record and give the Chair your own understanding and significance of that definition?

**MR ROBERTO GONSALVES:** Chair I will read it.

“Delivery point means the delivery point in relation to the locomotives, spares, tool or test equipment as applicable namely the depot at Koedoespoort

Gauteng, the depot at Bayhead Durban or such other location in South Africa as maybe agreed between the contractor and the company from time to time.”

So Chair my understanding of that is when you deliver completed locomotives you have got to deliver it somewhere that is going to be in relation to where the contractor facility was. So my understanding is that because the contractor facility had been moved to Bayhead delivery to – of those locomotives was going to take place at Durban as well – Bayhead Durban.

**ADV PHILLIP MOKOENA SC:** Yes. Now may I refer you back to your statement with particular reference to page 4 Mr Gonsalves? From paragraph 15 you commence addressing a new topic which is the proposed relocation to Durban. You may proceed to deal with those relevant facts.

**MR ROBERTO GONSALVES:** So Chair I think I am repeating what I say in the Locomotive Supply Agreement – the LSA – stipulated that the contractor facility was going to be either Koedoespoort or Bayhead. However we knew that when – by the time that the LSA was signed that the contractor facility was going to be at Bayhead and I think the important thing is that all the calculations had been done on the basis initially that the contractor facility was going to be at Koedoespoort. In early March so just a couple of days or two weeks or so even less than two weeks before the Locomotive Supply Agreement was signed Transnet indicated that we had to give them an impact of manufacturing

and assembling in – in Bayhead Durban as opposed to Koedoespoort in Pretoria and we obviously sat down with CNR Consortium to calculate what the impact was on the price that was submitted for manufacturing and assembling in Bayhead Durban as opposed to Koedoespoort Pretoria.

**ADV PHILLIP MOKOENA SC:** Yes. Now at the time when you were approached by Transnet to – for the company to provide them with a relocation cost would I be correct that at that time there were no physical activities or operations at all in Koedoespoort?

- 10 **MR ROBERTO GONSALVES:** Chair that is absolutely correct. I mean we were not even at the stage – this is prior to 17 March – we had not even signed the tender documents yet. So the company had not even been incorporated. So there were no physical premises. We were not based in Koedoespoort. We were not based anywhere. We were still preparing the tender documents.

**ADV PHILLIP MOKOENA SC:** In simple terms there was nothing to relocate?

**MR ROBERTO GONSALVES:** Absolutely correct. Physically there was nothing to relocate.

- 20 **ADV PHILLIP MOKOENA SC:** Yes. Now may I refer you to folder number two which you will find from page 180?

**CHAIRPERSON:** That is Annexure RG2?

**ADV PHILLIP MOKOENA SC:** It is Chair and within the two minutes that is remaining before the lunch adjournment could you please identify that document?

**MR ROBERTO GONSALVES:** Chair this document is written by the CNR Consortium Unincorporated Joint Venture and signed by Rowlen von Gericke on behalf of the CNR Consortium and it is addressed to Ms Lindiwe Mdlletshe at the Commodity Manager Supply Chain at TFR and in short what it says is that:

“With reference to the TFR request relating to CNR’s response for the cost impact of building the locomotives in Durban we would like to point out that our original quotation is based upon the locomotives in Koedoespoort or Germiston.”

10

And it is a request by Rowlen von Gericke on behalf of the consortium.

“Can you please reconsider us rather building in Koedoespoort as opposed to Bayhead in Durban?”

**ADV PHILLIP MOKOENA SC:** So it is quite apparent from reading this annexure that it was the consortium’s view that it is far better to do the operations in Koedoespoort rather than to locate it to Durban. Is that my – is that my ...?

**MR ROBERTO GONSALVES:** Correctly Chair. The offices are here. A lot of the supplies are based up in Johannesburg. The preference would have been Koedoespoort as to – as supposed to Bayhead Durban.

20

**ADV PHILLIP MOKOENA SC:** Yes. Chair would it be the appropriate time to adjourn?

**CHAIRPERSON:** Yes. Let us adjourn. We will adjourn until quarter past two. We adjourn.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Yes Mr Mokoena you may proceed.

**ADV PHILLIP MOKOENA SC:** Thank you Chair. Mr Gonsalves just before the lunch adjournment you were still informing the Chair about the request which was made to your consortium emanating from Transnet, if you can simply summarise what you were informing the Chair.

- 10 **MR ROBERTO GONSALVES:** Yes Chair in summary the CNR Consortium made up of CNR, Endinamics, Global and Kaydee's applied or tendered for to manufacture both Diesel and Electric locomotives, they were ultimately awarded a contract for 232 diesel locomotives. Prior to submitting the final tender price TFR requested that we give them an analysis of the increase in costs for us manufacturing at Bayhead in Durban as opposed to Kuduspoort in Pretoria where we had originally assumed we were going to be manufacturing assembling and based our initial tender prices on.

**ADV PHILLIP MOKOENA SC:** Yes.

- 20 **CHAIRPERSON:** You gave evidence before lunch to the effect that you had advised or your consortium had advised that this relocation should not happen because everything would be – it would be better if everything was done in Gauteng, is that right? Am I mixing up something?

**MR ROBERTO GONSALVES:** No Chair that is correct, the preference

on the CNR Consortium was to manufacture at Kuduspoort rather than Bayhead in Durban.

**CHAIRPERSON:** Yes, and what was the reason given for not accepting that suggestion or advice?

**MR ROBERTO GONSALVES:** Chair I think that there four OEM's and they wanted to split the manufacturing between two locations, Kuduspoort and Durban, so two OEM's had to get Durban, Bayhead in Durban and we were selected as one of the parties, together with Bombardier, to manufacture and assemble at Bayhead in Durban and  
10 the other two CSR and General Electric got Kuduspoort.

**ADV PHILLIP MOKOENA SC:** Now fundamentally at that time when this request was made was there anything that had to be allocated, were there any operations taking place already in Kuduspoort?

**MR ROBERTO GONSALVES:** Chair we were at that stage where we were just tendering, so we hadn't commenced operations at all.

**ADV PHILLIP MOKOENA SC:** Yes, now let's proceed to give more flesh into that evidence by referring it to RG3, that is folder number three Chair, on page 182. If you may Mr Gonsalves identify that document for us and take us through that document.

20 **MR ROBERTO GONSALVES:** Thank you counsel. Chair page 182 is a letter from CNR Consortium signed by Rowlen von Gericke, this isn't a signed version but it was signed by Rowlen von Gericke, this is just printed off an email and it's addressed to TFR and it's in connection with their request and the introduction to it says:

“Further to our previous email in this regard following the



request from TFR foreseeing our consortium to consider Durban facilities for manufacture of locomotives the following calculations were made.”

And there's a heading “impact of manufacturing in Durban versus Johannesburg and in ...(intervention)

**ADV PHILLIP MOKOENA SC:** You don't have to take us – you can just take us to the summary as to what was the amount arrived at.

**MR ROBERTO GONSALVES:** So Chair what we did is we calculated the additional cost of manufacturing in Bayhead as opposed to  
10 Kuduspoort and the total amount was R9.7million, the exact amount is R9 755 600, so what we informed TFR the additional cost for the full 232 locomotives, not per locomotive, would be R9.7million for us having to now manufacture and assemble in Bayhead Durban as opposed to Kuduspoort, Pretoria.

**ADV PHILLIP MOKOENA SC:** May we request the Chair to make a big note on that amount of R9.7 because flowing from the evidence of this witness that amount changes drastically.

Now of importance Mr Gonsalves is what is being recorded immediately after the amount of R9.7, if you can read and comment on  
20 what is written therein.

**MR ROBERTO GONSALVES:** Okay Chair it says the above costs only relate to the measurable financial implications. Please bear in mind that there will always be considerable amount of immeasurable financial losses that may be – that will be incurred due to the relocation to Durban. Furthermore it will be very inconvenient and

counterproductive to split our resources between Johannesburg and Durban. For these reason we request that the manufacturing should be done at Kuduspoort, knowing the Kuduspoort facility I was wonder, this is Rowlen von Gericke, I was wondering whether it will be possible to utilise the old Kuduspoort East Foundry Facility. The CNR Consortium is of the opinion that the project can be better managed and executed in the Kuduspoort facility given its proximity to the existing offices.

**ADV PHILLIP MOKOENA SC:** And this accord with what you have informed the Chair earlier on about the view already taken by the  
10 Consortium.

**MR ROBERTO GONSALVES:** That's correct counsel.

**ADV PHILLIP MOKOENA SC:** Yes.

**CHAIRPERSON:** But – I'm sorry – was this a second preference to say manufacturing should happen in Kudupoort only, the first one was – oh that was the first preference ja, oh, Durban was not the preference, it was the Gauteng preference, okay.

**MR ROBERTO GONSALVES:** Correct Chair.

**ADV PHILLIP MOKOENA SC:** Yes Chair. Now even though you have said to the Chair there was nothing to be allocated, but we now know  
20 from having looked at this document that if there was any amount to be placed on what is termed the relocation was nothing more than R9.7million as reflected in this document?

**MR ROBERTO GONSALVES:** That's correct Chair.

**ADV PHILLIP MOKOENA SC:** Now you may proceed, may I refer you to back to your statement, page four and begin to please summarise for

us the contents of paragraph 8 and what follows thereafter.

**MR ROBERTO GONSALVES:** Paragraph 18?

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

**MR ROBERTO GONSALVES:** Okay, so we said the calculation  
...(intervention)

**CHAIRPERSON:** Are you going back to the statement?

**ADV PHILLIP MOKOENA SC:** To the statement yes.

**CHAIRPERSON:** Yes okay.

**MR ROBERTO GONSALVES:** Ja Chair I think it's paragraph 18, the  
10 calculation of the extra cost relating to relocation from Kuduspoort to  
Bayhead was performed by us as the consortium members, that is CNR,  
Endinamics, Global and Kaydees, we took the cost like transportation,  
flights, office and accommodation etcetera into consideration. The  
revised costs also took into consideration the savings that would arise,  
that is important to Durban and not Pretoria meant less transport costs.

**CHAIRPERSON:** So these would be costs that would be, all of which  
would be saved if the manufacturing happened in Kuduspoort, in  
Gauteng.

**MR ROBERTO GONSALVES:** Chair that's correct, certain costs would  
20 be saved so the transportation costs from Durban to Pretoria would be  
saved.

**CHAIRPERSON:** Ja, and this is the amount or this is the list that could  
be saved.

**MR ROBERTO GONSALVES:** Chair that 9.7 is the total additional cost  
so there were some additional costs and there's some savings. So we

took the additional costs, flights, accommodation, etcetera, etcetera, the savings on transportation we deducted from that, to arrive at a net increase in cost of 9.7million which we took into account in determining our final bid price.

