

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

PARKTOWN, JOHANNESBURG

10

30 MAY 2019

DAY 102

20

PROCEEDINGS ON 30 MAY 2019

CHAIRPERSON: Good morning Ms Sello, good morning everybody.

ADV MAHLAPE SELLO: Morning Chair.

CHAIRPERSON: I see that there has not been any improvement?

ADV MAHLAPE SELLO: Actually Chair it is surprising there has not because if the Chair has regard to the spine of the file.

CHAIRPERSON: Hm.

ADV MAHLAPE SELLO: The correction has been made.

CHAIRPERSON: Hm.

10 **ADV MAHLAPE SELLO**: How we did not find itself to the cover as a matter we were discussing this morning but I have been assured

CHAIRPERSON: Ja.

ADV MAHLAPE SELLO: That they all will be reprinted and refiled at least there ...

CHAIRPERSON: Ja.

ADV MAHLAPE SELLO: There is progress the spine is correct.

CHAIRPERSON: Ja well I guess we must acknowledge the progress that has happened.

ADV MAHLAPE SELLO: Thank you Chair.

20 **CHAIRPERSON**: Even if it does not meet the expectations that we had.

ADV MAHLAPE SELLO: Undoubtedly Chair.

CHAIRPERSON: Ja.

ADV MAHLAPE SELLO: We shall endeavour to improve.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: And this is now Chair marked 88 – BB8[c]. Bo

– [a], [b] and [c] will all be ..

CHAIRPERSON: Ms Sello started by saying 88.

ADV MAHLAPE SELLO: I know Chair. I am looking at 8 and it affects what I say.

CHAIRPERSON: Ja.

ADV MAHLAPE SELLO: They will all be corrected this afternoon so the next time the Chair has regard to these files they will be...

CHAIRPERSON: No that is fine.

ADV MAHLAPE SELLO: Thank you Chair.

10 **CHAIRPERSON**: That is fine. Hm.

ADV MAHLAPE SELLO: Chair we are still on MNS Reports.

CHAIRPERSON: Ja.

ADV MAHLAPE SELLO: And we are now dealing with the MNS Report that is titled the Relocation of 2 OEM's to Durban.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: Chair will recall Mr Sedumedi dealt with 95 100 1064 and appointment of TA's.

CHAIRPERSON: Yes.

20 **ADV MAHLAPE SELLO**: Today we deal with the relocation and tomorrow Doctor Bloom will deal with transactions flowing from the advice of the TA's.

CHAIRPERSON: Ja.

ADV MAHLAPE SELLO: Which will be tomorrow and that will complete the MNS reports.

CHAIRPERSON: Okay.

ADV MAHLAPE SELLO: Thank you Chair.

CHAIRPERSON: Thank you.

ADV MAHLAPE SELLO: The witness we will – we have today is Mr Thobani Mnyandu.

CHAIRPERSON: Hm.

ADV MAHLAPE SELLO: And with your permission may he be sworn in Chair?

CHAIRPERSON: Okay please administer the oath or affirmation?

REGISTRAR: Please state your full names for the record?

10 **MR THOBANI TREVOR MNYANDU:** Thobani Trevor Mnyandu.

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

MR THOBANI TREVOR MNYANDU: No I do not.

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

MR THOBANI TREVOR MNYANDU: Yes.

REGISTRAR: Do you solemnly swear that all the evidence 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.

20 **MR THOBANI TREVOR MNYANDU:** So help me God.

REGISTRAR: Thank you

ADV MAHLAPE SELLO: Thank you. Chair before Mr Mnyandu deals with his presentation perhaps to place his testimony in its proper context. The Chair will recall that last week Mr Gonsalves representing the minority shareholder in the CNR Consortium testified and he spoke

in large part on the relocation. The evidence of Mr Gonsalves concerns relocation from the perspective of the bidders or the minority shareholder within the bidder. Mr Mnyandu today is dealing with the same issue except from a different angle. He is dealing with it from the Transnet perspective and whether Transnet was aware in part of the increases in relocations costs that were being proposed. What position it took in regard to those increases and whether it was agreeable to such increases. So at time the testimony might sound familiar but we would like to point out that this from the Transnet perspective. Thank
10 you Chair. With that context then Mr Mnyandu you confirm that you have prepared a presentation on the relocation of the OEM's to Durban. You should have next to you a file marked BB8[c].

MR THOBANI TREVOR MNYANDU: Yes I confirm Chair.

ADV MAHLAPE SELLO: And you confirm that that is the presentation you have prepared?

MR THOBANI TREVOR MNYANDU: Indeed it is so.

ADV MAHLAPE SELLO: The structure of the file Chair is the first part of the file is the actual presentation. There are tabs 1 to 7 that follow documents under tabs 1 to 7 that follow the presentation. Mr Mnyandu
20 please explain what those documents are in tabs 1 to 7?

MR THOBANI TREVOR MNYANDU: These are documents that are not necessarily annexed to our report.

CHAIRPERSON: Well you said he is testifying from the perspective of Transnet. Do you...

ADV MAHLAPE SELLO: No, no he is giving a report on how Transnet

dealt with the relocation issue.

CHAIRPERSON: Yes but let me know first about him – about him. Who is he?

ADV MAHLAPE SELLO: Oh. Yes I was going to do that Chair I was...

CHAIRPERSON: Before we go into anything.

ADV MAHLAPE SELLO: We go into the documents.

CHAIRPERSON: I must know who he – who he is.

ADV MAHLAPE SELLO: Then Mr Mnyandu could you very briefly tell the Chair who you are, what role you played in this investigation and
10 your relationship with MNS?

MR THOBANI TREVOR MNYANDU: Chair as already has been stated in for the record my name is Thobani Trevor Mnyandu. I am an attorney and one of the directors at MNS Attorneys. I am the lead attorney in the Department of Construction and Engineering Law. We offer a wide range of services in that area of law which includes what is referred to as front end services. From a large perspective we advise organs of state as to what should go into tender documents, what they should look like so we advise on the legal framework that is concerned with the preparation of such documents. We also play a huge role in
20 advising organs of state and contractors alike on contract management
1 but more specifically in relation to disputes that arise from construction engineering contracts including but not limited to bank guarantees, advanced payment bond guarantees and the like.

CHAIRPERSON: Thank you.

ADV MAHLAPE SELLO: Thank you. And you were directly involved in

the investigation of this particular aspect the relocation of the 2 OEM's?

MR THOBANI TREVOR MNYANDU: Yes I confirm I was directly involved I led the team that put together the report.

ADV MAHLAPE SELLO: Okay.

CHAIRPERSON: Thank you.

ADV MAHLAPE SELLO: Thank you Chair. You were still explaining to the Chair the structure of your submission made up of your presentation and followed by 7 documents as filed under tabs 1 to 7.

10 **MR THOBANI TREVOR MNYANDU:** Chair in consultation with the evidence leaders we put together a presentation that summarises the context and the conclusions of the report. The exhibits that are marked TTM1 to TTM7 are documents that are not necessarily attached to the report but no new matter arises from them so it does not seek to raise new points but they expand on the points that are contained in the reports.

ADV MAHLAPE SELLO: So then the issues emanating from TTM1 to 7 are foreshadowed in the report?

MR THOBANI TREVOR MNYANDU: Indeed they are Chair.

20 **ADV MAHLAPE SELLO:** Except the report does not attach the document as an exhibit in respect of each of the points?

MR THOBANI TREVOR MNYANDU: Indeed it is so.

ADV MAHLAPE SELLO: Okay. With that explanation then I think we have the proper context. Could you lead us through your presentation?

MR THOBANI TREVOR MNYANDU: Thank you Chair. Chair just to give

you're an overview of what the presentation deals with we have got the contents page at slide number 2. The contents page outlines that we will give you the background in relation to the issue of relocation. Most importantly we will ask first the question of what is relocation and whether there was a commercial rationale to it? We will then deal with communications that were sent to the OEM's in relation to the issue of relocation. As well as highlight to you at the outset as to what was the attitude of each OEM in respect thereof. We will then deal from the one perspective of the OEM first with the approval process. What

10 communications were had to take the issue of relocation costs as it were forward? In particular we will deal with a particular memoranda prepared internally at Transnet. We will deal with internal meetings as well as email communications as I have said. The meetings that were held with the respective OEM's. We will then highlight to you Chair that prior to the approval of the relocation costs what critical communications were had amongst the negotiation team members within Transnet. We will deal with – Chair with the involvement of a structure known as the Transnet Internal Audit who ought to have played a particular role in the facilitation of the negotiations as well as

20 the conclusion of the approval of the relocation costs. Chair we will then take you through the sale and findings of an independent expert that was contracted by us pursuant to a prima facie view that we held on the relocation costs. That is a rail logistics company that does work in the space. Finally Chair we will conclude by giving you our findings. Also explaining what our findings mean for Transnet considered

together with the findings of the independent expert who by and large as we found support the prima facie view that we had. The last bit we will deal with Chair relates to the recommendations made to Transnet.

ADV MAHLAPE SELLO: Thank you. You may then start.

MR THOBANI TREVOR MNYANDU: Thank you Chair. Chair just to outline the background again.

ADV MAHLAPE SELLO: Excuse me Mr Mnyandu I apologise. I get a message here that you are not particularly audible could you pull the microphone closer to you.

10 **MR THOBANI TREVOR MNYANDU:** I apologise Chair.

ADV MAHLAPE SELLO: Yes. Okay thank you.

MR THOBANI TREVOR MNYANDU: Right. Firstly Chair just to outline the background that led to Mncedisi Ndlovu & Sedumedi Attorneys being requested to undertake an investigation on this issue. It arose out of the fact that during July 2015 Transnet approved the relocation costs for both BT Bombardier Transportation and China North Rail at amounts of R618 457 125.00 and R647 181 494.00 respectively. The issue of relocation Chair has been the subject of intense debate riddled with allegations of corruption that was said to be associated with it.

20 When we undertook the investigations we therefore set a couple of questions that applied to the investigation. And this slide we seek to summarise what those questions were. Firstly Chair we needed to know what was relocation in itself? What is the meaning of relocating? We then needed to question whether there was indeed relocation in this instance. Whether it was envisaged in the business case because the

business case by and large Chair as evidence has been led now was the document that gave effect to the line items that would make up the total budget for the 1064 locomotives procurement process. We then needed to interrogate when exactly and by whom the decision to relocate the two OEM's was taken and whether or not there was any commercial rationale provided for the relocation of the two OEM's. Lastly we needed to ask ourselves and investigate and come to a conclusion on whether or not the approved relocation costs that we have just referred were indeed justifiable. Chair in considering the first

10 question of what is relocation we decided to consult the Oxford Dictionary. You will see there Chair at slide number 5 that we make the point that the Oxford Dictionary considers relocation to be the action of moving to a new place and establishing one's home or business there. Chair relocation therefore proceeds from the premise that there is a move from one place to another. Following on from this Chair you will then get context as to why both in our report as well as in the presentation the word "relocation" is in inverted commas. As early as June 2018 when we first interviewed the project engineer of Transnet that is heading from a Transnet perspective the manufacturing of the

20 locomotives and certify his acceptance from time to time. We were informed by Mr Frikkie Harris that 1. No OEM moved from one place to Durban and that BT more clearly BT and CNR had not set up any jigs nor had they established site when the request for them to be located in Durban was made. The finding that we made therefore arising from this was that there was no relocation. Just to explain what jigs are?

Those are metal materials that are set up in a manufacturing site of locomotives in order to bend the materials that are there for the manufacturing of the locomotive to a particular degree. Chair in slide number 6 as has already been canvassed before you this morning our view – our finding is that the word relocation is a misnomer insofar as it is mentioned in the context of the 1064 locomotives transaction. Put differently and to reiterate the point we found that there was no relocation of either BT nor was there relocation of CNR. The noteworthy point to be made at this point Chair is that whilst there was

10 not a relocation per se of any OEM there was a decision communicated to the OEM's for them to be located at a place different to the one that they had initially thought they would be when they put in their tender submissions. But Chair as you will see going forward we have found that all communications were had in this regard prior to the conclusion of the contract. As we take you through the presentation we will deal with the respective communications or rather the communications with the respective OEM's.

ADV MAHLAPE SELLO: Okay.

MR THOBANI TREVOR MNYANDU: Chair the question that arose from

20 what I have just explained when the decision was taken to change the location of the two OEM's is whether there was a commercial rationale linked to that decision. And Chair the issue is covered in a report commissioned by PWC who were instructed by Transnet between January and February 2014 to conduct an assessment of whether first of all Transnet Engineering and operating division of Transnet was

going to be able to deliver on the 1064 locomotive programme 1 and 2 to advise amongst other things as to whether or not there were available facilities to house each of the OEM's. Chair you will recall that initially when the tender was issued it was issued for the manufacturing of electric locomotives as well as diesels locomotives on the one side. The view at that point was that there were going to be two OEM's. The PWC report Chair is to be found at Volume 12 page 8927. But what we have tried to do in this slide is to summarise the findings of PWC. Just to get back again to the issue of the decision to
10 award to four different OEM's as opposed to two that brought about the question as to whether or not the facility that was – is known as Koedoespoort in Pretoria would be able to house more than two OEM's.

ADV MAHLAPE SELLO: Please proceed.