**CHAIRPERSON:** Okay.

**ADV PHILLIP MOKOENA SC:** Now if we may proceed to deal with a new topic, the agreement with BEX and please take us through what is stated in your paragraph 19 Chair on page 5.

**MR ROBERTO GONSALVES:** Okay, in summary Chair on the 23<sup>rd</sup> of  
10 April 2015 CNR SA, that's the South African entity, signed a contract with a company called BEX and that company, that comes later on as Annexure 8, so I don't know if counsel you want me to go into that already.

**ADV PHILLIP MOKOENA SC:** No, no we will deal with it in due course.

**MR ROBERTO GONSALVES:** Okay so on 23<sup>rd</sup> of April 2015 a signed contract with BEX, registration number 2009/028420/07 to act as an intermediary to negotiate a claim from Transnet for the relocation from Kuduspoort to Bayhead.

20 **ADV PHILLIP MOKOENA SC:** Now what I want to know is that at this time when now the name of BEX all of a sudden emerges do we know whether at the time when your consortium submitted a tender whether BEX as an entity was it part of that consortium?

**MR ROBERTO GONSALVES:** Chair BEX was not known to us at all until April 2015, it was the first time we heard the name.

**ADV PHILLIP MOKOENA SC:** Yes, and at the time when you submitted the relocation cost of R9.7 was BEX factored in at all?

**MR ROBERTO GONSALVES:** Chair not at all, BEX wasn't involved whatsoever.

**ADV PHILLIP MOKOENA SC:** And do you know whether you know your company or the consortium did have any previous dealings with BEX prior to them now emerging on the 23<sup>rd</sup> of April as stated in your statement.

**MR ROBERTO GONSALVES:** Chair not whatsoever no.

10 **ADV PHILLIP MOKOENA SC:** Yes, now may I refer you to folder number six, Chair it will be RRG6, on page 203. If you can identify the document ...(intervention)

**CHAIRPERSON:** Yes.

**ADV PHILLIP MOKOENA SC:** ...and please summarise for us those aspects which you believe are paramount to your evidence.

**MR ROBERTO GONSALVES:** Sure, Chair so what happened is on the – we received an email from the directors of the – the executive directors if you like of CNR South Africa with a resolution that they had already signed dated 8<sup>th</sup> of April 2015 and that resolution required the  
20 minority directors, that's Rowlen von Gericke, Lulamile Xate and myself to sign a resolution appointing effectively BEX as an agent for the company to negotiate the contract, the relocation claim with Transnet.

**ADV PHILLIP MOKOENA SC:** Did you support that memorandum or what was there to be achieved through that document?

**MR ROBERTO GONSALVES:** Chair we absolutely expressed that we

were dissenting directors, we haven't signed the resolution, refused to sign the resolution and at countless board meetings we raised the same issue and reminded them that we hadn't approved that resolution to appoint BEX as their agent.

**ADV PHILLIP MOKOENA SC:** Yes, but I mean what is surprising what was to be discussed at the time if already there was an amount arrived at as a relocation fee, what was BEX supposed to do at the time?

**MR ROBERTO GONSALVES:** So Chair that's precisely one of the  
10 reasons why we refused to appoint BEX or sign any resolution because in our minds we had already been remunerated or reimbursed for the relocation, additional relocation costs involved in manufacturing at Bayhead as opposed to Kuduspoort, we couldn't see any basis for any claim from Transnet for a relocation allowance or relocation claim.

**ADV PHILLIP MOKOENA SC:** Yes Chair back to the statement of the witness on page five, from paragraph 22 you set out the pertinent background facts in relation to the appointment of BEX, could you please summarise those for us.

**MR ROBERTO GONSALVES:** Sorry counsel which paragraph?

20 **ADV PHILLIP MOKOENA SC:** Page 5 from paragraph 22.

**MR ROBERTO GONSALVES:** From paragraph 22, ja, sure. So as I mentioned Chair we were emailed a draft BEX agreement which was dated the 8<sup>th</sup> of March 2015 and that's Annexure 5 in the file. I would like to point out Chair that the ...(intervention)

**CHAIRPERSON:** Well you said 8 March and I see two 8 Aprils, are you

sure 8 March is the right date?

**MR ROBERTO GONSALVES**: Chair the agreement was 8<sup>th</sup> of March but we received it on the 8<sup>th</sup> of April, yes.

**CHAIRPERSON**: Oh okay, okay.

**ADV PHILLIP MOKOENA SC**: Yes you were just about to refer – you wanted to say something about ...(intervention)

**MR ROBERTO GONSALVES**: Sure, I think Chair the important thing is if you look at Annexure 5 and that draft agreement that is presented to us it was with an entity called BEX Structured Products.

10 **ADV PHILLIP MOKOENA SC**: Chair that is on page 190.

**CHAIRPERSON**: Thank you.

**ADV PHILLIP MOKOENA SC**: Would that be correct Mr Gonsalves?

**MR ROBERTO GONSALVES**: That is absolutely correct Chair.

**ADV PHILLIP MOKOENA SC**: Yes, could you please repeat what you wanted to highlight to the Chair in relation to those names.

**MR ROBERTO GONSALVES**: Sure, so Chair it's important to note that it says Beck Structured Products Pty Limited and it's got a registration number of 2000, we will see later in Annexure 8 that the actual agreement signed with another entity, not the same entity, very similar  
20 name, had a 2009 registration number and we believed that there's a real BEX company that exists and we were given folders and files of work that they had done, but the BEX agreement that they actually signed was a dormant company which we will cover later on in my testimony.

**CHAIRPERSON**: Mmm, mmm.

**ADV PHILLIP MOKOENA SC:** Yes, and let's go back then to your paragraph 22.1 and just summarise what you convey therein.

**MR ROBERTO GONSALVES:** So Chair when we were presented with this you will see why we couldn't support it. In this agreement with BEX there's a paragraph 7.2 and if I may read it out, the fee that BEX requested for providing these services in terms of the agency agreement was the company agrees that BEX will be entitled for an Agency commission equivalent to the difference between the price excluding VAT awarded to the company by TFR and the price  
10 benchmark of R218million excluding VAT, and this is important:

“For example [they say] if the price awarded is R650million then BEX will be entitled to an agency commission of R370million.”

**ADV PHILLIP MOKOENA SC:** Sjoel

**CHAIRPERSON:** (Laughing) I mean that's about half ...(intervention)

**MR ROBERTO GONSALVES:** More than half.

**CHAIRPERSON:** More than half.

**MR ROBERTO GONSALVES:** More than half ja.

**ADV PHILLIP MOKOENA SC:** But even more we know that at the back  
20 of this information is the already affected amount of R9.7million, now we now see what is now being envisaged in the paragraph that you have just read to the Chair. Alright, you may proceed then with what you are telling the Chair from paragraph 22.2 on onwards.

**MR ROBERTO GONSALVES:** So in paragraph 22.2 it's what I already repeated that we received this partially signed Round Robin resolution



signed by the CRC directors requesting that we sign it, the minority directors sign it and the resolution is “in order to enter the agency agreement in relation to the relocation of the manufacturing facility.”

**ADV PHILLIP MOKOENA SC:** Yes. Now what happened after you having received this document?

**MR ROBERTO GONSALVES:** We we absolutely refused to sign it and in a nutshell the company went ahead and signed an agreement with BEX on the basis that they had four directors on the Board and controlled the Board.

10 **ADV PHILLIP MOKOENA SC:** Yes, may I refer you to RG7, that is folder number seven Chair, and if you may go to page 207 that's where you locate it and please identify that document for the Chair.

**MR ROBERTO GONSALVES:** Chair what I was attempting to illustrate here was that only on the meeting, at the meeting of the 10<sup>th</sup> of April 2015 but I've got extracts of minutes of the meeting on the 8<sup>th</sup> of October 2015 and also on the 6<sup>th</sup> of May 2016, and perhaps I could just maybe read out some parts of it to demonstrate how we felt about this. From the minutes and that's on page Chair 209 ...(intervention)

**ADV PHILLIP MOKOENA SC:** Is it paragraph 5.2?

20 **MR ROBERTO GONSALVES:** 5.2 on page 209.

**ADV PHILLIP MOKOENA SC:** Yes, if you may then read for us.

**MR ROBERTO GONSALVES:** Yes.

:”GW [that's Geoff Wang] introduced to the Board the progress of Durban relocation, with assistance by BEX to a negotiation with TFR, the company finally negotiated for R647million to be

paid by TFR. Half has been received and the other half will be received as and when locomotives are delivered to TFR. BEX has been paid a fee of R67million for the services provided plus VAT. SW [and SW is Stan Whiting who was the proxy for Rowlen von Gericke], RG [that's myself] and LLX [which Lulamile Xate] requested that it be noted that they did not sign the resolution for the BEX mandate. GW, Geoff Wang, to provide the Board members with a copy of the variation order by TFR. SW, RG and LLX [that's Stan Whiting, Robbie Gonsalves and Lulamile Xate] reiterated their concerns with the BEX contract. GW provided the relevant documents of BEX to the directors ...”

And we will cover that now and they gave us the CIPC documents and BEE certificate, and BEE credential certificate. Also the estimated cost for Durban relocation, the BEX proposal and reason for selecting BEX have already been provided to the directors in April. That is Geoff Wang saying that he has already provided us with all the information that we could possibly have requested so we should be happy.

**ADV PHILLIP MOKOENA SC:** Now this amount that we see here as 647million one can trace it back from the amount 9.7 which you say it was already effected when the company you know conceded to the request of the relocation.

**MR ROBERTO GONSALVES:** Chair that's correct, so the amount 9.7 which we had already received effectively in the pricing for the locomotives had now ballooned to 647million and what is quite ironic I

think is that that the R647million is very close to the R650million that BEX, the first draft BEX agreement referred to as an example for their fee where they said R650million minus R280million benchmark gives us a R370million fee.

**ADV PHILLIP MOKOENA SC:** And the majority shareholders how did they justify receiving this money from Transnet in the light of what you actually told the Chair.

**MR ROBERTO GONSALVES:** Well Chair they just couldn't give us satisfactory answers and neither could Transnet and you will see later  
10 on why we reported this to the Hawks.

**ADV PHILLIP MOKOENA SC:** Yes now Chair back to the statement of the witness, if you may proceed Mr Gonsalves with what you're stating from paragraph 22.5 on page 6, and please summarise for us what you're conveying therein.

**MR ROBERTO GONSALVES:** Counsel could I just on that point on page 2.4 ...(intervention)

**ADV PHILLIP MOKOENA SC:** Yes, yes.

**MR ROBERTO GONSALVES:** I just wanted to refer to the minutes of the 6<sup>th</sup> of May 2016 if I may.

20 **ADV PHILLIP MOKOENA SC:** Oh yes, yes you may.

**MR ROBERTO GONSALVES:** So Chair you will see on page 214 item 9 which refers to resolution number 8 and the third bullet point it says the SA directors requested a copy of the BEX report submitted to TFR made it clear that we as the shareholders have not approved the BEX contract so I think the important as well is that even though there was a

Board resolution you will see later on we thought as shareholders in the company that it required a shareholders resolution as well because it was out of the ordinary course of the business as stipulated in the MI of the company.

**ADV PHILLIP MOKOENA SC:** Yes, yes. Now I was just about to refer you to paragraph 22.5 for you to proceed with the evidence from that paragraph.

**MR ROBERTO GONSALVES:** So I think Chair I have already covered this slightly but the important thing is that despite the objections they  
10 controlled the board, the SRRC directors, the CNR directors and they went ahead and signed the contract with BEX on the 23<sup>rd</sup> of April 2015 and you will note that that BEX entity that they signed, which is Annexure 8, is signed with a company called Business Expansion Structured Products Pty Limited so it's not the original entity, the BEX Structured Products Pty Limited and the registration of this company is a 2009 company registration as opposed to the BEX structured products with a 2000 registration number.

**ADV PHILLIP MOKOENA SC:** Yes.

**CHAIRPERSON:** And that's the dormant company that you were talking  
20 about?

**MR ROBERTO GONSALVES:** That's quite correct Chair.

**ADV PHILLIP MOKOENA SC:** Now will you please turn to RG8, you will find it from page 216, before I refer you to the relevant portions of that document could you please identify that document?

**MR ROBERTO GONSALVES:** Chair this is the actual agreement

signed, you will see signed with Business Expansion Structured Products which they refer to as BEX and its dated April 25 2015.

**ADV PHILLIP MOKOENA SC:** Yes, if you turn over to page 217 you will see from the paragraph that says “whereas” if you can read for us point A and please comment on the contents of that paragraph.

**MR ROBERTO GONSALVES:** So Chair you will see that this company never operated, it had a turnover of less than R5million, it was effectively a dormant company. However in this agreement signed between BEX and CRSA in the introduction it says BEX a professional  
10 service advisory business that specialises in business enterprise onto optimisation using financial modelling, derivatives and engineering techniques with its long subsisting relationships in the territory of South Africa and it goes on and on. Obviously as a dormant company it had no activities and had never done anything.

**ADV PHILLIP MOKOENA SC:** This was false this was incorrect, this was false?

**MR ROBERTO GONSALVES:** Absolute incorrect Chair.

**ADV PHILLIP MOKOENA SC:** Now if I may refer you to page 222 of the same document.

20 **MR ROBERTO GONSALVES:** Sorry counsel which page?

**ADV PHILLIP MOKOENA SC:** 222.

**MR ROBERTO GONSALVES:** 222?

**ADV PHILLIP MOKOENA SC:** Yes, are you there?

**MR ROBERTO GONSALVES:** Yes I am thank you.

**ADV PHILLIP MOKOENA SC:** If you can also take the Chair through

paragraph 6.2 and 6.3 and comment on what is stated in those paragraphs.

**MR ROBERTO GONSALVES:** So Chair under 6.2 so the initial contract had had a benchmark of R280million and the fee was anything above R280million, this changed to R580million and I will read it out. So here it says the company agrees that BEX will be entitled to an agency commission equivalent to the difference between the price excluding VAT awarded to the company by TFR and a project benchmark cost of R580million excluding VAT. For example if the price awarded is  
 10 R680million then BEX will be entitled to an agency commission of R100million excluding VAT, that is R680million less R580million.

The next paragraph says the company will be entitled to the project benchmark cost of R580million irrespective of whether the total project value is negotiated lower than the R680million by TFR.

**ADV PHILLIP MOKOENA SC:** Yes and your comment on these paragraphs?

**MR ROBERTO GONSALVES:** So it is quite interesting to see that the benchmark had changed from R280 to R580 for starters and I think that probably had a lot to do with the pressure that the minority  
 20 shareholders and directors put on them but irrespective it still talks about, refers to a potential fee of R100million to a company called BEX that is a dormant company.

**ADV PHILLIP MOKOENA SC:** This dormant company that you are talking about do you know as to whether did it have directors, how many ...(intervention)

**MR ROBERTO GONSALVES:** Chair we do so if we can it's on Annexures 9 and 10 so the first one perhaps on page 229, this was at that board meeting, I think it was on the 8<sup>th</sup> of April or the 10<sup>th</sup> of April 2015, this was presented to us sort of by the Chinese directors, and it's BEE verification certificate of exemption for micro enterprises, so this is for Business Expansion Structured Products Pty Limited and it says at the bottom you will see "company identification status exempt micro enterprise" that is turnover of R5million and below and then if you look at Annexure 10 which is page 231 we've got core 14.3 from CIPC, certificate of confirmation and here we will see there's the active directors of the company is one Mark Shaw and Mark Shaw was appointed by the company on the 15<sup>th</sup> of April 2015, so it seemed that the company as established sometime in 2009 as a dormant company and on the 15<sup>th</sup> of April 2015 Mark Shaw was appointed as a director and on the 25<sup>th</sup> of April this company signed the agency agreement with CNR South Africa.

**ADV PHILLIP MOKOENA SC:** And that's the company that was going to be entitled to that huge amount of the relocation fee?

**MR ROBERTO GONSALVES:** Correct, initially the fee of 370million but it was changed down to 100million.

**ADV PHILLIP MOKOENA SC:** Yes, now may I refer you back to your statement and please take us from page seven paragraph 25 and please make us to understand the different amounts that are reflected therein and their significance.

**MR ROBERTO GONSALVES:** Ja so I think it goes to the point that BEX

was entitled to a fee of anything over R280 million. For starters we did not know where the R280 million came from. On the 21 April 2015 the company emailed us a calculation which is attached as Annexure 11 showing us calculations for supporting an amount of R287 million. At that stage obviously we had not even seen. When we saw the BEX contract an amount referred to of R280 million we had no idea where that amount had come from.

**ADV PHILLIP MOKOENA SC:** Yes.

**MR ROBERTO GONSALVES:** And on the 21 April for the first time we  
10 saw some calculations supporting an amount of R287 million.

**ADV PHILLIP MOKOENA SC:** Maybe let us go to those calculations.  
Chair it is RG11 to be found on page 233.

**MR ROBERTO GONSALVES:** Chair it is on pages 233 to 235.

**ADV PHILLIP MOKOENA SC:** Yes.

**MR ROBERTO GONSALVES:** So unfortunately it is a long A3 page it is sort of printed in three A4 pages. But you will see quite an amateurish document that says for example point1 increase logistics costs R45 100 million. Then increased cost for set up facilities in Durban and traveling R27 300 million etcetera. And there are eight line items and  
20 the total of that line item is R287 million and some change.

**ADV PHILLIP MOKOENA SC:** Yes.

**MR ROBERTO GONSALVES:** And Chair if I may just add what I find fascinating is this was emailed to us by the company claiming that the relocation claim should be R287 million. But ultimately Transnet paid them R647 million which is even more absurd.



**CHAIRPERSON:** [coughing] excuse me. Your calculation of the relocation costs was about R9 million, is that right?

**MR ROBERTO GONSALVES:** Chair R9.7 million.

**CHAIRPERSON:** R9.7 million. So this company at this stage inexplicably says R26,3 million well it has got some whatever it says here but you say ultimately it was 600 and something million?

**MR ROBERTO GONSALVES:** So Chair ja our – we increased the tender price by 9.7 million for all 232 locomotives.

**CHAIRPERSON:** Yes.

10 **MR ROBERTO GONSALVES:** The company submitted something for R287 million.

**CHAIRPERSON:** Yes.

**MR ROBERTO GONSALVES:** And that is obviously when they entered into the initial – when they had discussions with BEX initially and the draft agreement we got referred to a benchmark of R280 million. So it seems that this is where the R280 million came from.

**CHAIRPERSON:** Hm.

**MR ROBERTO GONSALVES:** And so this is their own calculation sent by the company of a potential claim that they thought they had of R287  
20 million but ultimately Transnet paid R647 million to the company.

**ADV PHILLIP MOKOENA SC:** From an amount which you say it was R9.7 and it was already factored in – into the amount that was supposed to be paid to the consortium?

**MR ROBERTO GONSALVES:** That is quite correct Chair.

**ADV PHILLIP MOKOENA SC:** Now for now we are now sitting at an

amount of R280 million which you are unable yourself to give meaning or sense to it as to how it was arrived at?

**MR ROBERTO GONSALVES:** Absolutely Chair. I mean you can see on pages 233 to 235 a very poorly constructed schedule supporting an amount of R287 million.

**ADV PHILLIP MOKOENA SC:** Do you know if there was anything that significantly changed from when the relocation amount was 9.7 for it to arrive to be R208 that could at least you know explain or justify this amount?

- 10 **MR ROBERTO GONSALVES:** Chair I – I have no doubt that when the company arrived at Bayhead they may have found that the facility maybe is not what they expected and thought that they – there was an amount that they could possibly claim. If that was the case it would be very easy to prove what it is and Transnet should have given us the answers and said, the company is entitled to a claim for this specific reason. For example maybe this piece of equipment does not exist and we said it did exist and so we need to – you had to acquire the equipment yourself so we now need to reimburse you. But nothing of that sort happened. So I cannot see any justification when we
- 20 submitted a fixed final price that included an amount for relocation as we had calculated together with CNR of R9.7 million and included that in the final price of the locomotives how we were entitled to anything? Bearing in mind that we are shareholders in the company. We would love to get a reimbursement of an amount. We just could not see any justification for it.

**ADV PHILLIP MOKOENA SC:** Ja may I refer you back to your statement? Page 7 and proceed to deal with paragraph 26 because it appears that that amount for 280 does not end there but for some reason it gets increased?

**MR ROBERTO GONSALVES:** Sure so Chair what actually happened is that a contract was signed it is in Annexure 12 on page 238 and this was a contract signed between CNR, South Africa and TFR in respect of this relocation allowance or claim. It was signed in July 2015 and Counsel I do not know if you want me to go into the amounts now?

10 **ADV PHILLIP MOKOENA SC:** Yes let us go – maybe let us do that – let us align that with you – with Annexure RG12 on page 238.

**MR ROBERTO GONSALVES:** Sure.

**ADV PHILLIP MOKOENA SC:** Yes.

**MR ROBERTO GONSALVES:** So – Chair then on page 239 you will see that the claim now has gone – moved from this R287 million that we were referring to to an amount of R719 million and then CNR are quite gracious in offering a settlement discount of 10% amounting to R71 million to TFR and that the nett amount...

**CHAIRPERSON:** I am sorry, I am sorry. You have lost me.

20 **ADV PHILLIP MOKOENA SC:** Page 239 Chair.

**CHAIRPERSON:** And maybe in part because I have been thinking about what you telling me. These kinds of amounts that were just claimed and paid. Okay where are we?