MR THOBANI TREVOR MNYANDU: Going ahead Chair PWC made the finding that unfortunately PW – Koedoespoort would not be able to house more than 2 OEM's as they would arise issues related to intellectual property in relation to the electric locomotives being conducted – being manufactured by two OEM's as well as those being manufactured by the diesel OEM's. As a result and based on a study
20 done by PWC of the facilities of Transnet around the country they put in an alternative suggestion that the other two OEM's could either be located in Uitenhage in the Eastern Cape where Transnet Engineering has got facilities or Durban in a place known as Bayhead. The decision that was made had pros and cons to it was that the location would rather be Durban. Just to point out at this point Chair that the decision

and the communication in this regard was made prior to the signature of the contracts and during the negotiations with the four OEM's.

ADV MAHLAPE SELLO: And by reference to the contracts you mean the main contract?

MR THOBANI TREVOR MNYANDU: Yes when I...

ADV MAHLAPE SELLO: The allocation – the award.

MR THOBANI TREVOR MNYANDU: When I refer to...

ADV MAHLAPE SELLO: Or the tender.

MR THOBANI TREVOR MNYANDU: The contracts I am referring to the
10 main contracts being the locomotives supply agreements concluded with the four OEM's.

ADV MAHLAPE SELLO: Okay.

MR THOBANI TREVOR MNYANDU: Chair we then move onto the next slide to summarise what was the critical advice that was given to Transnet by PWC once they had made the recommendations. PWC advised that Transnet should request the OEM's to justify costs incurred as a result of the relocation and to seek alternative assembly locations where additional costs would not be incurred. We make the point in this slide that we have found that the advice given by PWC
20 above was not carried through either in the negotiations nor was it contained in the proposals by the OEM's for the relocation costs. Chair we also make the point in this slide that in the locomotive supply agreements that were concluded with the two OEM's being BT and CNR the concept of relocation nor the cost plays any role nor is it mentioned in those agreements.

ADV MAHLAPE SELLO: So on that point as at the point of conclusion of the locomotive supply agreements we can deduce that it was not contemplated by the parties that any of the OEM's would have to relocate and therefore incur costs as a consequence thereof? If one on the strict reading of the agreement.

MR THOBANI TREVOR MNYANDU: On the strict reading of the locomotive supply agreements.

ADV MAHLAPE SELLO: Yes.

MR THOBANI TREVOR MNYANDU: Yes it is so.

- 10 **ADV MAHLAPE SELLO:** Now after the conclusion of the agreements in March 2014 is there document signed by both parties that opened the – opened up the issue of relocation and start a negotiation process in respect thereof and if there is such a document does that document indicate on – in terms of which clause in the contract such a negotiation is being undertaken.

MR THOBANI TREVOR MNYANDU: At this point I would like to take the Chair to TTM1 which is on page 38 of the bundle before the Chair this morning.

ADV MAHLAPE SELLO: Yes.

- 20 **MR THOBANI TREVOR MNYANDU:** This is email correspondence sent to one of the OEM's and prior to the conclusion of the locomotive supply agreements. It is sent by a supply chain services personnel at Transnet Freight Rail who played the role of being the interface 1 in the negotiations of the locomotive supply agreements as well as being the interface as we will see later in relation to the negotiation for the

relocation costs.

ADV MAHLAPE SELLO: Yes.

MR THOBANI TREVOR MNYANDU: Chair as evidence has already been led the locomotive supply agreements were concluded on 17 March 2014. The email before you Chair at TTM1 on page 38 is addressed by Ms Lindiwe Mdletshe to Mr Aubrey Lekwane as well as a David Anglin who are from Bombardier Transportation. I would like to read into the record if the Chair will allow?

CHAIRPERSON: Ja.

10 **MR THOBANI TREVOR MNYANDU:** The subject of the email reads as follows:

“Revised Proposal. The date of the email is 6 March 2014. Dear Tenderer you are requested to submit your revised proposal which include the latest TE scope of work by no later than 14h00 tomorrow 7 March 2014. Price impact for Durban must be submitted on Monday at 10 am. TFR also requested that you share your sub-contractors prices as per your discussion yesterday. Kindly be on standby for
20 tomorrow. Time will be communicated in the morning.”

ADV MAHLAPE SELLO: Okay.

MR THOBANI TREVOR MNYANDU: Chair this...

ADV MAHLAPE SELLO: So that is an invitation from Transnet?

MR THOBANI TREVOR MNYANDU: Yes.

ADV MAHLAPE SELLO: Yes.

MR THOBANI TREVOR MNYANDU: This demonstrates that there was an invitation from Transnet in writing to the one OEM to give a price indication and factor in what it would cost the OEM – the particular OEM to be located and manufactured from Durban. We have not been able to discover a direct response to this but from the communications that follow as well as the locomotive supply agreements it would seem that the particular OEM chose not to put in a price proposal insofar as our investigations are concerned and therefore the agreement was
10 concluded on the basis that the particular OEM would be located elsewhere. Chair it is relevant at this point to take you to appendix 2 of our report which is to found at Volume 12 pages 8830.

ADV MAHLAPE SELLO: Chair if – if I may I omitted to point out Mr Mnyandu's testimony will rely only on 12 and 13 so the Chair could have 13 ready – at the ready. The rest are not applicable. Thank you Chair. Could you repeat that page number again Mr Mnyandu?

MR THOBANI TREVOR MNYANDU: It is 8830 for the Chair.

ADV MAHLAPE SELLO: Yes. 8830 is the cover sheet the actual document starts at 331.

20 **MR THOBANI TREVOR MNYANDU:** 8831.

ADV MAHLAPE SELLO: 8831.

MR THOBANI TREVOR MNYANDU: Apologies.

ADV MAHLAPE SELLO: Yes.

MR THOBANI TREVOR MNYANDU: What the Chair will see at page 8831 is that this is an internal memorandum at Transnet addressed to

Mr Brian Molefe the Group Chief Executive at the time. The subject reads: The award of TFR – of the TFR 1064 locomotives tender to originally equipment manufacturers and their associated sub-contracts with Transnet. Below that Chair you will see it is dated 16 May 2014 which is some two months after the conclusion of the locomotive supply agreements.

ADV MAHLAPE SELLO: Sorry Mr Mnyandu to be precise it is with Transnet Engineering which as you explained is a division within Transnet?

10 **MR THOBANI TREVOR MNYANDU:** Yes.

ADV MAHLAPE SELLO: That is what it reads yes.

MR THOBANI TREVOR MNYANDU: Transnet Engineering.

ADV MAHLAPE SELLO: Yes.

MR THOBANI TREVOR MNYANDU: The memorandum is from a Mr Richard Vallihu his title at the time being Chief Executive of the Operating Division Transnet Engineering.

ADV MAHLAPE SELLO: Hm.

MR THOBANI TREVOR MNYANDU: Chair if you turn to page 8832 the purpose of the memorandum is summarised as to request the Transnet
20 Group Chief Executive to formally communicate the allocation of Bombardier Transportation and CNR to Transnet Engineering Durban facility.

ADV MAHLAPE SELLO: Yes.

MR THOBANI TREVOR MNYANDU: Chair perhaps we can turn to 8833 so as not to detain ourselves with the memorandum and deal with the

ambit we seek to draw your attention to in this memorandum. At paragraph 5 at 8833 it reads as follows:

“The decision to allocate CSR Zhuzhou electric locomotive company and GE just to point out CSR Zhuzhou is the CSR being the locomotive manufacturer that was awarded 359 locomotives at – to the Koedoespoort facility was based on the fact that sub-contracts with these OEM’s already exist and that the facility currently holds production lines
10 for locomotives designed by them.”

Chair you will recall that evidence as being led by Mr Sedumedi that prior to the conclusion of the 1064 locomotives programme there had been a transaction for the acquisition of 95 locomotives which are electric locomotives that were manufactured at Koedoespoort by CSR and 43 diesel locomotives that were being manufactured by GE. It is in respect those locomotives that paragraph 5 is based.

ADV MAHLAPE SELLO: And sorry the 43 by GE were also manufactured in Koedoespoort?

MR THOBANI TREVOR MNYANDU: Indeed.

20 **ADV MAHLAPE SELLO:** Yes.

MR THOBANI TREVOR MNYANDU: Chair we then take you to paragraph 6 which reads:

“CNR rolling stock South Africa which is the CNR Consortium once it had been incorporated have indicated their acceptance of their allocation to the Durban facility through their actions which we will

promptly you to Chair and planning around the use of the Durban facility. Bombardier Transportation has however expressed their requirement for an official communication informing them that their factory site will be Durban.”

Section 1.1.33 of the sub-contract this relates to the sub-contract agreement concluded between Transnet Engineering on the one end as well as Bombardier reads as follows:

“Facilities shall mean the rolling stock assembly and engineering facilities of the sub-contractor situated in Koedoespoort or any other
10 location of the sub-contractor as may be agreed upon by the parties.
Until such time as the communication has been received Bombardier Transportation insists that the contractual agreement is Koedoespoort.”
Chair in relation to what happened pursuant to this communication ...

ADV MAHLAPE SELLO: Before we get there so our understanding of Section 1.1.33 or Clause 1.1.33 of sub-contract we must understand that the parties contracted on the basis that the production may be in Koedoespoort or any place in South Africa?

MR THOBANI TREVOR MNYANDU: Yes.

ADV MAHLAPE SELLO: And it is on that basis that they contracted
20 and they accepted that term?

MR THOBANI TREVOR MNYANDU: That is correct Chair.

ADV MAHLAPE SELLO: Thank you.

CHAIRPERSON: And why was Bombardier Transportation saying until such time as the communication has been received Bombardier Transportation insists that the contractual agreement is Koedoespoort.

Was – was there already an arrangement in terms of which Koedoespoort had been agreed with them as a site?

MR THOBANI TREVOR MNYANDU: Chair in relation to the main agreement - the Locomotives ...

CHAIRPERSON: Hm.

MR THOBANI TREVOR MNYANDU: Supply Agreement.

CHAIRPERSON: Hm.

MR THOBANI TREVOR MNYANDU: The facility ...

CHAIRPERSON: Hm.

10 **MR THOBANI TREVOR MNYANDU:** For engineering or the manufacturing of the locomotives is noted as Koedoespoort.

CHAIRPERSON: Oh, okay.

MR THOBANI TREVOR MNYANDU: Yes Chair.

CHAIRPERSON: Okay.

ADV MAHLAPE SELLO: And if I may just follow on that question at paragraph 5 of – of that memorandum page 8833 it states that:

“The decision to allocate both CSR and GE was based – was the reason ...”

MR THOBANI TREVOR MNYANDU: Yes.

20 **ADV MAHLAPE SELLO:** It advances the reasons.

MR THOBANI TREVOR MNYANDU: Yes.

ADV MAHLAPE SELLO: At the time that decision was made is there a record of a firm decision to relocate or allocate Bombadier and CNR to Durban?

MR THOBANI TREVOR MNYANDU: In our findings there had been a

firm decision based on the findings of the PWC Report as well as now with particular reference to the correspondence that we have taken the Chair to at TTM1.

ADV MAHLAPE SELLO: Okay. You may proceed.

MR THOBANI TREVOR MNYANDU: Thank you Chair. Chair we would now like to take you to volume 12 - the same volume – at page 8837. Chair we can make it 8838 because 8837 is the covering page.

CHAIRPERSON:

ADV MAHLAPE SELLO: Yes.

- 10 **MR THOBANI TREVOR MNYANDU:** This is correspondence on the letterhead of Bombadier Transportation. It is addressed to Transnet Freight Rail on 6 June 2014.

CHAIRPERSON:

ADV MAHLAPE SELLO: Huh-uh.

MR THOBANI TREVOR MNYANDU: The subject reads:

“Allocation of Bombadier Transportation to the Transnet Engineering’s Durban Facility - Letter of Mr Brian Molefe to Dr Lutz Bertling dated 21 May 2014”.

- 20 **ADV MAHLAPE SELLO:** Yes.

MR THOBANI TREVOR MNYANDU: “Dear Mr Jiyane, further to our informal discussions Bombadier has now received the letter above mentioned from your Group Chief Executive Mr Brian Molefe via our Chief Operating Officer Mr Lutz Bertling on

26 May 2014. Mr Molefe officially informed us that Transnet Engineering’s Durban Facility should host our operations and asked Bombardier Transportation to agree. A response letter was provided by Dr Bertling on 5 June 2014 confirming that our project team would contact TFR directly to confirm the next step.”

Chair what we seek to do with this correspondence from the perspective of the OEM being Bombardier is that communication then was had and there was confirmation that it was accepted that it would be located at Durban. That is what we seek the Chair to note from this. In relation to timeline Chair and insofar as our slide number 9 is concerned. We would now like to take you through the attitude of CNR Consortium ...

ADV MAHLAPE SELLO: And before we do so just with reference to the appendices you just referred us to.

MR THOBANI TREVOR MNYANDU: Yes.

ADV MAHLAPE SELLO: What is your interpretation of the agreements that is signed by Bombardier and CNR? Would it - if one were to conclude that it was not open to any of the OEMs to insist on operating from Koedoespoort would that be a – a proper interpretation of that agreement?

MR THOBANI TREVOR MNYANDU: Yes that would be a proper interpretation of the agreement.

ADV MAHLAPE SELLO: Okay, thank you.

MR THOBANI TREVOR MNYANDU: Chair at slide number 9 we would now like to take you through the attitude of CNR Consortium in so far as it concerns the decision we should say to locate or rather be located in the Durban Facility of Transnet Engineering. TTM2 which is to be found at page 39 before the bundle that is with Chair this morning is a letter from the CNR Consortium. The letter is dated 10 March. We make the point at this point Chair that that is exactly a week prior to the conclusion of the Locomotive Supply Agreement.