**ADV PHILLIP MOKOENA SC:** Chair 239. Page 239 that is where the – That is where Mr Gonsalves is. Mr Gonsalves while the Chair is

shocked about those amounts could you please be slow and take us through the contents of 239?

**MR ROBERTO GONSALVES**: Sure. So...

**CHAIRPERSON**: Hopefully somebody else will come and – and say there was no reason to be shocked this was all justified.

**MR ROBERTO GONSALVES**: Chair we have requested that from TFR.

**CHAIRPERSON**: Yes.

**MR ROBERTO GONSALVES**: Transnet already and from CNR.

**CHAIRPERSON**: Yes.

10 **MR ROBERTO GONSALVES**: And no one has given us a satisfactory answer.

**CHAIRPERSON**: Yes. Thank you. 229 you said Mr Mokoena?

**ADV PHILLIP MOKOENA SC**: 239.

**CHAIRPERSON**: 239.

**ADV PHILLIP MOKOENA SC**: 239 yes Chair.

**CHAIRPERSON**: Okay.

20 **MR ROBERTO GONSALVES**: So Chair this is the agreement that was eventually signed between CNR South Africa and TFR in respect of the relocation allowance and you will see that it was signed by Jeff on page 249, by Jeff Wang on behalf of CNR and by Anoj Singh on behalf of Transnet. The version that we have in this file is only being say – signed by Jeff Wang we do not have the version that was signed by Anoj Singh as well.

**ADV PHILLIP MOKOENA SC**: But can you confirm that you are aware of the signed version which was signed on behalf of Transnet by Anoj

Singh and on behalf of the consortium by Mr Jeff Wang?

**MR ROBERTO GONSALVES:** Correct Chair you will see later on that Siyabonga Gama confirms that this is accepted.

**ADV PHILLIP MOKOENA SC:** Yes.

**MR ROBERTO GONSALVES:** So Chair going back to page 239 if I may? You will see in the first – at the bottom of the first paragraph the cost has now ballooned from this 9.7 to the R287 million to now R719 million and...

**CHAIRPERSON:** It is okay let me – that is 239?

10 **ADV PHILLIP MOKOENA SC:** It is under the heading 'Summary' Chair?

**CHAIRPERSON:** Executive Summary?

**ADV PHILLIP MOKOENA SC:** Executive Summary.

**CHAIRPERSON:** Yes okay.

**ADV PHILLIP MOKOENA SC:** Maybe if we – what we can do Mr Gonsalves if you can read it?

**MR ROBERTO GONSALVES:** Sure.

**ADV PHILLIP MOKOENA SC:** And then thereafter you can comment about it so that at least we are able to follow your evidence.

**CHAIRPERSON:** Ja.

20 **MR ROBERTO GONSALVES:** So Chair I will read the first two paragraphs under the Executive Summary.

“We have been requested to analyse the cost increase for the locomotive delivery and locomotive factory relocation in terms of manufacturing facility relocation for Class 45D locomotive supply project.

The decision to relocate from Pretoria, Gauteng to Durban KwaZulu Natal will cost an estimated R719 million but the precise amount is R719 090 548.00. Of this amount we are happy to offer settlement discount of 10% amounting to R71 909 054.00 therefore the reduced amount due to CNR after deducting the settlement discount amounts to R647 million – R647 million the exact amount R647 181 494.00.”

10 **ADV PHILLIP MOKOENA SC:** Yes. And your comment on these paragraphs bearing in mind the 9.7?

**MR ROBERTO GONSALVES:** So ja so Counsel you are quite correct. Chair the amount went from 9.7 to an email that we got supporting R287 million which seems to tie in with the initial draft BEX contract where there is a benchmark of R280 million and then this ballooned to R719 million but CNR was so gracious as to give a 10% discount to TFR so that the amount reduced to R647 million.

**ADV PHILLIP MOKOENA SC:** They were indeed gracious with that amount. If you may refer back to page 7 of your statement and  
20 summarise the contents of paragraph 27 Mr Gonsalves.

**MR ROBERTO GONSALVES:** Ja I think what we mentioning here is that the – as alluded to earlier on is that the benchmark in the first draft BEX contract alluded to an amount of – referred to an amount of R280 million and in the signed contract with BEX I am using the term BEX loosely because there were two different companies with two

different registration numbers but that amount – that benchmark then increased to R580 million.

**ADV PHILLIP MOKOENA SC:** Yes. And you may proceed with your evidence.

**CHAIRPERSON:** Okay. Okay so I am sorry. Where is the R580 million?

**MR ROBERTO GONSALVES:** So...

**CHAIRPERSON:** That figure?

**MR ROBERTO GONSALVES:** If you go to Annexure 8 I think it is Chair  
10 you will see under the fee section it should be Clause 6.

**ADV PHILLIP MOKOENA SC:** Page 216 Chair.

**MR ROBERTO GONSALVES:** 222.

**CHAIRPERSON:** Yes thank you and then go to – do I go to 217?

**ADV PHILLIP MOKOENA SC:** Triple 2, 222.

**MR ROBERTO GONSALVES:** I think 222 is the best page.

**ADV PHILLIP MOKOENA SC:** Yes.

**MR ROBERTO GONSALVES:** Ja 222.

**CHAIRPERSON:** Oh where we were just now?

**MR ROBERTO GONSALVES:** Correct.

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

**CHAIRPERSON:** Okay I see it here. Thank you.

**MR ROBERTO GONSALVES:** Sure Chair.

**CHAIRPERSON:** But as we talk about these figures I asked you earlier on what justification or what Transnet said when you put your suggestion or preference to them that the manufacturing should happen

in Gauteng. You said they said something like they wanted to speed – as you understood their argument why did that – why was that necessary?

**MR ROBERTO GONSALVES:** Chair I think it is possibly a capacity issue. There is only so many locomotives that can be manufactured. So if you have got two facilities I know that they wanted to expedite the production of the locomotives. So if you could only make for example 12 locomotives in a month in one facility say in Koedoespoort if you split it between Koedoespoort in Bayhead you could make 24  
10 locomotives in a month. So it would be expedited that was one reason I know that they mentioned. The other reason that was mentioned was just a transfer of skills. Having skills in both Koedoespoort and Bayhead to manufacture locomotives so you would have the skills in two different locations.

**CHAIRPERSON:** But if one looked at the costs and let us leave it at – at your figure of 9, something million.

**ADV PHILLIP MOKOENA SC:** Yes.

**CHAIRPERSON:** Did it seem – did this seem to justify all those costs to you, all of that?

20 **MR ROBERTO GONSALVES:** Chair obviously we were not involved in Transnet's decision making.

**CHAIRPERSON:** Yes.

**MR ROBERTO GONSALVES:** I do understand that there may be an argument why he would want to split it and diversify a risk from a geographic perspective.



**CHAIRPERSON**: Hm.

**MR ROBERTO GONSALVES**: Skills transfer not having all your risk in one facility if something had to go wrong at Koedoespoort.

**CHAIRPERSON**: Hm.

**MR ROBERTO GONSALVES**: At least you could continue manufacturing in Bayhead etcetera. So I understand that. I was not – we were not involved in that.

**CHAIRPERSON**: Ja.

**MR ROBERTO GONSALVES**: It was just given to us.

10 **CHAIRPERSON**: Ja it would just depend on the finer details I would imagine – finer details of around that decision. I guess always subject to how much it is going to cost to do that.

**MR ROBERTO GONSALVES**: Chair if ...

**CHAIRPERSON**: Probably if you – if you are a state entity it is not like you just using your own money. But as you say there may be – there may be value which – on which one cannot put rands and cents or rand value if you talk about expansion of skills and so on. But of course as I say subject what the costs will be. Obviously also one would look at long term benefits of that – of splitting you know. Okay alright.

20 **MR ROBERTO GONSALVES**: Correct Chair.

**ADV PHILLIP MOKOENA SC**: But could there have been a justification for the amount of 9.7 to become 280 and ultimately 647?

**MR ROBERTO GONSALVES**: Mr Chair...

**ADV PHILLIP MOKOENA SC**: Whatever the reason that might be proffered?

**MR ROBERTO GONSALVES:** Chair absolutely not. So the decision was made that CNR South Africa had to manufacture and assemble in Bayhead. It was done. We increased the price that we bid on the locomotives by R9.7 million taking into account the additional cost and some of the savings and we were – it was paid for in built-in in a fixed price contract. Even if the amount was R287 million had ballooned to R287 million from R9 million which I think sounds absurd by any stretch of imagine we had no basis for a claim in my mind and until someone could justify that and show us we – you know we just could not accept  
10 it.

**ADV PHILLIP MOKOENA SC:** I mean surely as a shareholder would have loved that this money must be paid to your company to the consortium to benefit the consortium but in your clear conscience you say that there could not have been justification for the company to receive such amount from Transnet.

**MR ROBERTO GONSALVES:** No Chair it is I mean – it may sound absurd for a shareholder to turn around and say we do not want the R647 million that we have paid we do not believe we are entitled to it but that is precisely what we did.

20 **CHAIRPERSON:** Yes but it is – it is what makes you to reject it is the fact that it is improper. If you thought it was proper by all means you would welcome it I have no doubt. But the problem was that you took the view that this was improper.

**MR ROBERTO GONSALVES:** Chair I think you hit the nail on the head.

**CHAIRPERSON:** Hm.

**MR ROBERTO GONSALVES:** So if it was a proper claim and it had justification for it we would have been happy.

**CHAIRPERSON:** Yes.

**MR ROBERTO GONSALVES:** And the only way we could find out was to approach Transnet and say this is what we have been paid R647 million. If we are entitled to it fantastic. We still got a problem with the BEX issue but that is another issue. But are we entitled to the R647 million, can you help us in that respect?

**ADV PHILLIP MOKOENA SC:** Yes. May I refer you back to your  
10 witness statement with particular reference to page 8 and please if you may comment from paragraph 28 and share with us what you are conveying in that paragraph and also paragraph 29?

**MR ROBERTO GONSALVES:** Sure. So perhaps Chair I can just read this because I think it is quite important.

**ADV PHILLIP MOKOENA SC:** Yes.

**MR ROBERTO GONSALVES:**

“It was not clear to us as the minority non-executive  
CRRC directors why having negotiated the term...”

**CHAIRPERSON:** Okay, okay is it page 7?

20 **ADV PHILLIP MOKOENA SC:** Page 8.

**CHAIRPERSON:** Page 8.

**ADV PHILLIP MOKOENA SC:** Paragraph 28.

**CHAIRPERSON:** Yes okay thank you.

**MR ROBERTO GONSALVES:** Sure so Chair I will start again.

“It was not clear to us as the minority non-executive

CRRC directors why having negotiated the terms of an agreement with Transnet as extensive and complex as a locomotive supply agreement and despite having access to considerable rail rolling experience with the shareholder base CNR South Africa nevertheless felt it necessary to appoint an intermediary such as BEX which appears to have been a newly formed company with no trading history and little or no background in assembly,  
 10 manufacture, maintenance or operation of locomotives or any other experience in the rail industry to negotiate a second directly related agreement [which we subsequently noted was referred to a variation order with Transnet and furthermore to do so on such significantly generous terms to BEX.”