ADV MAHLAPE SELLO: Huh-uh.

- 10 **MR THOBANI TREVOR MNYANDU:** It is addressed to – sorry Chair – it is addressed to Ms Lindiwe Mdletshe who at the time was a Commodity Manager in the Supply Chain Services Unit of Transnet Freight Rail. We have already explained the particular role that she was playing in relation to the negotiations. In fact we have already demonstrated it through the correspondence that she had sent to Bombadier on 9 March 2014. It says Chair:

20 “Dear Lindiwe, with reference to the TFR request relating to the CNR response to for the cost impact of building the locomotives in Durban we would like to point out that our original quotation is based upon building the locomotives in Koedoespoort or Germiston. We understand from TE ...”

Which is meant to denote Transnet Engineering.

“...that the Koedoespoort Facility has already been allocated but CNR would like to request that before

a final decision is made regarding this matter that we are granted site visits for both Durban and Germiston. As regards the request for the cost impact of this decision CNR would like to point out that our preliminary studies show that the cost of building the locomotives in Durban will be higher than the cost of building the locomotives in Germiston.”

ADV MAHLAPE SELLO: Yes.

- 10 **MR THOBANI TREVOR MNYANDU:** Chair if you turn overleaf it is then from CNR dated 11 March “The Impact of Manufacturing in Durban versus Johannesburg.” What we have tried to do in slide number 9 and the two slides that follow is to summarise and be able to take you through the particular quotation – as we see it – received by Transnet from CNR.

ADV MAHLAPE SELLO: Yes.

- 20 **MR THOBANI TREVOR MNYANDU:** The Chair will note that on the extreme left those are topics which relate to manufacturing. Chair we are to understand this as the capital – it is to denote the capital expenditure that would be incurred if CNR were to be located in Durban. We will make some examples for you Chair in relation to what would cost less and what would be a saving as a result of CNR being located in Durban. The first item is an engine per locomotive. In the third column it reads that there would be an extra cost of R8 000. There is a comment that is put in there in order to substantiate - as we

see it – why there would be the extra cost. The comment reads:

“Engine imported but testing done in Johannesburg.”

That is to be understood Chair saying whilst the engines would be imported for each locomotive from China or anywhere else that they will be procuring from and get to the Durban Harbour there would be an extra cost for the engines to be tested. We then seek to – on the other hand – draw your attention to what was going to be a saving ...

ADV MAHLAPE SELLO: Before we get that – we get to that point.

10 **MR THOBANI TREVOR MNYANDU:** Yes Chair.

ADV MAHLAPE SELLO: If – if I understand you correctly. The extra cost – the engine is imported?

MR THOBANI TREVOR MNYANDU: Yes.

ADV MAHLAPE SELLO: Fully assembled from China?

MR THOBANI TREVOR MNYANDU: Yes Chair.

ADV MAHLAPE SELLO: It arrives at Durban Harbour?

MR THOBANI TREVOR MNYANDU: Yes Chair.

20 **ADV MAHLAPE SELLO:** And if manufacturing of the locomotives is undertaken at Koedoespoort that engine would then have to be transported to Johannesburg?

MR THOBANI TREVOR MNYANDU: That is correct Chair.

ADV MAHLAPE SELLO: And it is at Johannesburg that it will be tested?

MR THOBANI TREVOR MNYANDU: That is correct Chair.

ADV MAHLAPE SELLO: So that cost was going to be incurred in the

first place? Why is it listed here as an extra cost? Does that – is that intended to cover the cost of returning the engine back to Durban for manufacture of the locomotive?

MR THOBANI TREVOR MNYANDU: Chair unfortunately the quotation itself is not substantiated ...

ADV MAHLAPE SELLO: Okay.

MR THOBANI TREVOR MNYANDU: But we can follow that the extra cost to be incurred is to take it back to the Durban Bayhead Site for it to be fitted on the locomotive.

10 **ADV MAHLAPE SELLO:** Otherwise the cost of transporting it from the harbour to Johannesburg was already included in the original quote on the basis of which the parties contracted?

MR THOBANI TREVOR MNYANDU: That is correct Chair.

ADV MAHLAPE SELLO: Thank you. Yes you may proceed, thank you.

MR THOBANI TREVOR MNYANDU: Thank you. Chair to take you then to a line item that denoted in this quotation what would be a saving for Transnet we use again an item that has a similar amount of R8 000. It is in relation to wheels and axles.

ADV MAHLAPE SELLO: That will be the seventh entry – I think.

20 **MR THOBANI TREVOR MNYANDU:** The eighth.

CHAIRPERSON:

ADV MAHLAPE SELLO: Eighth entry on the left column, yes.

MR THOBANI TREVOR MNYANDU: *Ja.* Chair the saving that was denoted there was an amount of R8 000. The comment that you will see on the far right hand side is ...

CHAIRPERSON: I am sorry. There are two R8 000 entries there under “Savings”. Which one are you dealing with?

ADV MAHLAPE SELLO:

MR THOBANI TREVOR MNYANDU: Wheels and axles.

ADV MAHLAPE SELLO: Which should be the second one Chair.

CHAIRPERSON: Oh, okay the second one.

ADV MAHLAPE SELLO: Yes Chair.

MR THOBANI TREVOR MNYANDU: Yes Chair.

CHAIRPERSON: Okay, thank you.

10 **MR THOBANI TREVOR MNYANDU:** The comment on the far right hand side reads imported components.

ADV MAHLAPE SELLO: Huh-uh.

MR THOBANI TREVOR MNYANDU: The understanding is that the wheels and axles would therefore be imported to the Durban Harbour. There would not be a cost to bring them up to Johannesburg and return them and therefore there would be a cost saving of R8 000 for Transnet.

ADV MAHLAPE SELLO: Please explain that again Mr Mnyandu.

20 **MR THOBANI TREVOR MNYANDU:** In respect of wheels and axles an amount of R8 000 would not be incurred and it would be a saving for Transnet in that the wheels and the axles ...

ADV MAHLAPE SELLO: Okay.

MR THOBANI TREVOR MNYANDU: Which are parts of the locomotive would be imported to Durban taken from Durban to the site ...

ADV MAHLAPE SELLO: Okay.

MR THOBANI TREVOR MNYANDU: For manufacture.

CHAIRPERSON: What is the significance of the two amounts being exactly the same in regard to the engine and the wheels and axles?

MR THOBANI TREVOR MNYANDU: Chair – Chair there is not. I thought it would be easier to find on the slide and that is why I referred you to the R8 000.

CHAIRPERSON: Well is it not an indication that it is – it relates to transportation because the transportation from Durban to Johannesburg would probably cost the same? I do not know whether that is petrol
10 and whatever else because otherwise very interesting that it should be exactly the same amount. If you are going to use the same ...

MR THOBANI TREVOR MNYANDU: (Indistinct).

CHAIRPERSON: If it is transportation so you talk about petrol. You talk about whatever else then one could understand if it is exactly the same amount. Otherwise it is difficult to understand why there should be this coincidence that it is the same amounts.

MR THOBANI TREVOR MNYANDU: Chair your conclusion is a logical one to follow. ...

CHAIRPERSON: Hm.

20 **MR THOBANI TREVOR MNYANDU:** From what is in the document.

CHAIRPERSON: Hm.

MR THOBANI TREVOR MNYANDU: Yes.

CHAIRPERSON: Hm. Okay, thank you.

ADV MAHLAPE SELLO: And on that basis we may assume then seeing as it is a saving that that transport cost of the wheels and the axles

would have formed part of the original quotation?

MR THOBANI TREVOR MNYANDU: That is to be understood from the quotation.

ADV MAHLAPE SELLO: And it is a saving because now they no longer have to be transported to Johannesburg when they get to the Durban Harbour?

MR THOBANI TREVOR MNYANDU: Indeed it is so Chair.

ADV MAHLAPE SELLO: Okay.

10 **MR THOBANI TREVOR MNYANDU:** Chair - we then take you to slide number 10 to deal with the next section of the quotation that starts at page 40.

ADV MAHLAPE SELLO: Sorry before you do so. There seems to be a – a fixed amount a total cost for the recollection at the bottom of nine?

MR THOBANI TREVOR MNYANDU: Yes.

ADV MAHLAPE SELLO: And that is 4 million?

MR THOBANI TREVOR MNYANDU: 4 million.

ADV MAHLAPE SELLO: So we are informed by CNR that these adjustments - add some deduct others - the cost will be 4 million?

MR THOBANI TREVOR MNYANDU: Indeed it is so Chair.

20 **ADV MAHLAPE SELLO:** Okay. Then we go overleaf.

MR THOBANI TREVOR MNYANDU: Then we go overleaf.

ADV MAHLAPE SELLO: Yes.

MR THOBANI TREVOR MNYANDU: Overleaf it is the second part of ...

CHAIRPERSON: I am – I am sorry.

MR THOBANI TREVOR MNYANDU: Yes Chair.

CHAIRPERSON: Is that 4 million the total of all the other items under “Extra Cost”? Is that total of all the – or not or is it a separate – is it a ...

MR THOBANI TREVOR MNYANDU: Chair the ...

CHAIRPERSON: An extra cost on its own not totalling?

MR THOBANI TREVOR MNYANDU: Chair it totals all of the extra costs that are to be found in the column in which it appears. So it is a sum made up of ...

CHAIRPERSON: I – no, no it cannot be. My – my arithmetic is not so
10 good but ...

MR THOBANI TREVOR MNYANDU: Chair for the purpose ...

CHAIRPERSON: That 4 million the highest of those amounts is R40 000. The next highest is R20 000. All the others are too small to make up 4 million.

MR THOBANI TREVOR MNYANDU: Chair for the purposes of – this is a cost and extra cost per locomotive.

ADV MAHLAPE SELLO: Per locomotive.

MR THOBANI TREVOR MNYANDU: For the purposes of our presentation ...

20 **CHAIRPERSON:** The four – the 4 million? The one you say is an extra cost per locomotive?

MR THOBANI TREVOR MNYANDU: It is supposed to be the total for all locomotives.

CHAIRPERSON: For all locomotives?

ADV MAHLAPE SELLO: Yes.

MR THOBANI TREVOR MNYANDU: For all locomotives.

CHAIRPERSON: So it is not a total of adding up the amounts that are above the 4 million in that column?

MR THOBANI TREVOR MNYANDU: Yes Chair.

CHAIRPERSON: Okay. No ...

ADV MAHLAPE SELLO: Yes.

CHAIRPERSON: Okay, okay.

MR THOBANI TREVOR MNYANDU: But you can accept Chair even though ...

10 **CHAIRPERSON:** (Indistinct).

MR THOBANI TREVOR MNYANDU: You can accept Chair even though nothing turns on it.

CHAIRPERSON: Yes.

MR THOBANI TREVOR MNYANDU: That on any score ...

CHAIRPERSON: *Ja.*

MR THOBANI TREVOR MNYANDU: The amount that is the – the total there ...

CHAIRPERSON: *Ja.*

MR THOBANI TREVOR MNYANDU: Is in correct.

20 **CHAIRPERSON:** Okay.

MR THOBANI TREVOR MNYANDU: *Ja.*

CHAIRPERSON: Okay.

MR THOBANI TREVOR MNYANDU: It is a little under R5 million on our calculations.

CHAIRPERSON: Okay.

MR THOBANI TREVOR MNYANDU: Yes Chair.

CHAIRPERSON: Okay.

ADV MAHLAPE SELLO: Okay.

MR THOBANI TREVOR MNYANDU: The next part of the presentation at slide 10 we deal with the next part of the quotation and this relates to the subject of the imported locomotive. What we are to understand from this is that there would be a savings of imported locomotives. The number in brackets is the number of locomotives that would be imported and the saving is denoted as R1 million. For locomotives that
10 would be fully assembled and shipped to the Durban Harbour.

ADV MAHLAPE SELLO: Yes.

MR THOBANI TREVOR MNYANDU: What we are to ...

CHAIRPERSON: I am sorry. Please just go back.

MR THOBANI TREVOR MNYANDU: Yes Chair.

CHAIRPERSON: The number in brackets represents what?

MR THOBANI TREVOR MNYANDU: The number of locomotives that would be fully assembled in China and transported by ship to Durban.

CHAIRPERSON: Okay, alright.

MR THOBANI TREVOR MNYANDU: Yes.

20 **CHAIRPERSON:** Okay.

MR THOBANI TREVOR MNYANDU: So the savings of R1 million is in relation to 20 locomotives that would not be transported to Johannesburg.

ADV MAHLAPE SELLO: And in this instance the R1 million saving is not per locomotive. It is a total saving on the 20?

MR THOBANI TREVOR MNYANDU: Indeed it is so Chair.

ADV MAHLAPE SELLO: Okay.

MR THOBANI TREVOR MNYANDU: The next line item deals with savings on kits and 15 of them. Chair before we take you through the amount we would just like explain what kits are. It relates to the bogie which is a part of the locomotive, the underframe and some body panels that would be imported from Dalian. Just to give context to the conversation from that perspective 15 locomotives were going to be produced by CNR as semi knockdown kits. That is to say some of it is
10 manufactured in China and then some of it – the parts are imported to South Africa and then full assembly happens in South Africa. The amount that was denoted as a saving there was R285 000. Again we understand on the basis that the 15 kits would then not need to travel to – inland. Chair you will see in the next column below that is the total saving from that perspective and it amounts to R1 285 000.

ADV MAHLAPE SELLO: Yes.

MR THOBANI TREVOR MNYANDU: And therefore the last it says the total extra costs is R2.79 million. It is R2 792 900 for the Chair.

ADV MAHLAPE SELLO: Arithmetically does that add up?

20 **MR THOBANI TREVOR MNYANDU:** Arithmetically that does not add up.

ADV MAHLAPE SELLO: Okay.

MR THOBANI TREVOR MNYANDU: Chair the final part of the quotation received from CNR during March 2014 is made up of cost related to Flights and Accommodation referred to as FNA Costs. The quotation

proceeds from the basis that there would be a minimum of four people to fly to Durban every week from Johannesburg.

ADV MAHLAPE SELLO: Yes.

MR THOBANI TREVOR MNYANDU: That cost is denoted as an amount of R1 320 000 and the next line item is in relation to the accommodation. From the reading of the quotation we are made to understand that it would be the accommodation for the four people flying to Durban. That amount is put down as R960 000. There is no indication as to what the flights would be. There is no indication as to
10 where the amounts are quoted from.

ADV MAHLAPE SELLO: And before you – you leave that point going back to Mr Harris' conclusion that neither Bombardier nor CNR had a base in Johannesburg. Presumably there was no personnel as well?

MR THOBANI TREVOR MNYANDU: Yes Chair.

ADV MAHLAPE SELLO: And your conclusion that as a fact therefore it could not have relocated from Johannesburg to get to Durban or to be placed in Durban?

MR THOBANI TREVOR MNYANDU: Yes Chair.

ADV MAHLAPE SELLO: Do you have an indication of who these four
20 people are that fly from Johannesburg every week and why they must fly from Johannesburg to Durban every week?

MR THOBANI TREVOR MNYANDU: No we do not Chair.

ADV MAHLAPE SELLO: Is there any documentation that you have seen where Transnet interrogates both the figures and the basis for the figures in this regard?

MR THOBANI TREVOR MNYANDU: No there is not such a document Chair.

ADV MAHLAPE SELLO: Okay, thank you.

MR THOBANI TREVOR MNYANDU: Chair the extra FNA Costs denoted on this slide is for Flights and Accommodation is simply adding the two amounts. It is R2 280 000. Chair the last item that was dealt with in respect of the quotation was new office set up for 60 personnel and that amount was R604 800. The last point to be made is that the total extra costs as indicated in 10 March 2014 quotation received from CNR
10 was that it was going to cost R9 755 600 for it to be located in Durban.

ADV MAHLAPE SELLO: And that is made up of the 4 million – your slide 9?

MR THOBANI TREVOR MNYANDU: Yes Chair.

ADV MAHLAPE SELLO: Plus the 2.7 million at slide 7 which are savings or extra costs in relation to imported locomotive and what they denote as Flight and Accommodation Costs and offices for new personnel. All that taken together will give a total of 9.7 million ...

MR THOBANI TREVOR MNYANDU: Together ...

ADV MAHLAPE SELLO: According to this document?

20 **MR THOBANI TREVOR MNYANDU:** Yes Chair together with the total extra transport costs.

ADV MAHLAPE SELLO: Yes.

MR THOBANI TREVOR MNYANDU: That is correct.

ADV MAHLAPE SELLO: Yes, thank you. Please proceed.

MR THOBANI TREVOR MNYANDU: Thank you Chair. Chair we now

seek to take you through the approval process of the cost for relocation.

ADV MAHLAPE SELLO: Yes.

CHAIRPERSON: That 9.7 million total extra costs is that the amount that was – arrived at by – that Mr – is Mr Gonsalves?

ADV MAHLAPE SELLO: Mr Gonsalves, yes Chair.

CHAIRPERSON: Mr Gonsalves he is the one who (intervenes).

ADV MAHLAPE SELLO: It is Mr Gonsalves who testified on behalf of the minority shareholder in the CNR Consortium.

10 **CHAIRPERSON:** Yes. That – that is the amount that he was talking about.

ADV MAHLAPE SELLO: That is the amount that he was talking about.

CHAIRPERSON: Okay, alright but based on what you have said even that amount there are certain things that are not explained. Is that right?

MR THOBANI TREVOR MNYANDU: Indeed that is so Chair.

CHAIRPERSON: So that maybe – maybe not the true costs might have been lower?

MR THOBANI TREVOR MNYANDU: Indeed – indeed it is so Chair.

20 **CHAIRPERSON:** Thank you.

ADV MAHLAPE SELLO: Yes Mr Mnyandu you may proceed.

MR THOBANI TREVOR MNYANDU: Chair at slide number 12 we now seek to take you through the approval process in relation to the cost of relocation. We first seek to highlight some salient points in relation to CNR and then deal with BT before we get to the actual approval of the

costs. Pursuant to the receipt by Transnet of the quotation of R9.7 million by CNR we have found that there were no further engagements during the year 2014 until February 2015 during which a proposal was submitted by CNR which estimates the costs inside the text of the report to be approximately R100 million for relocation. However in the same document Chair it also reflects at the end of it an estimate of R318 million. Chair that is to be found at volume 12 page 9013.

ADV MAHLAPE SELLO: Yes.

MR THOBANI TREVOR MNYANDU: We have no record and we have
10 not seen such a record in our investigation of the quotation having been interrogated, having been responded to by Transnet but we gather from the further correspondences that there were that such a quotation was not accepted. Chair a previous witness – Mr Gonsalves – has already led evidence about an agreement that we speak about at slide 12.

ADV MAHLAPE SELLO: Before we get to that we have – I have turned to your page – the document at 9013 volume - volume 12 – your Appendix 7 and in particular I am at page 9017.

MR THOBANI TREVOR MNYANDU: Yes Chair.

20 **ADV MAHLAPE SELLO:** And under item 4 “Potential Cost Increase”.

MR THOBANI TREVOR MNYANDU: Yes Chair.

ADV MAHLAPE SELLO: Understanding sequence of events Transnet was provided with the 9-odd million increase to the cost – no – 9-odd million ...

MR THOBANI TREVOR MNYANDU: Quotation.

ADV MAHLAPE SELLO: Cost for relocation to Durban?

MR THOBANI TREVOR MNYANDU: Yes Chair.

ADV MAHLAPE SELLO: So we are somewhere in the ballpark of 10 million?

MR THOBANI TREVOR MNYANDU: Yes Chair.

ADV MAHLAPE SELLO: Subsequently and in February 2015 Transnet is then served with this document and at item 4 it states:

“It is estimated that it will get the cost increase ...”

That is the relocation.

10 **MR THOBANI TREVOR MNYANDU:** Yes Chair.

ADV MAHLAPE SELLO: The cost will be more than 100 million such as the following fields: transportation cost increase, human staff cost increase, technical cost increase.

MR THOBANI TREVOR MNYANDU: Yes Chair.

ADV MAHLAPE SELLO: That is 90 million difference between this amount and the previously quoted quotation of 10 million?

MR THOBANI TREVOR MNYANDU: Yes it is Chair in the space of 11 months.

20 **ADV MAHLAPE SELLO:** Were you able to get any understanding on how this came about and the justification for this jump?

MR THOBANI TREVOR MNYANDU: No we were not Chair.

ADV MAHLAPE SELLO: Did you make enquiries?

MR THOBANI TREVOR MNYANDU: We tried making enquiries through the documentation itself ...

ADV MAHLAPE SELLO: Okay.

MR THOBANI TREVOR MNYANDU: But however the proposals gives no indication.

ADV MAHLAPE SELLO: Does this document make reference to the previous R9 million quotation?

MR THOBANI TREVOR MNYANDU: No it does not Chair.

ADV MAHLAPE SELLO: Okay. Thank you. You may proceed.

MR THOBANI TREVOR MNYANDU: During April 2015 Chair we discovered an agreement which I have – already has been highlighted to the Chair – was dealt with Mr Gonsalves who is a minority
10 shareholder and a Director of the CNR Consortium. The agreement was concluded between CNR and BEX – Business Expansion Structured – a company that was going to assist CNR with the benchmarking of its relocation costs. It is an agreement as I say Chair that is to be found at volume 12 page 9022 in consultation with the evidence leaders to the extent that evidence has already been led on it. We shall not cover it save to confirm to the Chair that a copy of the agreement was obtained from Transnet and it is the exact agreement that is on record in the evidence bundles of the Commission.

ADV MAHLAPE SELLO: And again I am – the very document that said
20 the cost will be in excess of 100 million in fact gave a new cost of 380 million?

MR THOBANI TREVOR MNYANDU: Yes that is correct Chair.

ADV MAHLAPE SELLO: So the lip is actually from 9 million to 380 million in 11 months?

MR THOBANI TREVOR MNYANDU: Indeed it is so Chair.

ADV MAHLAPE SELLO: Thank you. You may proceed. You are dealing with the BEX Agreement.

MR THOBANI TREVOR MNYANDU: Yes. Chair whilst we do not deal extensively with the BEX Agreement – rather the agreement between CNR and BEX – we do point out that BEX were entitled to earn the difference between 580 million and R647 million. On our calculation that works out to R67 million for computing the costs.

ADV MAHLAPE SELLO: Yes.

MR THOBANI TREVOR MNYANDU: Whilst we are not – cannot confirm
10 the date on which payment was made Chair we have seen an invoice number one and the attorneys for CNR have confirmed that payment was indeed made. Chair this is to be found at page 9035 of your volume 12 bundle.

ADV MAHLAPE SELLO: Yes. Is it necessary to go there?

CHAIRPERSON: Well does the slide not say nine – Appendix 9?

ADV MAHLAPE SELLO: It is Appendix 9.

CHAIRPERSON: Oh. Okay, on volume 12?

ADV MAHLAPE SELLO: On volume 12.

CHAIRPERSON: Oh, okay yes.

20 **ADV MAHLAPE SELLO:** And ...

CHAIRPERSON: Do we need to go there to that page?

ADV MAHLAPE SELLO: Mr Mnyandu let me just check with you. That is the same invoice that Mr Gonsalves led evidence on?

MR THOBANI TREVOR MNYANDU: Yes it is so Chair.

ADV MAHLAPE SELLO: You have seen the invoice already Chair.

CHAIRPERSON: Ja.

ADV MAHLAPE SELLO: Yes.

CHAIRPERSON: No that is fine.

ADV MAHLAPE SELLO: So we may proceed on that basis. We are familiar with the invoice.

MR THOBANI TREVOR MNYANDU: Chair there is a particular paragraph that we would like to take the Chair through.

ADV MAHLAPE SELLO: Okay.

CHAIRPERSON: Yes please do so.

10 **ADV MAHLAPE SELLO:** (Intervenues).

MR THOBANI TREVOR MNYANDU: Which assists or rather assisted us in forming a *prima facie* view in relation to ...

ADV MAHLAPE SELLO: At 9036?

MR THOBANI TREVOR MNYANDU: At 9036 once the Chair is there.

ADV MAHLAPE SELLO: Yes.

MR THOBANI TREVOR MNYANDU: The Chair will note it is a letter on the letterhead of Hogan Lovells Attorneys.

ADV MAHLAPE SELLO: Yes.

20 **MR THOBANI TREVOR MNYANDU:** The subject reads, reportable irregularity CRRC Rolling Stock our client. The Chair will not it is addressed to KPMG and he context to it is that there had been the reporting of an accounting irregularity in relation to the payment of 67million rand to Becks which KPMG had found, the Chair will see the summarised at paragraph 1.3 as follows,

“We understand that at this time and on the basis of the

information provided to you, you are of the view that the proposal and the agreement contain alleged irregularities for the following reasons. 1) the proposal significantly misrepresented to Transnet the cost of relocation of relocation of a manufacturing facility from Pretoria to Durban and 2) a payment made by our client to Becks appear to “lack sound commercial substance and purpose”.

Chair without detaining you we would like to take you to paragraph 2.1...(intervention).

10 **CHAIRPERSON**: I’m sorry is this the part you were relying on to say the attorneys have confirmed payment?

MR THOBANI TREVOR MNYANDU: Yes Chair

CHAIRPERSON: This is the part you were relying on?

MR THOBANI TREVOR MNYANDU: Yes Chair.

CHAIRPERSON: Okay thank you.

MR THOBANI TREVOR MNYANDU: Chair we’d now like to take you to paragraph 2.1 at page 9039.

ADV MAHLAPE SELLO: 39 or 37 Mr Mnyandu?

MR THOBANI TREVOR MNYANDU: Paragraph 2.21...(intervention).

20 **ADV MAHLAPE SELLO**: Oh 21 I thought 2.1 yes 2.21 is at 9039.

MR THOBANI TREVOR MNYANDU: Yes, Chair, at this point the letter has already set-out the background in relation to CNR now known as CRRC Rolling Stock and BEX and how they became about to form the relationship. This deals with the perspective of CNR in relation to the relocation costs. Briefly, paragraph 2.21 reads,

“Our client was of the view at the time, that Transnet would not agree to a project cost of 580million rand and that the final project cost might be lower than this. Based on our client’s prior business that our client believe that Transnet will require a discount on this amount, thus our client believed that the final project cost will be closer to 580million rand. Hence they believed there was very little risk for the in agreeing in an upside fee arrangement with BEX”,

It is just that note that we needed to take the Chair to.

- 10 **ADV MAHLAPE SELLO**: Before you leave that note, this is – this letter is from the attorneys and it is advancing CNR consortium position.