**ADV PHILLIP MOKOENA SC:** While you are there may be let us complete that thought by referring you to RG14 on page 261 and if you can identify the document and also summarise the contents of that  
 20 document and please proffer your comment on it?

**MR ROBERTO GONSALVES:** Sure. So Chair this is a document signed on the 23 July 2015 by the acting Group Executive Siyabonga Gama of Transnet and it is addressed to Jeff Wang of CNR and in summary what the letter says is that it serves to confirm the acceptance of the variation order of the amount of R647 million of

which the proposed payment terms was 50% payable within fourteen days which is R323 million and I am rounding the numbers and 50% payable in 24 equal instalments of R13.4 million. Chair if I may just add on my paragraph 28? What we – what I was referring to there is that the locomotive supply agreement is a document of over 500 pages and it took weeks on end to negotiate. A similar document was negotiated with Transnet Engineering also over 500 pages. This was done within the consortium we had lots of experience especially amongst the BE partners. We had Azon Rail there. We had a guy  
 10 called Julius Nobanda from Nanetta, Linontando. We had Global Rail with tons of rail experience. Women in Rail. You had Kadies Asalves. We had negotiated all these agreements. We now had a possible claim from Transnet related to these agreements why did they not engage with us, why did they not inform us, why did they not let us do the calculations if there was a calculation? Why would they appoint a company BEX that has got no trading history that has never traded and pay them ultimately an amount of R67 million but at one stage could have possibly been an amount of R370 million.

**CHAIRPERSON:** Well you have just said in effect that you had enough  
 20 relevant expertise and experience to do whatever calculations needed to be done and why did they need BEX ja? Do you want to compare the expertise and experience that your team or your consortium had compared to BEX's and I know that you said they were a dormant company and so on but just talk, contrast the two for me?

**MR ROBERTO GONSALVES:** Ja so I think Chair what we are saying is

BEX is a dormant company. They absolutely have no experience in this. They do not know anything about the local supply agreement. They were not involved in any of the negotiations on the relocation to Bayhead etcetera. Within our consortium the reason why CNR selected us as a consortium was because of the extensive experience that many of the partners in the consortium had in the rail industry. Why would they not turn to us and say we think we have got a possible claim from Bayhead for whatever reason from Transnet for the relocation to Bayhead we do not believe that we do but let us assume that there was

10 a basis for it can you assist us in putting together some calculation or formulate a claim for us? Instead they turned around to a company called BEX that is as we know a dormant company ten days earlier they appointed the director, no trading history etcetera. That just does not make commercial sense whatsoever.

**CHAIRPERSON**: How many directors did this company have with whom they concluded this contract BEX?

**MR ROBERTO GONSALVES**: So Chair if I can take you I think it is Annexure 12 or 13.

**CHAIRPERSON**: Hm. And I

20 **MR ROBERTO GONSALVES**: Annexure 10.

**CHAIRPERSON**: About 10?

**MR ROBERTO GONSALVES**: Annexure 10 no, no sorry.

**CHAIRPERSON**: Oh Annexure 10.

**MR ROBERTO GONSALVES**: Ja you will see...

**ADV PHILLIP MOKOENA SC**: Page 231.

**MR ROBERTO GONSALVES:** 231 yes.

**CHAIRPERSON:** Thank you.

**MR ROBERTO GONSALVES:** One director Mark Shaw appointed on the 15 April 2015. The BEX agreement was signed on the 25 April 2015. So one director seemingly.

**CHAIRPERSON:** Hm. Ja.

**ADV PHILLIP MOKOENA SC:** He might have been experienced Chair?

**CHAIRPERSON:** He?

**ADV PHILLIP MOKOENA SC:** He might have been experienced?

10 **CHAIRPERSON:** He might have had experience yes, yes.

**ADV PHILLIP MOKOENA SC:** Yes.

**CHAIRPERSON:** And a very relevant expertise. Well maybe the witness must tell us whether they did any check on what that director's professional and practical experience was? What experience or qualifications he had that may be – may have been relevant to this kind of project? Are you able to shed light on that?

**MR ROBERTO GONSALVES:** No Chair. The only light I can shed on here is on the – in the first agreement put in front of us the Annexure 5 agreement I am going to call it which is the BEX structured products  
20 that 2000 company I believe that such a company does exist and effectively if I may use the term they hijacked the credentials of this company and put a document in front of us that purported to show that BEX had experience in similar activities. The reality is that when we asked for the documents and they brought us the documents by that time the agreements had already been signed and so there was almost

we could do. When they showed us the Sipsey document and the BE Certificate document it did not take – it took a few seconds to realise that this was a sham company and said so right in front of them. Gentlemen do you realise that there is one director that is just recently been appointed and this company has never traded. It has got a turnover less than R5 million. Obviously they could not respond in any meaningful way to that.

**CHAIRPERSON**: But was your understanding that they were shocked by this they just had not done their homework before deciding that they would have this arrangement with this company, contract with this company? Or was your understanding that they knew and they may have had other reasons to continue and conclude the contract with them?

**MR ROBERTO GONSALVES**: So Chair certainly when they presented us at the board meeting with these documents and we counted immediately when we saw that it was affectively a dormant company, a sham company they – they never defended it in any way. They never expressed any shock in any way. I kind of sensed that they were aware what they were dealing with or who they were dealing with.

**CHAIRPERSON**: Yes thank you. If they were aware that might mean that they may have been up to something that was not proper. Are you able to indicate what you think? Why would they – why would they want to let a company with no experience, with really that had been dormant and with one director that had operated on the basis of a turnover of less than R4 million want it to handle hundreds of millions



or rands? Why would that be beneficial to them?

**MR ROBERTO GONSALVES:** So Chair the benefit to them was that BEX acting as an agent was able to procure R647 million from Transnet which they claim that they could not and for BEX to be able to facilitate that BEX got paid an amount of R67 million. So remember that what their claim was at one stage R280 million. Let us just – let us assume that it is a correct calculation done by the company they ultimately receive R647 million through the assistance of BEX and for that BEX was paid R67 million.

10 **CHAIRPERSON:** But how could a company with no experience or expertise in this sector that you were involved in be able to get I do not how many indistinct] I mean hundreds and hundreds of millions or rands above what a consortium with a lot of relevant expertise and experience could get, how could that be possible?

**MR ROBERTO GONSALVES:** Chair that is the million dollar question. That is precisely the same question we asked.

**CHAIRPERSON:** I mean if – if we talking about for example accounting and auditing business and – and one business wants to buy another one or some arrangement, I would not have much experience and if you  
20 – if you took – you a Chartered Accountant you would do far better than I could ever dream to do to negotiate anything because you have an appreciation of various features of the business and certain nuances and understandings. So how could come in with no experience, no knowledge, no exposure to the sector and be able to do that better than you?

**MR ROBERTO GONSALVES**: Chair we could not agree more with you.

**CHAIRPERSON**: Hm - but you say you – you never checked whether the single Director what his or – was it a he or she? What his or her professional background is. Was it a Chartered Accountant like you or was it somebody with Matric only? Was it somebody within anything that one can rely on maybe to – to explain this phenomenal success in the negotiations?

**MR ROBERTO GONSALVES**: No. Chair we – we demanded a few times ...

10 **CHAIRPERSON**: Hm.

**MR ROBERTO GONSALVES**: That we meet with BEX.

**CHAIRPERSON**: Hm.

**MR ROBERTO GONSALVES**: That was never forthcoming ...

**CHAIRPERSON**: Hm.

**MR ROBERTO GONSALVES**: For obvious reasons.

**CHAIRPERSON**: Hm.

**MR ROBERTO GONSALVES**: We asked the question of them have you ever met with BEX. They claimed that they had met with BEX.

**CHAIRPERSON**: Hm.

20 **MR ROBERTO GONSALVES**: So we demanded the same thing. We want to see CVs, credentials ...

**CHAIRPERSON**: Hm.

**MR ROBERTO GONSALVES**: Etcetera. None of that ever – we never received any of that.

**CHAIRPERSON**: Hm.

**ADV PHILLIP MOKOENA SC:** May you please return back to your statement page 8 and summarise for us what your statement from paragraph 29 which I believe it is quite important.

**MR ROBERTO GONSALVES:** *Ja.* So I think page 29 – paragraph 29 we are saying that even though the variation order is financially beneficial. We think that the Locomotive Supply Agreement already envisages that we – the operations are going to be at Bayhead and it is a fix price contract and an amount of R9.7 million has already been included for all 232 locomotives. So we cannot see how we are entitled  
10 to any amount.

**ADV PHILLIP MOKOENA SC:** Yes.

**CHAIRPERSON:** Maybe I should just say something. I should not be misunderstood. I talked as we are talking about what experience the BEX Director had. I said maybe it was just somebody with Matric. I do not mean that people with Matric – you know - cannot have experience and expertise. So I just want to – to – I was just comparing for example you are talking about in the example I gave of financial Chartered Accountants or getting – you know – for that you would need – I would imagine – you know - to be on at least the same level as the  
20 people in that sector but certainly there are many people even without Matric who are very good in their jobs and who have lot of important and relevant experience. So I do not want to be misunderstood in anyway. I was just comparing with a situation where you need somebody with certain – you know – academic qualifications in that sector but maybe you might be given somebody who does not have that

when that is essential. So that is what – so I thought I must just explain that.

**MR ROBERTO GONSALVES**: Okay, Chair.

**CHAIRPERSON**: Thank you.

**MR ROBERTO GONSALVES**: Understood.

**ADV PHILLIP MOKOENA SC**: Yes – but what expertise would be required for one to really negotiate such a transaction?

**MR ROBERTO GONSALVES**: Chair I think you would – to – to negotiate that one would have – need quite a bit of rail experience  
10 especially experience in the manufacturing and assembly of – and understand what the basis of the claim could be. Does it relate to logistics? Does it relate to training? Does it relate to the facilities, the equipment etcetera? So one would have to be pretty knowledgeable about the rail industry and manufacturing and supply chain – you know – processes to be able to calculate an amount.

**ADV PHILLIP MOKOENA SC**: Yes. Now the minority shareholder is also – did have regard to that variation order and they made certain observations as you do from page 9 paragraph 31. If you can please summarise what is written therein.

20 **MR ROBERTO GONSALVES**: Ja. Chair so even though CNR had signed the agreement with BEX we thought we would let them know that we thought this is outside the ordinary course of business and in terms of the Memorandum of Incorporation it requires 70 percent of the shareholders to agree on a transaction on agreement and because CNR holds 66 percent of the shares 30 percent held by (indistinct), 2

percent by Global and 2 percent by Cadiz that if we could elevate this to a shareholder level we would vote against it ...