MR THOBANI TREVOR MNYANDU: Yes Chair.

ADV MAHLAPE SELLO: Where it seeks to justify the conclusion of the agreement for services with BEX.

MR THOBANI TREVOR MNYANDU: Yes Chair.

ADV MAHLAPE SELLO: And at paragraph 2.21 that you’ve just referred us to at page 9093, the letter informs us that, in truth, CNR believed, presumably on the basis of some calculation that the actual cost of relocation would be 580.

- 20 **MR THOBANI TREVOR MNYANDU**: Yes Chair.

ADV MAHLAPE SELLO: But we know that’s not what CNR claimed as a relocation cost.

MR THOBANI TREVOR MNYANDU: Indeed.

ADV MAHLAPE SELLO: And they did this knowing that the actual cost is 580 if it is the actual cost.

MR THOBANI TREVOR MNYANDU: Indeed Chair.

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

MR THOBANI TREVOR MNYANDU: Thank you Chair. At slide number 13 we make the point as made in our report that the agreement was based on a risk sharing model which we've already dealt with, that we note to be very suspicious for the reasons already outlined to the Chair. Furthermore, we'd like to point out that the agreement is also suspicious on the fact – based on the fact that the Chair will recall that evidence was led by Mr Sedumedi that CNR, as a consortium, had placed in or submitted a bid or proposal for the manufacturing of both electric as well as diesel locomotives. Chair from our perspective it is therefore unfathomable that there would be an OEM that would require the assistance of a third party in order to compute the price difference of it being located in one place as opposed to the other.

ADV MAHLAPE SELLO: And in bidding for both diesel and electric effectively, they bid for 1064 locomotives.

MR THOBANI TREVOR MNYANDU: Indeed it is so Chair.

ADV MAHLAPE SELLO: Yes.

MR THOBANI TREVOR MNYANDU: We then move on to the next slide.

20 **ADV MAHLAPE SELLO:** Yes.

MR THOBANI TREVOR MNYANDU: Chair on 19 May 2015, there is a memorandum that is prepared by Ms Mdletshe, Ms Lindiwe Mdletshe in which she sought approval from the, then acting Group Chief Executive, Mr Siyabonga Gama for the negotiation of the terms of the relocation with CNR.

ADV MAHLAPE SELLO: Yes.

MR THOBANI TREVOR MNYANDU: Whilst the memorandum notes that a separate submission is to be made or has been prepared for BT we have not discovered such a memorandum but from the processes that ensued arising his memorandum, we are indeed able to confirm that BT was communicated with to the same effect. Chair we seek to take you through the genesis or the purpose of the memorandum, the purpose of the memo was to seek approval for the following, 1) for the team to negotiate the commercial terms of relocation...(intervention).

10 **CHAIRPERSON:** I'm sorry the memorandum is at what page?

MR THOBANI TREVOR MNYANDU: Chair it is to be found at volume 13 at page 9110.

ADV MAHLAPE SELLO: The actual document starting at 9111.

CHAIRPERSON: I think the appearance of Appendix before the volume...(intervention).

ADV MAHLAPE SELLO: Is confusing a bit.

CHAIRPERSON: It's confusing because I'm used to these bundles starting with a volume.

ADV MAHLAPE SELLO: Indeed Chair.

20 **CHAIRPERSON:** So I take time to – I kind of miss them.

ADV MAHLAPE SELLO: We shall amend, Chair, your copy and remove references to appendix and just give direct reference to the volume and the page number.

CHAIRPERSON: I mean I appreciate that having appendix (indistinct) might be helpful but ...(intervention).

ADV MAHLAPE SELLO: It perhaps may come at the end of the...(intervention)

CHAIRPERSON: Maybe it can come at the end.

ADV MAHLAPE SELLO: Not at the beginning, yes Chair

CHAIRPERSON: I'll find this page just now.

ADV MAHLAPE SELLO: 9111 Chair.

CHAIRPERSON: Thank you.

ADV MAHLAPE SELLO: Thank you Chair.

MR THOBANI TREVOR MNYANDU: Chair we summarise as I've said
10 that the purpose of the memo was to seek approval for the team to negotiate the relocation to Durban with CNR. The background speaks to the issues that we've already covered and needs not to be covered for you Chair...(intervention).

ADV MAHLAPE SELLO: Mr Mnyandu please pull the mic – swing it towards you yes.

MR THOBANI TREVOR MNYANDU: Apologies Chair.

ADV MAHLAPE SELLO: Yes thank you.

MR THOBANI TREVOR MNYANDU: If we go to paragraph 6 under background Chair it says,
20 "A team will be...(intervention).

CHAIRPERSON: I'm sorry before you go to paragraph 6, at some stage it would help if you could just tell me, where do we find the first use of this term, relocation and by whom, if your investigation helped you to establish that but it doesn't have to be now, later, but if you were not able to discover that you will just let me know.

MR THOBANI TREVOR MNYANDU: Alright Chair.

CHAIRPERSON: Okay.

MR THOBANI TREVOR MNYANDU: Chair if we go to the purpose it is

A) the team,

10 “To seek approval for the team to negotiate the relocation to
Durban with CNR. B) Seek approval for a variation order to
finalise the relocation of the programme of the construction of
233 class 45D locomotives to Durban to a maximum value of
R669 784 286.00 Separate submission has been prepared
for BT, we know that there is a typo at B insofar as it refers to
233 locomotives it ought to be 232. C) it is also to seek
approval for a letter to be issued to CNR to commence
negotiation for this relocation of the programme”.

ADV MAHLAPE SELLO: Okay.

20 **MR THOBANI TREVOR MNYANDU:** For these purposes Chair we’d just
like to draw your attention to the cap of 669million rand that is
requested. We found it odd that a Transnet official, internally would
request for a cap at 669million rand. Upon investigating the issue, the
amount resembles exactly what is to be found at page 42, but the Chair
need not go there now at page 42 of the Exhibit Bundle that is before
the Chair. So it is the latest proposal that had been received from CNR
even though it is dated June 2015, it coincides, as I say the amount
coincides with the memo done by Ms Lindiwe Mdletshe, if we go to the
bottom...(intervention).

ADV MAHLAPE SELLO: Before you leave that point, you say the

669million odd emanates from a proposal by CNR?

MR THOBANI TREVOR MNYANDU: Indeed Chair.

ADV MAHLAPE SELLO: And you referred the Chair to the document and you said it's not necessary really to go there at the moment.

MR THOBANI TREVOR MNYANDU: At the moment.

ADV MAHLAPE SELLO: And you say that document is dated June 2015.

MR THOBANI TREVOR MNYANDU: Indeed Chair.

ADV MAHLAPE SELLO: Please refer to page 9115 of the memo to Mr
10 Gama...(intervention).

CHAIRPERSON: Maybe before that this amount of 669 784 286.00 that is dealt with under purpose, does it look like somebody, for Transnet may have received the proposal from CNR and had just taken that amount as is and said to Gama that's what we should talk about?

MR THOBANI TREVOR MNYANDU: Indeed it looks like that Chair.

CHAIRPERSON: Yes without any discussion from what you could find.

MR THOBANI TREVOR MNYANDU: It seems there was indeed no interrogation of the amount.

CHAIRPERSON: Yes.

20 **MR THOBANI TREVOR MNYANDU:** It is a request to approve that amount as a ceiling for the negotiations Chair.

CHAIRPERSON: Yes, yes, okay thank you.

ADV MAHLAPE SELLO: And the other – please go to 9115 and following on the question that the Chair has just posed that, that number appears to be uplifted directly from CNR proposal into this

memorandum. You testified that, that proposal is dated June 2015.

MR THOBANI TREVOR MNYANDU: Indeed Chair.

ADV MAHLAPE SELLO: But this memorandum is dated 19 May 2015.

MR THOBANI TREVOR MNYANDU: Indeed Chair.

ADV MAHLAPE SELLO: So the number was known somewhere, somehow to somebody within Transnet before the actual proposal was received?

MR THOBANI TREVOR MNYANDU: Indeed Chair.

ADV MAHLAPE SELLO: Do you know how that came to be or is that
10 asking too much?

MR THOBANI TREVOR MNYANDU: During the course of our investigations we weren't able to determine.

ADV MAHLAPE SELLO: Thank you.

MR THOBANI TREVOR MNYANDU: But it is to be noted Chair that the particular memorandum actually contains two signature pages because if the Chair goes to 9114, it is where the amount at the top at recommendation of 669 is to be found but on the page at which Mr Gama signs the memorandum, the amount is denoted as R635 851 786.00

20 **ADV MAHLAPE SELLO:** Okay.

MR THOBANI TREVOR MNYANDU: Even that amount comes from a particular proposal submitted on behalf of CNR.

ADV MAHLAPE SELLO: Is that...(intervention).

CHAIRPERSON: So the page 9114 and page 9115 are these pages two pages of different documents or – I see they both say recommendation

at the top and then say compiled by, they don't – they're compiled by Lindiwe Mdletshe both of them but the signature on top of Lindiwe Mdletshe's name, the signatures are different on the two documents and the – or does it look like it's one person who signed for Lindiwe Mdletshe, Ravi Nair and Peter Selinga , what was happening...(intervention).

MR THOBANI TREVOR MNYANDU: Sorry to disturb just to confirm.

CHAIRPERSON: Yes.

MR THOBANI TREVOR MNYANDU: The reading that you see on the
10 signature lines of Ms Lindiwe Mdletshe, Mr Ravi Nair as well Mr Selinga say, see attached.

CHAIRPERSON: Oh they say, see attached, they are not signatures.

MR THOBANI TREVOR MNYANDU: Indeed Chair.

CHAIRPERSON: Okay.

MR THOBANI TREVOR MNYANDU: The signatures are on the next page.

CHAIRPERSON: But then Mr Anoj Singh's signature is there and Mr Gama's signature is there on page 9114 and they are repeated at page 9115, what is the meaning of this?

20 **MR THOBANI TREVOR MNYANDU**: Chair we were not able to determine Ms Lindiwe Mdletshe herself, when interviewed could not explain as to why there were two signature pages.

CHAIRPERSON: Yes the most senior – was the most senior of all these people, well it was Mr Gama as of this time, he was acting Group Chief Executive.

MR THOBANI TREVOR MNYANDU: Indeed Chair and the approval was sought from him.

CHAIRPERSON: And to the extent that he signed two pages that contained the same thing in terms of the recommendation except for the figure at 9114 it's one amount, at 9115 it's a different amount, he approved two different amounts for the same thing, is that right?

MR THOBANI TREVOR MNYANDU: Yes Chair.

CHAIRPERSON: Okay.

MR THOBANI TREVOR MNYANDU: The understanding as we
10 understood it from our interview was that the one that was actually approved is the later proposal which is the one, as I say, dated June 2015 and it contains the amount of 669million rand.

CHAIRPERSON: And how did the other one come about, you don't know?

MR THOBANI TREVOR MNYANDU: It was earlier, it had been submitted earlier by CNR.

CHAIRPERSON: But this document that we are looking at which has got these two pages 9914 and 9115...(intervention).

MR THOBANI TREVOR MNYANDU: I apologise Chair, perhaps we
20 should have pointed out, if you look at the page 9114, it signed during the month of June.

CHAIRPERSON: 2015.

MR THOBANI TREVOR MNYANDU: 2015, 9 June.

ADV MAHLAPE SELLO: Yes.

MR THOBANI TREVOR MNYANDU: So it is approved by Mr Gama

based on the later proposal received in June.

CHAIRPERSON: Yes.

MR THOBANI TREVOR MNYANDU: Yes Chair.

CHAIRPERSON: And then the document – then 9115 there is no date appearing next to Mr Gama’s signature to indicate when he signed it but Selinga, I don’t know if it’s Ms or Mr Sipiwe Selinga he or she signed on 19 May 2015 and Mr Lindiwe Mdletshe signed on the same day, I’m not seeing...(intervention).

MR THOBANI TREVOR MNYANDU: There is no date.

10 **ADV MAHLAPE SELLO:** It looks like – is it 19...(intervention).

MR THOBANI TREVOR MNYANDU: It looks like 19 May 2015 Chair.

CHAIRPERSON: 2015, So the document – Mr Gama’s approval on page 9114 is later than the approvals on 9115.

MR THOBANI TREVOR MNYANDU: Indeed Chair.

CHAIRPERSON: So – but then only he approved that on that page and Mr Singh on 9114 to the extent that their signatures are good enough for the approval, that would be the amount that must be seen as having been approved.

MR THOBANI TREVOR MNYANDU: Indeed Chair.

20 **CHAIRPERSON:** And replacing this other one, at page 9115.

MR THOBANI TREVOR MNYANDU: Indeed Chair.

CHAIRPERSON: I see that somebody wrote at 9115 that – I think maybe Mr Gama he needs clarity on certain things so maybe that’s why there’s the one on page 9114 because he needed to have some clarity but I wonder why he signed before getting the clarity.

MR THOBANI TREVOR MNYANDU: Indeed Chair it's a mystery.

CHAIRPERSON: Ja okay, thank you.

ADV MAHLAPE SELLO: I'm still trying to reconcile 9114 with 9115. If one looks at 9114 it's seeking approval for an amount of 669million.

MR THOBANI TREVOR MNYANDU: Yes Chair.

ADV MAHLAPE SELLO: It says compiled and typed, Lindiwe Mdletshe, on the signature line it's not her signature it's written see attached.

MR THOBANI TREVOR MNYANDU: See attached.

10 **ADV MAHLAPE SELLO:** For Mr Ravi Nair?

MR THOBANI TREVOR MNYANDU: Ravi Nair.

ADV MAHLAPE SELLO: The same thing applies, it says see attached.

MR THOBANI TREVOR MNYANDU: Indeed Chair.

ADV MAHLAPE SELLO: So does Mr Selinga say, Mr Anoj Singh signs on what appears to be 28th May 2015 and Mr Gama signs on the 9th of June 2015.

MR THOBANI TREVOR MNYANDU: Yes Chair.

ADV MAHLAPE SELLO: What is the attached that we are being referred to?

20 **MR THOBANI TREVOR MNYANDU:** Again through our interviews we discovered that what is attached is – what is denoted by the see attached, my recommendation of the memorandum has already been signed for, see attached.

ADV MAHLAPE SELLO: Okay now will the see attached be what appears at 9115?

MR THOBANI TREVOR MNYANDU: Indeed it is so Chair.

ADV MAHLAPE SELLO: So 9115 would appear to be the last page of a memorandum.

MR THOBANI TREVOR MNYANDU: Indeed Chair.

ADV MAHLAPE SELLO: If we were to follow the structure of Appendix 10.

MR THOBANI TREVOR MNYANDU: Indeed Chair.

ADV MAHLAPE SELLO: And yes Ms Lindiwe Mdletshe signed there on the 19th of May 2015, except when I look at the recommendation it is
10 now for 635million.

MR THOBANI TREVOR MNYANDU: Yes indeed Chair.

ADV MAHLAPE SELLO: So would my logic be correct if I say, page 9115 is the final page of a – another memo and not Appendix 10, there's another memo that argued for approval of 635million.

MR THOBANI TREVOR MNYANDU: Chair on the basis that the front of Appendix 10...(intervention).

ADV MAHLAPE SELLO: Precisely because that front speaks of 669.

MR THOBANI TREVOR MNYANDU: Yes.

ADV MAHLAPE SELLO: So there must be another memo that speaks
20 of 635.

MR THOBANI TREVOR MNYANDU: Yes Chair.

ADV MAHLAPE SELLO: Which is not annexed here or attached but only the signed recommendation page is annexed.

MR THOBANI TREVOR MNYANDU: Yes it is so Chair.

ADV MAHLAPE SELLO: Okay.

CHAIRPERSON: I'm not sure that I have followed your exchange but let me ask this. It seems – it seems – it would seem illogical or maybe illogical is not the right word but it maybe it would be strange if the, see attached, at 9114 was made with the intention of referring to 9115 because, see attached, above Mr Mdletshe's signature line and Mr Nair's signature line from what you said earlier on, in that event could only mean, I have already signed.

MR THOBANI TREVOR MNYANDU: Indeed that is what is to be understood Chair.

10 **CHAIRPERSON:** Yes but the problem with that understanding of, see attached, is the two pages could not have both been meant to be used.

MR THOBANI TREVOR MNYANDU: Principally Chair because they refer to different numbers, that there is a request for approval on.

CHAIRPERSON: Yes so that is the one problem with that understanding, the other problem is if – is that it would be so easy to sign there unless the idea was that Mdletshe – Ms Mdletshe and Mar Nair were not available, I don't know but it just makes it very difficult to understand precisely what was being recommended by who and what was being approved by Mr Gama.

20 **MR THOBANI TREVOR MNYANDU:** Even more so Chair when one considers that the signature lines with the, see attached, above the names of the personnel at Transnet that would take the memorandum to Mr Gama, yes Chair.

CHAIRPERSON: Yes, yes.

MR THOBANI TREVOR MNYANDU: As I say, during the course of our

investigations and interviews there was no direct answer in relation to why this memorandum was done in this manner.

CHAIRPERSON: But when you found this document, did you find it with these two pages as part of the document?

MR THOBANI TREVOR MNYANDU: Indeed Chair.

CHAIRPERSON: Yes.

MR THOBANI TREVOR MNYANDU: On first investigation we were of the view that perhaps the one related to BT who at the time had a quotation very close to the number which is 635million but we later
10 discovered that there was a proposal from CNR to the effect of R635 851 000.00 moreover, as we say, the last letter, which is C, under recommendations, it says, letter to be issued to CNR to commence negotiation, so too does 9114 read, letter to be issued to CNR.

CHAIRPERSON: Ye but you say your team did speak to Ms Mdletshe?

MR THOBANI TREVOR MNYANDU: Yes Chair.

CHAIRPERSON: And you put this to her.

MR THOBANI TREVOR MNYANDU: Yes Chair.

CHAIRPERSON: And you say she could not explain it?

MR THOBANI TREVOR MNYANDU: On many questions she could not
20 explain the sequence of events, nor what led to particular decisions that she took.

CHAIRPERSON: And what did she attribute that to, did she say she had forgotten, she couldn't remember or she just stared at you?

MR THOBANI TREVOR MNYANDU: Chair in certain instances she couldn't remember but I should place on record that the interview with

her was rather abrasive.

CHAIRPERSON: Was she hostile?

MR THOBANI TREVOR MNYANDU: In a manner yes Chair.

CHAIRPERSON: Yes that interview wasn't recorded by...(intervention).

MR THOBANI TREVOR MNYANDU: It is transcribed Chair, it is part of the transcripts that will be delivered.

CHAIRPERSON: Yes okay and what about Mr Gama and Mr Anoj Singh they had left Transnet by the time you had this chance or did you get a chance to put this to them and hear what they had to say?

10 **MR THOBANI TREVOR MNYANDU:** Chair we didn't – we did get a chance to speak to Mr Gama, we didn't put this particular memorandum to him at the time, at the time we were investigating the large part of the 1064 locomotives transaction which was the procurement process followed. Whilst we did touch briefly on the issue of relocation this particular memorandum was not put to him.

CHAIRPERSON: And Mr Anoj Singh?

MR THOBANI TREVOR MNYANDU: He had left Transnet.

CHAIRPERSON: Oh, okay thank you.

20 **ADV MAHLAPE SELLO:** And then at 9114 as we pointed out on the signature lines of Ms Lindiwe Mdletshe, Mr Nair and Mr Selinga respectively it's a manuscript written, see attached, did you investigate who wrote that on each line?

MR THOBANI TREVOR MNYANDU: When we asked Ms Lindiwe Mdletshe she didn't have a clue.

ADV MAHLAPE SELLO: Did she say definitely that she did not, at

least insofar as her name is concerned, write, see attached, on this document?

MR THOBANI TREVOR MNYANDU: Definitely, yes.

ADV MAHLAPE SELLO: And she said what, did she claim that she doesn't know who wrote that and under what circumstances?

MR THOBANI TREVOR MNYANDU: Yes but she did own up to compiling the memorandums.

ADV MAHLAPE SELLO: So then she would be aware of both memorandums for CNR, firstly for 635 and then subsequently for this
10 669.

MR THOBANI TREVOR MNYANDU: Sorry the memorandum – let me say the memorandum.

ADV MAHLAPE SELLO: This memorandum?

MR THOBANI TREVOR MNYANDU: Yes.

ADV MAHLAPE SELLO: Of 669?

MR THOBANI TREVOR MNYANDU: Of 669.

ADV MAHLAPE SELLO: Did you have a discussion with her about, seemingly another memorandum for 635?

MR THOBANI TREVOR MNYANDU: For the purposes of our interview
20 we didn't attack the – rather ask the question from that perspective because as I say, amongst other things, the interview was hostile.

ADV MAHLAPE SELLO: Alright thank you. Chair it's just been brought to my attention, I apologise...(intervention).

CHAIRPERSON: That's fine.

ADV MAHLAPE SELLO: Thank you Chair.

CHAIRPERSON: We'll take the tea adjournment, it's half past now we'll resume at quarter to twelve, we adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: You may proceed Ms Sello.

ADV MAHLAPE SELLO: Thank you Chair.

CHAIRPERSON: Thank you.

ADV MAHLAPE SELLO: Mr Mnyandu when we rose for tea we were still trying to make sense of the memorandum for the approval of 669
10 trying to reconcile pages 9114 to 9115. The queries I had in respect of that document are addressed thank you. I do not know if the Chair has got any other issues arising from the document or whether there are other comments you Mr Mnyandu would like to make in respect of that document before we move on.

CHAIRPERSON: No we can move on.

MR THOBANI TREVOR MNYANDU: No there are not Chair.

ADV MAHLAPE SELLO: Thank you. Then you may proceed.

MR THOBANI TREVOR MNYANDU: Chair we then proceed to slide number 15.

20 **ADV MAHLAPE SELLO:** Yes.

MR THOBANI TREVOR MNYANDU: To – to give an overview of the team composition and then deal with what the mandate that was sought for the team was going to be.

ADV MAHLAPE SELLO: Yes.

MR THOBANI TREVOR MNYANDU: The titles are the Group Chief

Financial Officer Mr Anoj Singh at the time. The Chief Executive of Transnet Engineering Mr Thamsanqa Jiyani.

ADV MAHLAPE SELLO: Hm.

MR THOBANI TREVOR MNYANDU: The Group Head of Supply Chain Management which was Mr Garry Pita as well as a representative from the Executive Legal and Compliance Mr Selingo.

ADV MAHLAPE SELLO: I am sorry to interrupt you Mr Mnyandu I am looking at the screen in front of me and I seem to have a different feed. I seem to have a – okay now it is back. I was just checking that we are
10 on the right computer. It is sorted you may proceed thank you.

MR THOBANI TREVOR MNYANDU: Thank you Chair. At slide number 15 we highlight that the team insofar as the memorandum goes was going to determine the approach that would best yield benefits for Transnet as well as the OEM's by taking into consideration two things.

ADV MAHLAPE SELLO: Yes.

MR THOBANI TREVOR MNYANDU: Quantifying different negotiation levels and the reasons for a revised pricing.

ADV MAHLAPE SELLO: Yes.

MR THOBANI TREVOR MNYANDU: And 2 reviewing the accuracy and
20 assumptions in the models in order to inform the negotiations.

ADV MAHLAPE SELLO: Yes.

CHAIRPERSON: So this is the Transnet team?

MR THOBANI TREVOR MNYANDU: Indeed Chair.

CHAIRPERSON: Hm.

MR THOBANI TREVOR MNYANDU: Chair under the header Motivation

the memorandum highlighted in order to move to Durban there would be different heads of additional costs.

ADV MAHLAPE SELLO: Yes.

MR THOBANI TREVOR MNYANDU: The memorandum summarised these different heads of costs as labour costs.

ADV MAHLAPE SELLO: Yes.

MR THOBANI TREVOR MNYANDU: Material costs, warehousing costs, technical support, operational and logistical effects, physical transportation of materials and resources, incremental warehousing
10 costs, financing and risk costs due to time constraints and delays. The memorandum also illustrated that there would be ancillary benefits for Transnet and savings associated with the two OEM's now manufacturing from Durban.

ADV MAHLAPE SELLO: Your heading at slide 16 speaks of the – speaks to the 19 May 2015 memorandum.

MR THOBANI TREVOR MNYANDU: Yes Chair.

ADV MAHLAPE SELLO: And that is our page 9111.

MR THOBANI TREVOR MNYANDU: Yes Chair.

ADV MAHLAPE SELLO: The issues listed there...

20 **CHAIRPERSON**: Well that is what I was exactly trying to look at so we have not moved away from the memorandum but you discussing what it dealt with?

MR THOBANI TREVOR MNYANDU: What the memorandum sought

CHAIRPERSON: Ja.

MR THOBANI TREVOR MNYANDU: Approval for.

CHAIRPERSON: I think what confused me is that I thought she was saying she was moving away from the memorandum.

ADV MAHLAPE SELLO: I had understood Mr Mnyandu to say he is done with the memorandum but clearly not.

CHAIRPERSON: Ja, ja.

ADV MAHLAPE SELLO: Chair.

MR THOBANI TREVOR MNYANDU: I apologise Chair.

CHAIRPERSON: Okay. No that is fine.

10 **MR THOBANI TREVOR MNYANDU:** We are done with looking at the copy itself.

ADV MAHLAPE SELLO: Yes.

MR THOBANI TREVOR MNYANDU: But summarising some of the [indistinct] parts of the memorandum.

CHAIRPERSON: Ja, ja. Okay.

ADV MAHLAPE SELLO: Ja. My question then is you list these issues or these factors that explain the costs of relocation.

MR THOBANI TREVOR MNYANDU: Indeed Chair.

ADV MAHLAPE SELLO: And we are – I must – we must understand from your slide that those issues emanate from the memorandum itself?

20 **MR THOBANI TREVOR MNYANDU:** Indeed Chair.

ADV MAHLAPE SELLO: Then I go back to my previous question. In light of the fact that the actual proposal comes in June 2015 how do the drafters of this memorandum in May know the factors that will be taken into consideration in computing the costs of relocation? Were you able to establish?

MR THOBANI TREVOR MNYANDU: It is in relation to the memorandum received earlier in May which is for the amount of R635 million odd.

ADV MAHLAPE SELLO: Have – do you have that memorandum?

MR THOBANI TREVOR MNYANDU: We actually do have a copy.

ADV MAHLAPE SELLO: A complete one?

MR THOBANI TREVOR MNYANDU: Yes. So not the memorandum the proposal from CNR – apologies Chair.

ADV MAHLAPE SELLO: Okay...