**ADV PHILLIP MOKOENA SC:** Yes.

**MR ROBERTO GONSALVES:** And their response was we have taken legal opinion that this is in ordinary course of business.

**ADV PHILLIP MOKOENA SC:** So clearly they did not want to heed the advice that you are giving them against – you know – having to accept this amount from Transnet?

**MR ROBERTO GONSALVES:** Chair that is correct. They knew that the  
10 minority Directors already voted no at the Board level and if it went to a shareholder meeting they would vote in the same way. So they would only get 66 percent and not 70 percent and therefore they would not get the shareholder resolution signed.

**ADV PHILLIP MOKOENA SC:** Yes. In order to contextualise what you are saying can I refer you to RG15 – 1-5 Chair. It is on page 263. Maybe you will be able to explain much more clearly to the Chair what you are trying to explain to us now by having regard to this document. Please identify that document first.

**MR ROBERTO GONSALVES:** So Chair this is the MOI – the  
20 Memorandum of Incorporation – for CNR Rolling Stock South Africa.

**ADV PHILLIP MOKOENA SC:** And if I may refer you to page 265 with particular reference to paragraph 4.1.3.27. If you can read it and give your perspective on that clause.

**MR ROBERTO GONSALVES:** So Chair this is a clause out of the MOI and these are all the issues - and there are 30 of them – that require if

you like the majority of the shareholders to approve and 4.1.3.27 has one of the items there as:

“The conclusion of any contract outside the ordinary course of the business is an item that would require the majority of your shareholders ...”

Which is 70 percent.

“...to agree on it.”

**ADV PHILLIP MOKOENA SC:** Yes and subsequent to that the minority shareholder also did write a letter to the company expressing their  
10 concerns. Am I correct?

**MR ROBERTO GONSALVES:** Chair that is quite correct. That is included as Annexure 16 from – on page 267.

**ADV PHILLIP MOKOENA SC:** Chair it is page 267. If you may turn to that – that page Mr Gonsalves. For the importance of this letter and what is contained therein Chair may through your indulgence request the witness to read it as it also finds itself later on when - when the witness testifies about reporting the matter to the Hawks.

**MR ROBERTO GONSALVES:** So Chair the – the letter is dated 8 June 2016. That is when the last person signed it and it is addressed  
20 to the Board of Directors of CNR and to the mother company – CRRC. It is quite important. So we also sent it to China and the heading is “The Appointment of BEX Expansion Structured Products (Pty) Ltd”. There are 19 points in the letter. I thought if I may just highlight which I thought

**ADV PHILLIP MOKOENA SC:** Yes, you may do that.

**MR ROBERTO GONSALVES:** Are the relevant points.

**ADV PHILLIP MOKOENA SC:** Yes, yes.

**MR ROBERTO GONSALVES:** So in paragraph 4 of that letter I read out:

“It has also come to our attention that despite all the Board Directors nominated by the minority shareholders of CNR South Africa the Non CRRC Directors expressing serious reservations and offering considerable opposition to the appointment of BEX. The Directors nominated by CRRC ...”

In other word the CRRC Directors.

“...nevertheless proceeded to vote in favour of such appointment.”

We then – if you could turn over the page – Clause 8 or paragraph 8 of the letter.

“At the Board Meeting of 10 April 2015 the Non CRRC Directors objected strongly to the company entering into an agreement with BEX and requested that the descent be expressly noted and minuted.”

20 The next paragraph:

“Notwithstanding the objections of Non CRRC Directors CNR South Africa nevertheless proceeded to sign an agreement with BEX as opposed to BEX Structured Products (Pty) Ltd on 23 April 2015.”

And then paragraph 16 right at the bottom of page 268.

“Although the second agreement ...”

That is a second agreement with Transnet.

“...concluded with Transnet maybe financially beneficial for CNR South Africa it remains unclear why or how such agreement was concluded given that the Locomotive Supply Agreement envisages and provides for CNR South Africa to establish its operations at the Bayhead Depot and for the supply of locomotives to take place Bayhead on a fixed price basis.”

10

And then paragraph 17 is – it is the one that I referred to about shareholder approval being required because we believe it is outside the ordinary course of business and then perhaps and most important or very important aspect of this letter paragraph 19:

“Furthermore we believe that this matter to be of significant importance and as such we will be scheduling a meeting with Transnet to discuss the matter.”

20

**ADV PHILLIP MOKOENA SC:** Yes. Was this letter reacted to by the majority shareholders? Did they react? Did they ...?

**MR ROBERTO GONSALVES:** Chair not – not in any means whatsoever and that is sort of being typical of their behaviour whenever we raised an issue there has been on response.

**ADV PHILLIP MOKOENA SC:** Yes. Now did you proceed to have the meeting instruction with that letter with Transnet in order to raise the



same issues?

**MR ROBERTO GONSALVES:** Absolutely Chair. So on 16 August 2016 Rowlen von Gericke ...

**ADV PHILLIP MOKOENA SC:** Paragraph 34 Chair page 9.

**MR ROBERTO GONSALVES:** Page 9 *ja*.

**CHAIRPERSON:** Thank you.

**MR ROBERTO GONSALVES:** So on 16 August 2016 Rowlen von Gericke from Global together with Stan Whiting from Global, Lulamile Xate representing Endinamix and I representing Cadiz  
10 we met with Siyabonga Gama who is the Group Chief Executive Officer with Garry Pita the Group Chief Financial Officer and we met with Ndiphiwe Silinga who is the Group Legal and Compliance Officer to discuss this.

**ADV PHILLIP MOKOENA SC:** Yes and what happened in that meeting?

**MR ROBERTO GONSALVES:** Well what is quite interesting is that at that stage we had not seen the variation order that had already been signed by Anoj Singh and we had not seen the acceptance letter of the variation order signed by Siyabonga Gama as well. So we went into that meeting just raising our issues about the BEX contract, how it was  
20 entered into, the amount that was claimed and what our belief was that there was no commercial substance to it.

**CHAIRPERSON:** Well in your statement you do not seem to deal much with the content of that meeting – the discussion. I know you have just made two sentence or so. If you are able to it would be good if you can tell me more. This is what you said and that is what the Transnet

delegation said or Mr Gama if he was the only one. Oh, not he was not the only from Transnet. There was a delegation.

**MR ROBERTO GONSALVES**: Correct.

**CHAIRPERSON**: The exchange – the issues you raised – you know. You told us the issues were of concern to you. Did you raise the same issues?

**MR ROBERTO GONSALVES**: Absolutely.

**CHAIRPERSON**: Yes and what was their response?

**MR ROBERTO GONSALVES**: So ...

10 **CHAIRPERSON**: Maybe if you can you can give their response to the different issues.

**MR ROBERTO GONSALVES**: Sure.

**CHAIRPERSON**: Hm.

**MR ROBERTO GONSALVES**: So Chair we raised two issues. One was that the relationship between the minority shareholders and CNR was not ideal. Mainly because of corporate governance issues.

**CHAIRPERSON**: Hm.

**MR ROBERTO GONSALVES**: That the Chinese did not seem to understand that we took corporate governance seriously and so that  
20 was the one issue.

**CHAIRPERSON**: Huh-uh.

**MR ROBERTO GONSALVES**: And you will see it is referred to later on in ...

**CHAIRPERSON**: Hm.

**MR ROBERTO GONSALVES**: In the papers ...

**CHAIRPERSON:** Hm.

**MR ROBERTO GONSALVES:** And then the second issue was BEX. We said that the company wants to engage or has engaged with BEX and to pay them a fee in respect of the relocation allowance. We do not believe that we are entitled to a relocation allowance. We may be missing something. There may be something in the locomotive supply agreement which is a 500 page document that entitles us to a claim ...

**CHAIRPERSON:** Hm.

**MR ROBERTO GONSALVES:** That we are not aware of. Was Transnet  
10 aware of this claim?

**CHAIRPERSON:** Hm.

**MR ROBERTO GONSALVES:** Do they know whether we are entitled to an amount? Can they justify the amount?

**CHAIRPERSON:** Hm.

**MR ROBERTO GONSALVES:** So perhaps we do not have the problem with the amount that is being claimed from Transnet and then we have only got a problem with BEX.

**CHAIRPERSON:** Hm.

**MR ROBERTO GONSALVES:** Their response was surprise from – from  
20 Transnet's perspective.

**CHAIRPERSON:** Hm.

**MR ROBERTO GONSALVES:** With hindsight there should not have been any surprise but you will see why and – I mean – there was even a comment I think that the CEO made that this alarming because perhaps a similar amount could have been paid to other OEMs ...

**CHAIRPERSON:** Hm.

**MR ROBERTO GONSALVES:** And said therefore this had to be investigated.

**CHAIRPERSON:** Hm. So – so you say their – well did you tell them one there is going to be no relocation here? Did you – did you ...?

**MR ROBERTO GONSALVES:** We told them that (intervenes).

**CHAIRPERSON:** *Ja* and what – what did they say? That they insist that there was going to be relocation on their understanding?

**MR ROBERTO GONSALVES:** No. So look we – so let us maybe clarify  
10 the relocation. So ...

**CHAIRPERSON:** *Ja*.

**MR ROBERTO GONSALVES:** R9.7 million was an increase in the price - in the tender price because manufacturing no longer was going to be at Koedoespoort based on our initial tender calculations and it was going to be at Bayhead ...

**CHAIRPERSON:** Hm.

**MR ROBERTO GONSALVES:** And once that was agreed to and – and formulated into the final pricing ...

**CHAIRPERSON:** Hm.

20 **MR ROBERTO GONSALVES:** It was signed on a fixed price contract basis.

**CHAIRPERSON:** Hm.

**MR ROBERTO GONSALVES:** So we told them - that is exactly what we told them.

**CHAIRPERSON:** Hm.

**MR ROBERTO GONSALVES**: So we did not think that we were entitled to an amount.

**CHAIRPERSON**: Hm.

**MR ROBERTO GONSALVES**: But we also said that it is possible ...

**CHAIRPERSON**: Hm.

**MR ROBERTO GONSALVES**: That we are entitled to an amount and we just do not know what the basis of that amount is and how it is calculated and on what basis in the legal agreements we can claim that amount ...

10 **CHAIRPERSON**: Hm.

**MR ROBERTO GONSALVES**: And perhaps we had missed something ...

**CHAIRPERSON**: Hm.

**MR ROBERTO GONSALVES**: And it was a simple response – a simple answer and someone can refer us to the Locomotive Supply Agreement and say in terms of Clause 32 or whatever it is you are entitled to a relocation allowance under these circumstances.

**CHAIRPERSON**: Hm.

**MR ROBERTO GONSALVES**: So we asked them please provide that to us and they undertook that they would look into it and they requested  
20 us to give them copies of all the documents which we did subsequently you will see.