CHAIRPERSON: Was the proposal by way of just a letter or a more
10 comprehensive document?

MR THOBANI TREVOR MNYANDU: It is a comprehensive document.

CHAIRPERSON: Okay and but it is not here in the bundle that is here?

MR THOBANI TREVOR MNYANDU: No Chair.

CHAIRPERSON: Oh. So that – in that memorandum the figure is 635?

MR THOBANI TREVOR MNYANDU: Indeed it is so Chair.

CHAIRPERSON: Yes. Which is where the 635 may have been taken
from?

MR THOBANI TREVOR MNYANDU: Indeed Chair.

CHAIRPERSON: Okay. Okay.

20 **ADV MAHLAPE SELLO:** Okay then again let us look at sequence.
Remember we started at 9 million.

MR THOBANI TREVOR MNYANDU: Yes.

ADV MAHLAPE SELLO: That is what we got from CNR.

MR THOBANI TREVOR MNYANDU: Yes.

ADV MAHLAPE SELLO: That is then updated to 318?

MR THOBANI TREVOR MNYANDU: Yes.

ADV MAHLAPE SELLO: Must the Chair understand that that 318 million proposal was subsequently followed by another of 635 million?

MR THOBANI TREVOR MNYANDU: Indeed Chair.

ADV MAHLAPE SELLO: And then the yet to come in June of 2015 after this memorandum of 669?

MR THOBANI TREVOR MNYANDU: Indeed Chair.

ADV MAHLAPE SELLO: Okay so we are now on a – we are talking about third and fourth proposals now?

10 **MR THOBANI TREVOR MNYANDU:** Indeed Chair.

ADV MAHLAPE SELLO: Thank you. We following yes.

MR THOBANI TREVOR MNYANDU: The memorandum was approved by Mr Gama we make the notes on 19 May 2015.

ADV MAHLAPE SELLO: Yes.

MR THOBANI TREVOR MNYANDU: Going forward the following personnel made up the negotiation team. Mr Anoj Singh, Mr Garry Pita, Mr Ndiphiwe Silinga, Mr E Moletsane, Mr Thamsanqa Jiyani as well as Ms Lindiwe Mdletshe.

20 **ADV MAHLAPE SELLO:** For the record I think that is Ms E Moletsane not Mr.

MR THOBANI TREVOR MNYANDU: Oh.

ADV MAHLAPE SELLO: That is what you have on the slide.

CHAIRPERSON: Sorry which one?

ADV MAHLAPE SELLO: He – Ms E Moletsane.

MR THOBANI TREVOR MNYANDU: Moletsane.

ADV MAHLAPE SELLO: On behalf of TE he had said Mr Moletsane.

CHAIRPERSON: Mr oh.

MR THOBANI TREVOR MNYANDU: Apologies.

CHAIRPERSON: Oh okay.

MR THOBANI TREVOR MNYANDU: My apologies Chair. Ms E Moletsane.

ADV MAHLAPE SELLO: Yes.

MR THOBANI TREVOR MNYANDU: Chair we now take you through the proposals submitted on behalf Bombardier Transportation BT having
10 taken you through the proposals of CNR after which we will then look at the process followed internally in order to approve the relocation costs. Bombardier Transportation.

CHAIRPERSON: I am sorry. I thought earlier on you had said Bombardier Transportation had not put up a proposal when they were asked to. Did they subsequently do?

MR THOBANI TREVOR MNYANDU: Yes Chair.

CHAIRPERSON: Oh and this is what we talking about now?

MR THOBANI TREVOR MNYANDU: Yes Chair.

CHAIRPERSON: Okay.

20 **MR THOBANI TREVOR MNYANDU:** You will recall that we made the point that on the 6 June they addressed a letter to Transnet Freight Rail recording that pursuant to the issuance of a letter by the then Group Chief Executive Mr Brian Molefe which was after the signature of the main agreement as well as the sub-contract. They were now willing to consider being located in Durban and they would work on the

necessary documentation in order to communicate to Transnet what would be the cost difference of them being located elsewhere.

CHAIRPERSON: Thank you.

ADV MAHLAPE SELLO: And by 6 of June it is 2014?

MR THOBANI TREVOR MNYANDU: 2014.

ADV MAHLAPE SELLO: To be exact.

MR THOBANI TREVOR MNYANDU: 2014 to clarify Chair.

ADV MAHLAPE SELLO: Yes.

MR THOBANI TREVOR MNYANDU: Chair following on from what we
10 have just discussed then BT presented three proposals to Transnet. Whilst with – between – in between these three proposals there were letters that were issued by BT in which BT sought to try and explain or substantiate its proposals. The proposals were submitted during September 2014. A second proposal submitted during April 2015 and the third proposal which was eventually accepted albeit with a discount applied is the July 2015 offer which Chair will find from page 63 of the bundle that the Chair has this morning.

ADV MAHLAPE SELLO: And the...

MR THOBANI TREVOR MNYANDU: Just to...

20 **ADV MAHLAPE SELLO**: That be your tab 4 of your presentation?

MR THOBANI TREVOR MNYANDU: Under tab 4 of the presentation.

ADV MAHLAPE SELLO: Yes.

MR THOBANI TREVOR MNYANDU: Just to take the...

CHAIRPERSON: That is – that is tab for the presentation is Exhibit BB8[c].

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: I think we just needed to put that on record

ADV MAHLAPE SELLO: On record indeed Chair.

CHAIRPERSON: Because we might not have put it on record. So tab number

ADV MAHLAPE SELLO: 4.

CHAIRPERSON: 4.

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: Thank you. Yes.

- 10 **MR THOBANI TREVOR MNYANDU:** Chair under tab number 4 what you will find is email correspondence from Ms Lindiwe Mdletshe in which we are able to gather and confirm that the proposals from BT were indeed shared with Transnet because she in turn on 20 June 2015 was sharing the different versions with her colleagues at Transnet. And overleaf the proposals from Transnet. The Chair need not consider them intensely because both in our report as well as in the presentation we highlight that the relocation costs insofar as BT was concerned were made up of the transportation costs, logistics costs, the loss of industrial footprint synergies and is how the amount of 634 in the first instance
- 20 R634 315 000,00 was made up which then in April became an offer of R634 315 000,00 the Chair will see this now from slide 19 of the presentation. And then lastly as we said the offer of R618 457 125,00. As we have said those are the three points that the proposals on BT were based on. We make the point in our report there is however no conclusive breakdown of the costs which would seek to support the

amounts that were claimed in each respect.

CHAIRPERSON: What was – what is the loss of industrial footprint synergies?

MR THOBANI TREVOR MNYANDU: Chair as we – as we understand it.

CHAIRPERSON: Hm.

MR THOBANI TREVOR MNYANDU: It is an argument that says if I as an OEM am based in Gauteng.

CHAIRPERSON: Hm.

MR THOBANI TREVOR MNYANDU: I have got relations synergies with
10 particular suppliers who would not necessarily be able to supply me
with the materials I need if I were to be located in a different location
or would do so at an extra cost.

CHAIRPERSON: So effectively saying if I operate from Johannesburg./

MR THOBANI TREVOR MNYANDU: Yes Chair.

CHAIRPERSON: I have in the course of my business certain people
that I deal with who may supply me with certain things for my business
and I have a certain – I have established certain relationships with
them and maybe I get discounts and if we operate from Durban I take
that into account when I quote to you but if I am going to be in another
20 place I will not have those discounts and therefore I would – I would
pay more than I would pay if I was in Johannesburg and that I have to
pass on to you.

MR THOBANI TREVOR MNYANDU: Indeed Chair.

CHAIRPERSON: Yes. Okay. But it should – does it warrant – does it
warrant to be an item under loss because all I really need to do is look

at how much I will get things in Durban and say well my price will go up because this is what I will be paying for things that I must get.

MR THOBANI TREVOR MNYANDU: Chair in order to understand can I rephrase the question and ask whether it warrants a price variation as such.

CHAIRPERSON: Hm.

MR THOBANI TREVOR MNYANDU: Chair it would depend on the negotiations of parties that have contracted arm's length but it would not automatically arise that they should be an additional cost.

10 **CHAIRPERSON:** Hm.

MR THOBANI TREVOR MNYANDU: No.

CHAIRPERSON: Hm. Ja okay thank you.

ADV MAHLAPE SELLO: And if anything – if anything it might result in a saving?

MR THOBANI TREVOR MNYANDU: Indeed Chair.

ADV MAHLAPE SELLO: Now I look at your tab for TTM4 at tab 4 of BB8[c] and in particular at page 71 I see that the R634 316 000,00 is given as a fixed price and it is a globular amount. I have looked through the document and unless I misread the document I do not see
20 the breakdown of that amount per item as you have listed in a sense that I do not see what portion of that R634 million is allocated for transportation costs and for logistics and what balance then is computed as a loss of industrial footprint synergies?

MR THOBANI TREVOR MNYANDU: Indeed it is so Chair there is no breakdown hence we make the point that where there is no breakdown

of the costs that is in support or would be in support of the amount claimed.

ADV MAHLAPE SELLO: Did you – were you able to get an understanding from any member of Transnet that you interviewed as to the exact meaning of loss of industrial footprint synergies?

MR THOBANI TREVOR MNYANDU: No Chair I must record that we did not necessarily engage them on that concept.

ADV MAHLAPE SELLO: And I think Mr Sedumedi pointed out that you had as yet not engaged with Bombardier on these issues?

10 **MR THOBANI TREVOR MNYANDU:** Yes that is correct Chair.

CHAIRPERSON: To the extent that logistic costs are listed as separate from transportation costs what did that entail?

MR THOBANI TREVOR MNYANDU: Chair I think it would only be explainable or explained by the drafters of – or those who considered the two to be different. Because one – when one speaks of transportation costs.

CHAIRPERSON: Hm.

MR THOBANI TREVOR MNYANDU: One is referring to logistics.

CHAIRPERSON: Hm. That is...

20 **MR THOBANI TREVOR MNYANDU:** That is what we would – understanding.

CHAIRPERSON: Yes.

MR THOBANI TREVOR MNYANDU: Yes Chair.

CHAIRPERSON: And you did not get a chance to talk to Bombardier about that?

MR THOBANI TREVOR MNYANDU: Chair as has just pointed out.

CHAIRPERSON: Yes.

MR THOBANI TREVOR MNYANDU: We have not yet engaged Bombardier in relation to these issues.

CHAIRPERSON: Ja. Yes. But it would appear that Transnet did not interrogate the – that as well hey?

MR THOBANI TREVOR MNYANDU: Yes Chair.

CHAIRPERSON: Hm. Okay thank you.

ADV MAHLAPE SELLO: Thank you Chair. Now Mr Mnyandu again
10 looking at the papers please refer to TTM4 at page 63 of BB8[c] and
that you said is the email from Ms Lindiwe Mdletshe of 20 June 2015.

MR THOBANI TREVOR MNYANDU: Yes.

ADV MAHLAPE SELLO: Circulating to her colleagues the Bombardier proposal.

MR THOBANI TREVOR MNYANDU: Yes.

ADV MAHLAPE SELLO: I read that email and it says and I quote:

“Good day please find attached Bombardier proposal as requested.

- 20
1. Initial proposal dated 26 September 2014 and as
bullets
 - Additional information dated 2 October 2014.
 - Further clarification dated 10 October 2014.
 - Detailed explanation dated 3 November 2014.
 2. And secondly revised proposal dated 10 April 2015.”

When I perused TTM4 I seem to find only a letter from Bombardier

dated 26 September 2014. What – a document termed final notice of contractor proposed variation with respect to Transnet's request to move TE's facility location from Koedoespoort to Durban and that would appear at page 72 to also be dated 26 September 2014. It is then followed by a schedule of deliveries.

MR THOBANI TREVOR MNYANDU: Yes Chair.

ADV MAHLAPE SELLO: I do not seem to have under TTM14 this additional information dated 2 October 2014, the further clarification of 10 October 2014, detailed explanation of 3 November 2014.

10 **MR THOBANI TREVOR MNYANDU:** To...

ADV MAHLAPE SELLO: You confirm that?

MR THOBANI TREVOR MNYANDU: Yes Chair.

ADV MAHLAPE SELLO: Okay. Now my question is were you able to locate these particular documents that are listed here for – issued in October 2014 and November – October and November 2014?

MR THOBANI TREVOR MNYANDU: Yes. To place matters into context.

ADV MAHLAPE SELLO: Yes.

MR THOBANI TREVOR MNYANDU: This was information that came to hand pursuant to the completion of our report together with the
20 statement that will be submitted to the commission.

ADV MAHLAPE SELLO: Yes.

MR THOBANI TREVOR MNYANDU: We will provide the further clarifications which are documents that we attached to the particular email.

ADV MAHLAPE SELLO: Okay.

MR THOBANI TREVOR MNYANDU: Rather what the email seeks to do is to at least give credence to the fact that the proposals from Bombardier were indeed received by Transnet.

ADV MAHLAPE SELLO: Okay. So then we can expect through the submission of a supplementary statement the documents list dated 2 October 2014, 10 October 2014, 3 November 2014 and the revised proposal of 110 April 2015.

MR THOBANI TREVOR MNYANDU: I confirm Chair.

ADV MAHLAPE SELLO: Okay. Thank you.

- 10 **CHAIRPERSON:** Can I go back to that issue of what the logistics costs referred to as well as the other item. Did you ask Ms Mdletshe well what these were and what her understanding was of the logistics costs insofar as they were a separate item from transportation costs because if they agreed to paying for certain things at least they should understand what those things are.