**CHAIRPERSON**: Hm. At that time when you met with them where were these costs? I mean – they have been moving up. Was it around what figure were they at that time if you are able to remember?

**MR ROBERTO GONSALVES**: I think it comes later on. I do not – at

that stage I think we were still talking about the term of R80 million.

**CHAIRPERSON**: Okay, okay but you are saying that at that meeting they were not able to tell you why you were entitled to – to that amount?

**MR ROBERTO GONSALVES**: Absolutely not. They said they would investigate it.

**CHAIRPERSON**: Okay. So – so it was not even a situation where they would tell you something but you – an explanation which you find unacceptable. They simply said they would investigate?

10 **MR ROBERTO GONSALVES**: That is correct Chair.

**CHAIRPERSON**: Which means they did not – they – they might not have been aware. That is one way of interpreting. That they might not have been aware but that is difficult to say because they - they would or maybe they would investigate by talking to people who were much more involved maybe.

**MR ROBERTO GONSALVES**: *Ja*. So Chair we assumed when we left the meeting we assumed that they were not aware of this.

**CHAIRPERSON**: Yes.

**MR ROBERTO GONSALVES**: That is the impression that we got.

20 **CHAIRPERSON**: Yes, yes.

**MR ROBERTO GONSALVES**: But we can see from the evidence that ...

**CHAIRPERSON**: *Ja*.

**MR ROBERTO GONSALVES**: The variation – acceptance of the variation order had already been signed ...

**CHAIRPERSON**: Yes.

**MR ROBERTO GONSALVES**: By the CEO.

**CHAIRPERSON**: So – so that meeting the variation had been signed?

**MR ROBERTO GONSALVES**: Yes but we had not seen it.

**CHAIRPERSON**: You had not seen it?

**MR ROBERTO GONSALVES**: That is correct Chair.

**CHAIRPERSON**: But if they had signed – if it had been signed then they should be - they should have been aware of the justification - if there was one?

**MR ROBERTO GONSALVES**: Correct Chair, correct.

10 **CHAIRPERSON**: And do you remember who – who had signed on behalf of Transnet?

**MR ROBERTO GONSALVES**: So the ...

**CHAIRPERSON**: The variation.

**MR ROBERTO GONSALVES**: The variation order was signed by Anoj Singh ...

**CHAIRPERSON**: Yes.

**MR ROBERTO GONSALVES**: And the acceptance of the variation order was signed by Siyabonga Gama. So we can refer that to (intervenes).

20 **CHAIRPERSON**: Ja. No as long as you – you know that to be the case. So certainly Mr Gama who was at that meeting having signed he ought to have known what justification there was and he – I take it – he would have known that at some stage those costs had been estimated at 9-something million. So now at that stage they had gone up to 200-something million.

**MR ROBERTO GONSALVES**: Chair that is quite correct.

**CHAIRPERSON:** Hm. So unless he had signed without interrogating those amounts which – which would not be good in terms of looking after – protecting Transnet – Transnet's interests as well.

**MR ROBERTO GONSALVES:** *Ja*. Chair that is quite correct. If you go to page 261 ...

**ADV PHILLIP MOKOENA SC:** Yes.

**CHAIRPERSON:** Huh-uh. Yes.

**ADV PHILLIP MOKOENA SC:** And importantly on that page is the date. What is the date of that letter?

10 **MR ROBERTO GONSALVES:** *Ja* correct. Chair the date is 23 July 2015 ...

**CHAIRPERSON:** Yes.

**MR ROBERTO GONSALVES:** And our meeting with the Transnet Executives was on 16 August 2016.

**CHAIRPERSON:** Oh it was long after. I mean at least about a month or so. Yes.

**MR ROBERTO GONSALVES:** Huh-uh.

**CHAIRPERSON:** Okay.

**ADV PHILLIP MOKOENA SC:** let us – let us ...

20 **MR ROBERTO GONSALVES:**

**CHAIRPERSON:** And then ...

**ADV PHILLIP MOKOENA SC:** Chair just - just to clarify.

**MR ROBERTO GONSALVES:**

**CHAIRPERSON:** *Ja*.

**ADV PHILLIP MOKOENA SC:** Those dates. The meeting took place ...



**MR ROBERTO GONSALVES:** The 16<sup>th</sup>.

**ADV PHILLIP MOKOENA SC:** On the 23<sup>rd</sup>. The meeting took place on 16 August 2016.

**MR ROBERTO GONSALVES:** 2016. So it is a year almost – more than a year later.

**ADV PHILLIP MOKOENA SC:** It is more than a year later.

**CHAIRPERSON:** Oh, more than a year later?

**ADV PHILLIP MOKOENA SC:** Yes.

**CHAIRPERSON:** Oh. I thought it was a month – the same year.

10 **ADV PHILLIP MOKOENA SC:** So there was no doubt that when you met with Mr Gama and the delegate from Transnet already a variation order which you have referred the Chair to on page 261 has already been signed by Mr Gama?

**MR ROBERTO GONSALVES:** Correct.

**ADV PHILLIP MOKOENA SC:** Reflecting the amount that you informed the Chair about?

**MR ROBERTO GONSALVES:** Correct. Correct Chair.

**CHAIRPERSON:** And did they ever come back to you? They said they would investigate. Did they ever come back to you and let you know  
20 that this increased amount that you thought you were not entitled to you – you were actually entitled to it by virtue of A, B, C, D?

**MR ROBERTO GONSALVES:** So Chair you will see in my statement a couple of things happened. So after we met we – with – with the Executives in person on 16 August on 13 September 2016 - and that is paragraph 35.

**ADV PHILLIP MOKOENA SC:** 35.

**CHAIRPERSON:** Yes.

**MR ROBERTO GONSALVES:** We physically met with Ndiphiwe Silinga and handed him 84 pages of documents around the BEX issue that we had and ...

**CHAIRPERSON:** I am sorry what documents were those?

**MR ROBERTO GONSALVES:** All the BEX issues ...

**CHAIRPERSON:** Oh, okay.

**MR ROBERTO GONSALVES:** Most of the documents that ...

10 **CHAIRPERSON:** Yes.

**MR ROBERTO GONSALVES:** That we had at that stage relating to BEX.

**CHAIRPERSON:** Correspondence and minutes and so on.

**MR ROBERTO GONSALVES:** Minutes ...

**CHAIRPERSON:** Ja.

**MR ROBERTO GONSALVES:** (Indistinct) documents etcetera.

**CHAIRPERSON:** Okay.

**MR ROBERTO GONSALVES:** Hm.

20 **CHAIRPERSON:** And Silinga had been one of the people who had attended the August meeting?

**MR ROBERTO GONSALVES:** Chair that is quite correct.

**CHAIRPERSON:** Yes, okay.

**MR ROBERTO GONSALVES:** And then Ndiphiwe Silinga called me on 12 October 2016 and informed me that they were conducting two audits – internal audits and the one – to find out two things. One why

Transnet Engineering had not been paid part of the R647 million.

**ADV PHILLIP MOKOENA SC:** Yes explain that to us.

**CHAIRPERSON:** *Ja*, what - what is that now?

**MR ROBERTO GONSALVES:** So Transnet Engineering is a subcontractor ...

**CHAIRPERSON:** Hm.

**MR ROBERTO GONSALVES:** To CNR South Africa.

**CHAIRPERSON:** Yes.

**MR ROBERTO GONSALVES:** They build the bodies and the bogies ...

10 **CHAIRPERSON:** Hm.

**MR ROBERTO GONSALVES:** And they probably make up 25 percent ...

**CHAIRPERSON:** Hm.

**MR ROBERTO GONSALVES:** Of the build price.

**CHAIRPERSON:** Hm.

**MR ROBERTO GONSALVES:** So what he was implying was that if CNR South Africa was entitled to a claim of R647 million ...

**CHAIRPERSON:** Hm.

**MR ROBERTO GONSALVES:** Then Transnet Engineering maybe was entitled as a subcontractor ...

20 **CHAIRPERSON:** Hm.

**MR ROBERTO GONSALVES:** To a portion of that amount ...

**CHAIRPERSON:** Hm.

**MR ROBERTO GONSALVES:** And his other question was – so at this stage I must just correct myself. We knew it was 647 million. It was not 280. We are talking about 647 million.

**ADV PHILLIP MOKOENA SC:** Yes.

**MR ROBERTO GONSALVES:** Because this 2016 – is how the four – R647 million was arrived at as they thought it had looked like certain amounts had been duplicated. That was a telephonic discussion we had with him.

**ADV PHILLIP MOKOENA SC:** And then what happened after that telephonic discussions?

**MR ROBERTO GONSALVES:** Then not a lot until ...

**CHAIRPERSON:** I am sorry. So on – on – so paragraph 36 reveals  
10 that they did actually come back to you. After the meeting of August they did come back to you or you had interactions and in terms of those interactions Silinga – was Silinga a male or female?

**MR ROBERTO GONSALVES:** A male.

**CHAIRPERSON:** Mr Silinga indicated that they were investigating having conducted audits to establish among others how the R647 million had been arrived at. So by this time which was a year later – over a year later – the amounts had – the amount has gone up to 600-something million.

**MR ROBERTO GONSALVES:** 647 million, quite correct.

20 **CHAIRPERSON:** Yes, okay.

**ADV PHILLIP MOKOENA SC:** And what – what transpired after that meeting with Mr Silinga?

**MR ROBERTO GONSALVES:** Then on ...

**CHAIRPERSON:** But I am sorry. I may – I may have – I may have misrepresented and you may have agreed – wrongly agreed. After your

August meeting, 2016 is the position that for the rest of that year they never came back to you?

**MR ROBERTO GONSALVES**: So on that – we met on 16 August 2016.

**CHAIRPERSON**: Yes.

**MR ROBERTO GONSALVES**: On 13 September 2016 we met with them again.

**CHAIRPERSON**: Oh that was still ...

**MR ROBERTO GONSALVES**: *Ja*.

**CHAIRPERSON**: Okay, alright.

10 **MR ROBERTO GONSALVES**: And we gave them all the physical information ...

**CHAIRPERSON**: Okay, okay.

**MR ROBERTO GONSALVES**: And then we had the conversation on 12 October 2016 where they informed us that they were doing this – these investigations.

**CHAIRPERSON**: Okay, okay. So in other way or another you got to know that they were investigating?

**MR ROBERTO GONSALVES**: Correct.

**CHAIRPERSON**: *Ja*, okay.

20 **MR ROBERTO GONSALVES**: Thank you Chair.

**ADV PHILLIP MOKOENA SC**: Now during these meetings that when you met with Mr Silinga and at the time when you met with the delegation of Transnet was it ever disclosed to you that there was a – a variation order that was already signed to this amount?

**MR ROBERTO GONSALVES**: Chair absolutely not. We only

discovered that later on. We got that from Hogan Lovells later on.

**ADV PHILLIP MOKOENA SC:** Yes. Then you may proceed. That is now after you have met with Mr Silinga on 12 October 2016 what happens?

**MR ROBERTO GONSALVES:** So on 12 October Mr Silinga called me and – that is the – and informed me about the two audits.

**ADV PHILLIP MOKOENA SC:** Yes.

**MR ROBERTO GONSALVES:** That they were doing.

**ADV PHILLIP MOKOENA SC:** Subsequent to that?

10 **MR ROBERTO GONSALVES:** And subsequent to that on 8 December Mr Silinga informed us that – he sent us an email saying that Transnet has appointed Harold Jacobs of Werksmans to investigate the BEX matter and that Mr Jacobs would be contacting us for interviews.

**ADV PHILLIP MOKOENA SC:** Proceed.

**MR ROBERTO GONSALVES:** And what happened is on 14 December 2016 we met with Werksmans team and shared all the information that we had on the BEX matter with them.

**ADV PHILLIP MOKOENA SC:** And what was the outcome of that meeting? Did they produce any report subsequently?

20 **MR ROBERTO GONSALVES:** No. They – they were – we kept on asking them where they were progressing. I think the next contact with them is we sent them an email at the end of January 2017 asking them what the status was of the investigations and they – they stated that it was ongoing.

**ADV PHILLIP MOKOENA SC:** Yes. Was there any other subsequent

engagement with Transnet?

**MR ROBERTO GONSALVES:** A few times we – we would have phoned Mr Silinga just to find out what the status was, whether we could assist them in anyway, how the investigations were progressing.

**ADV PHILLIP MOKOENA SC:** Yes. Now from paragraph 40 you refer to a letter which you received from Mr Silinga. Can you take us through the contents of same there on paragraph 11? What was he conveying to the main shareholders?

**MR ROBERTO GONSALVES:** So that is Annexure 18. So what  
10 happened was initially the company requested that Lulamile Xate sign a letter that the company addressed to Transnet. In the initial draft that they put in front of Lulamile there was a reference in there that we had resolved the BEX matter and Lulamile refused to sign it and had it removed, and then signed the letter, and the letter basically said that the relationship between CNR and the minority shareholders seem to be improving, they were getting a better understanding and appreciate of what we meant by corporate governance and that we had directors fiduciary duties and responsibilities.

In response to that letter Mr Silinga sent us a letter which is  
20 attached I think on page 277 ...(intervention)

**ADV PHILLIP MOKOENA SC:** Yes, but you did reproduce its contents from page 11, Chair contents are on page 11.

**MR ROBERTO GONSALVES:** Correct. And in – what Mr Silinga requests it says, in essence the letter seems to advise that all differences between the shareholders of CNR Rolling Stock South

Africa have been resolved and there now exists a good working relationship between the parties and he says in the next paragraph:

10            “As a direct result of the differences that existed between the shareholders you laid a complaint against what you suspected to be an untoward conduct by the entity and/or some of its shareholders in relation to the relocation cost to a plant in Durban. Transnet through its external attorneys initiated investigation which is still at its initial stages. In light of the tone of the attached letter we would be pleased to hear from you whether the resolved differenced including the issues raised in your complaint in the circumstances Transnet would like to know whether you are still pursuing with drawing the complaint.”

**ADV PHILLIP MOKOENA SC:** And did the minority shareholders react to this letter.

20            **MR ROBERTO GONSALVES:** Chair we responded to the letter and we basically said we would like to remind you that there were two items that we raised in a meeting with you, the first issue relating to the relationship and cooperation between CNR and the shareholders, and we would like to report that significant progress has been in this respect and now I'm reading directly:

             “The second issue related to the BEX issue and the impact on the minority directors and the original draft of the abovementioned CNR SA letter made reference to the BEX issue but this was removed by Mr Xati as the minority directors



and minority shareholders had deliberate not engaged with the CNR on this issue, given that the Transnet is undergoing its investigation. We therefore respectfully encourage you to continue along this road until a satisfactory outcome is reached and will continue to cooperate fully with you in this respect.”

**ADV PHILLIP MOKOENA SC:** So it was clear and unambiguous that in as far as it related to the minority shareholders the issue pertaining to BEX was still alive and it was still persisting with the complaint.

10 **MR ROBERTO GONSALVES:** That’s quite correct Chair and we continued to request that they continue with the investigation.

**ADV PHILLIP MOKOENA SC:** Yes, and then what happened after this exchange of correspondence?

**CHAIRPERSON:** Before that except for the fact that you may have got to Transnet’s attention, Transnet’s attention possible wrongdoing by your co-directors as minority directors and they in regard to a business relationship or contract between Transnet and your company why would Transnet be interested in whether any disagreements among yourselves have been resolved because the majority and the minority, do you  
20 know? My own thinking is that if you brought to their attention that for argument’s sake, let us say what you brought to their attention was corruption they would be obliged to look at it because they shouldn’t be party to any corruption and nobody should have engaged in corruption relating to any business they were doing, that is Transnet but other than that why should it be their business whether you were getting

along or not, because I guess if you're not getting along results in you not being able to do – carry out your contractual obligations then they should just say look if you don't – as long as you perform we are not concerned about your own issues among yourselves, but if it affects performance in terms of the contract we might have to terminate it and give it to somebody else who is going to perform. Why are you – one gets the impression from their letter as if you said to them yes we have resolved our issues that would mean they mustn't continue to find out whether there was anything untoward that had been done by anybody

10 from the company?

**MR ROBERTO GONSALVES:** Chair I think you're absolute correct, I think the objective of the letter was to give Transnet grounds not to pursue the BEX matter any further.

**CHAIRPERSON:** But am I right that in their letter they seem to be concerned about whether you are sorting out our issues?

**MR ROBERTO GONSALVES:** Ja, remember that Chair that when we went to him there were two issues that we raised, one was shareholder issues and like the relationship wasn't ideal and the second one was the BEX issue, and I think what ...(intervention)

20 **CHAIRPERSON:** Yes but why did you – why should the shareholder issues concern them, why did you take that one to them?

**MR ROBERTO GONSALVES:** I think there was a bit of a debate as to Chair whether we raised with Transnet or not, we just saw them as a significant stakeholder and we had a bit of impasse with CNR and we were trying to see whether Transnet could assist in that process and

they made it clear Chair that they didn't want to get involved.

**CHAIRPERSON:** Oh they made that clear?

**MR ROBERTO GONSALVES:** Ja in the relationship and the shareholders issues, we had to resort that – sort that out ourselves.

**CHAIRPERSON:** Ja okay.

**ADV PHILLIP MOKOENA SC:** Now flowing from that discussion with the Chair Mr Gonsalves I mean let us assume for the moment that there shareholders differences were amicably resolved within the consortium itself what would justify Transnet from not investigating how this amount escalated from 9.7, 280 647 000 being an SOE?

**MR ROBERTO GONSALVES:** Chair I would have thought it was a top priority and you will see that internally they said there was an investigation, I don't know what the outcome of that is or was, and then they requested Werksmans to do an investigation, I think ultimately Werksmans produced a report and I don't know whether the BEX matter was dealt with in that report or not but certainly we were concerned at the pace at which you know developments were moving.

**ADV PHILLIP MOKOENA SC:** And do you know as to who were the auditors of the consortium at this stage?

20 **MR ROBERTO GONSALVES:** CNR South Africa?

**ADV PHILLIP MOKOENA SC:** Yes.

**MR ROBERTO GONSALVES:** KPMG.

**ADV PHILLIP MOKOENA SC:** Were they engaged at any stage pertaining to these issues, I mean these are serious irregularities, this is serious matters of concern that were raised by the minority?

**MR ROBERTO GONSALVES:** Sir the only time that KPMG got involved was that we heard that there was a reportable irregularity in respect of this but we only heard that a bit later.

**ADV PHILLIP MOKOENA SC:** Yes can you deal then with your evidence from paragraph 42, page 12 Mr Chair.

**MR ROBERTO GONSALVES:** Mr Chair from a timeline perspective this is almost sort of six months later, I received a call from Daisy Zang, (indistinct) she is one of the employees at CNR South Africa and she mentioned to me that KPMG had informed them that they were  
10 considering issuing a report of irregularity and that report of irregularity if I can refer is the second RI, it's the second Reportable Irregularity because unbeknown to us at that stage they had already reported on the BEX issue as a reportable irregularity.

**ADV PHILLIP MOKOENA SC:** And then what happened after she, after the call.

**MR ROBERTO GONSALVES:** So I called Fred Van Eckenstein, the KPMG partner, to find out about this reportable irregularity and on that call he mentioned to me that this wasn't the first one that he had already issued a reportable irregularity and but obviously I didn't know  
20 that was in connection with.

**ADV PHILLIP MOKOENA SC:** Yes. Now if I may refer you to RG20, it's on page 281 Chair, it's a very lengthy letter if you may identify that letter and summarise for the Chair what it sought to convey and what was the purpose of that letter?

**MR ROBERTO GONSALVES:** So Chair this letter is dated the 4<sup>th</sup> of

September 2017, it's a letter from Hogan Lovells addressed to KPMG, to the partner, Fred Van Eckenstein, and it's a letter supporting why KPMG should not consider the BEX issue to be a reportable irregularity, so once KPMG had reported that this was a reportable irregularity, the BEX issue, the company then engaged Hogan Lovells to draft a response to KPMG and this is the response in Annexure 20.

**ADV PHILLIP MOKOENA SC:** Yes, did the minority shareholders agree with the sentiments accord in that letter?

**MR ROBERTO GONSALVES:** Chair absolutely not, we had no  
10 knowledge at that stage that there was even a reportable irregularity and that Hogan Lovells had been engaged to report and work on – to respond to the reportable irregularity.

**ADV PHILLIP MOKOENA SC:** Ja, may I refer you back to your statement, page 12, and commence from paragraph 45 of your statement to share with us what you're conveying in that paragraph.

**MR ROBERTO GONSALVES:** So on the 22<sup>nd</sup> of September 2017 I wrote to Fred van Eckenstein, the KPMG partner, I thanked him for the call, I said that he had mentioned to me on the call that there was a previous reportable irregularity as well, I told him that none of the  
20 South African directors, myself, Lulamile Xate or Rowlen von Gericke was aware of that and I asked him for – to give us any correspondence on it and that correspondence I subsequently got from Hogan Lovells and I requested a meeting with him as soon as possible between ourselves and the management of the company.

**ADV PHILLIP MOKOENA SC:** Yes, Chair I see that it's four o'clock,

would this be an appropriate time to adjourn, even if we can start at ten tomorrow we should be able to deal and complete with the evidence of Mr Gonsalves and the other short witness that we might have.

**CHAIRPERSON:** We will take – we will adjourn for today and we will resume tomorrow at ten, so do come back. We adjourn

**INQUIRY ADJOURNS TO 24 MAY 2019**