MR THOBANI TREVOR MNYANDU: Chair again to place matters into context insofar as the discussions ahead with Ms Mdletshe.

1. The exchanges in relation to the issues of relocation were rather hostile.
- 20 2. She gave the impression that she being a SCS of Supply Chain Services personnel would not have the expertise to deal with an assessment of the proposals notwithstanding the fact that she was part of the negotiation team.

Therefore we took the view that to try and take her through each of the proposals

CHAIRPERSON: Ja.

MR THOBANI TREVOR MNYANDU: Would not be...

CHAIRPERSON: Serve any purpose.

MR THOBANI TREVOR MNYANDU: Would not be serving any purpose for our investigations.

CHAIRPERSON: Yes. Okay. But you are not sure whether the lack of cooperation was – arose just from the fact that she seemed to be hostile or she might genuinely not have known certain things because they fall outside her expertise.

10 **MR THOBANI TREVOR MNYANDU**: Chair I am not sure.

CHAIRPERSON: Yes. Ja, ja. But I would have thought that if you are a member of a negotiating team even if something falls outside your expertise that at least from those in the team who have the expertise you would want to understand what is this about so that if you as part of a team are party to a decision to say we approve this you can at least explain if you are asked.

MR THOBANI TREVOR MNYANDU: Chair I think – yes that is what one would expect.

CHAIRPERSON: Hm.

20 **MR THOBANI TREVOR MNYANDU**: But I think to – matters will be placed into better context as we move forward and we deal with some critical email communicate amongst the negotiation team members.

CHAIRPERSON: Yes okay. Thank yo.

ADV MAHLAPE SELLO: But before we get there Mr Mnyandu again I am at TTM4 page 63 of your bundle. I see the addressees there appear

as Mr Garry Pita, Mr Thamsanqa Jiyani, Mr Anoj Sing and Mr Yusuf Lehar.

MR THOBANI TREVOR MNYANDU: Indeed Chair.

ADV MAHLAPE SELLO: Following on the Chair's question we understand that you did not – you have not had opportunity to interview Mr Anoj Singh on the basis that by the time you undertook your investigations he was no longer an employee at Transnet?

MR THOBANI TREVOR MNYANDU: Indeed Chair.

ADV MAHLAPE SELLO: Now did you have opportunity to interview Mr
10 Garry Pita, Mr Yusuf Laher, Mr Thamsanqa Jiyani and if you did did you raise these issues with anyone of them?

MR THOBANI TREVOR MNYANDU: We had the opportunity indeed to interview Mr Thamsanqa Jiyani.

ADV MAHLAPE SELLO: Yes.

MR THOBANI TREVOR MNYANDU: He pointed out that he was only able to attend a single meeting in respect of the negotiations and that he played no further role. Now we will get to the no further role at a later point Chair.

ADV MAHLAPE SELLO: Okay.

20 **MR THOBANI TREVOR MNYANDU:** We therefore did not take him through the proposals submitted by the OEM's. We did have the opportunity also to speak to Mr Yusuf Laher.

ADV MAHLAPE SELLO: Yes.

MR THOBANI TREVOR MNYANDU: Who gave us a version that he had interrogated particularly the CNR proposals and he had shared certain

comments and they were not necessarily attended to that is a part that we will also get to in the presentation.

ADV MAHLAPE SELLO: Ja. And insofar as Mr Garry Pita is concerned?

MR THOBANI TREVOR MNYANDU: Mr Garry Pita was no longer under the employ of Transnet as at the time we undertook our investigations.

ADV MAHLAPE SELLO: Okay. Thank you. You may proceed then with your presentation.

MR THOBANI TREVOR MNYANDU: Chair having given you the
10 sequences of the proposals related to both OEM's we now take you to initial meetings held with them arising from the approval by Mr Siyabonga Gama for the negotiations. That particular meeting was held or rather those meetings were held on the same day, the same location being OR Tambo International Airport on the 19 June 2015.

CHAIRPERSON: That memorandum was 19 May or 19 June – 19 May?

MR THOBANI TREVOR MNYANDU: 19 May Chair.

CHAIRPERSON: Oh okay.

MR THOBANI TREVOR MNYANDU: On 19 June the negotiation team
members from Transnet met with the representatives of the respective
20 OEM's. Chair when we conducted our investigation and we were provided with a transcript of the meeting for reasons that we will deal with now we could not make sense of it so as to include it in our report. However in consultation with the evidence team leaders for the commission we agreed that we should not deprive you of the document and in so doing in providing it to you which is TTM7 it is to be found at

page 97 of BBH – Exhibit BB8[c]. We also then sought to summarise the points of discussions that were held with each of the representatives. Chair you will see that at 97 and 98 registers or I should say properly attendance registers dated 19 June 2015 for meetings held with the representatives of the negotiation team.

CHAIRPERSON: Did the meeting that we are talking about involve Transnet meeting with each of the ...

MR THOBANI TREVOR MNYANDU: Indeed Chair.

CHAIRPERSON: Of the entities not jointly?

10 **MR THOBANI TREVOR MNYANDU**: Indeed Chair.

CHAIRPERSON: Ja. Okay.

MR THOBANI TREVOR MNYANDU: The transcripts would have you believe as such at least unfortunately and the reasons that we were referring to when we considered whether or not we could make sense of the transcript in the first place it does not have an introduction. It does not alert you to who is speaking at any point. The speakers are not recorded. The proposals that are referred to on the 19 June 2015 meetings in respect of both OEM's do not actually tell you which versions of the proposals are being discussed. However what we
20 sought to do as I said in slide 21 and the slide that follows is to summarise what the discussions were about.

CHAIRPERSON: Yes.

MR THOBANI TREVOR MNYANDU: We make the point that the – as you have just requested clarification Chair separate discussions were held with CNR and BT. The first discussion was held with

representatives of CNR which included Mr Mark Shaw who was the sole director of Becks a company that is already been dealt with Chair. We also make the point as I have already tried to outline that the transcript does not give you any indication as to who is speaking. You really have to follow the conversation in order to understand that this would be a Transnet representative and this would be a Chinese CNR representative. Apologies. In both instances Transnet's representatives referred to proposals received from the OEM's without necessarily giving any indication what were those versions of the proposals. Notably Transnet personnel addressed each OEM on the negative economic downturn in South Africa. We sought to highlight that Chair when we summarised the discussions because if these were individuals in the meeting concerned with the economic downturn in South Africa it would be strange a word you have used Chair that they would agree to an aggregate amount of R1.2 billion in an instance where as far as we have found the costs are wholly unjustifiable and have not been substantiated. In respect of both proposals of the OEM's the Transnet personnel emphasised the request for the OEM's to also demonstrate what would be the savings occasioned by them being located in Durban.

ADV MAHLAPE SELLO: Before we leave tab 7 I am at page 100 and according to this document this would be the first page of the transcript?

MR THOBANI TREVOR MNYANDU: Indeed Chair.

ADV MAHLAPE SELLO: It starts with as you rightly say unfortunately

the transcript does not identify who this – each speaker is. It starts with a speaker stating that was because of me in Cape Town and the mediator was kicked out of this process.

MR THOBANI TREVOR MNYANDU: Yes Chair.

ADV MAHLAPE SELLO: That start would indicate to me that this is not the full transcript of that meeting that there had been an engagement prior to that speaker making that comment.

MR THOBANI TREVOR MNYANDU: Indeed Chair.

ADV MAHLAPE SELLO: Were you able to determine how long I will
10 call it the unrecorded portion of the meeting if it is that it had taken before this speaker stated as they did.

MR THOBANI TREVOR MNYANDU: Chair we were not able to we are awaiting information on who the transcribers were.

ADV MAHLAPE SELLO: Yes.

MR THOBANI TREVOR MNYANDU: We are awaiting this information from Transnet Freight Rail.

ADV MAHLAPE SELLO: And if I go to page 123 even with BT I see the same problem. It – the transcript kicks off with the speaker saying the warehousing am I mistaken. And that is not a – a usual way of starting
20 a meeting or a conversation.

MR THOBANI TREVOR MNYANDU: It certainly is not Chair.

ADV MAHLAPE SELLO: Do you have – were you provided with the actual audio recording of this meeting?

MR THOBANI TREVOR MNYANDU: No unfortunately not Chair.

ADV MAHLAPE SELLO: What is the source of the transcript?

MR THOBANI TREVOR MNYANDU: It is officials in the Supply Chain Services Department of Transnet Freight Rail.

ADV MAHLAPE SELLO: Okay. Did you go back to the same employees to enquire whether they had a more complete transcript of these meetings?

MR THOBANI TREVOR MNYANDU: Indeed Chair. They indicated they do not and it is in that respect or in that regard that we have requested and are still awaiting the details of the company that would have transcribed the meeting.

10 **ADV MAHLAPE SELLO:** Do you know the identity of the company that transcribed?

MR THOBANI TREVOR MNYANDU: Not at this moment Chair.

ADV MAHLAPE SELLO: I take it that you have enquired as to their identity?

MR THOBANI TREVOR MNYANDU: Yes Chair it is in respect of that enquiry that we await information from officials at Transnet Freight Rail.

ADV MAHLAPE SELLO: How far backward was the request made by you to the officials of Transnet?

20 **MR THOBANI TREVOR MNYANDU:** We have had discussions about it at least in April of this year.

ADV MAHLAPE SELLO: Okay.

MR THOBANI TREVOR MNYANDU: Yes.

ADV MAHLAPE SELLO: And since then you have received no further information?

MR THOBANI TREVOR MNYANDU: We have received no further information and the basis is that the knowledgeable person is not at Transnet.

ADV MAHLAPE SELLO: Not at Transnet anymore?

MR THOBANI TREVOR MNYANDU: Yes. That is Ms Mdletshe who is on suspension.

ADV MAHLAPE SELLO: Okay. So if we were to make enquiries you – are you suggesting that Ms Mdletshe would be somebody to speak to – to find – to at least lay our hands on a complete version of the
10 transcript?

MR THOBANI TREVOR MNYANDU: Insofar as we have been advised Chair.

ADV MAHLAPE SELLO: Insofar you have been advised, thank you.

MR THOBANI TREVOR MNYANDU: Yes.

ADV MAHLAPE SELLO: Then you may proceed.

MR THOBANI TREVOR MNYANDU: Chair the OEMs were also requested to clarify assumptions made and the contingencies built into their proposals so that Transnet could seek to assist the OEMs with whatever challenges they have. Both OEMs were requested by
20 Transnet for a price reduction and a revised offer. The price reduction would be in the range between 15 and 25 percent. It was agreed that once the negotiations were finalised there would be a variation order to the main contract concluded. The main contract concluded being the Locomotive Supply Agreement. It was further agreed that CNR in particular would revise its proposal in order to communicate what was

not detailed in its proposals at that point being the milestone payments, the scheduled delays and Supply Development. The revised proposals it was agreed with both OEMs would then form part of the variation order that would be signed off. There is particular reference to the Transnet Team seeking approval from its Board Sub Committee on 30 June 2015. At least is it recorded in the transcript in the part that deals with CNR.

ADV MAHLAPE SELLO: Okay.

MR THOBANI TREVOR MNYANDU: The Board Sub Committee that we
10 would understand it to be would be the Board Acquisitions and Disposals Committee.

CHAIRPERSON: Hm. Now with the limitations or constraints that came with the transcript ...

MR THOBANI TREVOR MNYANDU: Yes Chair.

CHAIRPERSON: Of these meetings.

MR THOBANI TREVOR MNYANDU: Yes Chair.

CHAIRPERSON: Were you able to form a view as to whether the Transnet Negotiation Team interrogated how – for example with CNR – the costs that were initially estimated to be around R9 million could go
20 up to R600-and something million from that discussion did you – were you able to see that they raised this issue and how it was explained or is that something that you cannot tell from the transcript?

MR THOBANI TREVOR MNYANDU: Chair from the transcript we are unable to tell ...

CHAIRPERSON: Yes.

MR THOBANI TREVOR MNYANDU: But from email correspondences ...

CHAIRPERSON: Hm.

MR THOBANI TREVOR MNYANDU: That will be covered in the presentation ...

CHAIRPERSON: Hm.

MR THOBANI TREVOR MNYANDU: We do see some questions raised by some of the members ...

CHAIRPERSON: Members, yes.

MR THOBANI TREVOR MNYANDU: But we do not have evidence that
10 those were dealt with.

CHAIRPERSON: Yes.

MR THOBANI TREVOR MNYANDU: Let alone dealt with sufficiently.

CHAIRPERSON: Yes, yes.

MR THOBANI TREVOR MNYANDU: Yes Chair.

CHAIRPERSON: And the – the discount that Transnet requested the
OE comes to give them of between 15 to 25 percent. Do you get – did
you get to know how Transnet arrived at that – at those discounts
because if you have been told that the price or the cost will be 600-and
something million and you say please give me a discount of 15 or 25
20 percent one is entitled to assume that you mean you would be quite
happy with a 15 percent discount so you could pay 100s of millions for
something that could have been R9 million and maybe even less?

MR THOBANI TREVOR MNYANDU: Yes Chair. There is neither a
document nor is there anything in the transcript that suggests or
discloses how the request for a discount in that range ...

CHAIRPERSON: Hm.

MR THOBANI TREVOR MNYANDU: Was arrived at.

CHAIRPERSON: It might be difficult for you to say this but I am – I am going to ask you and you can indicate if you are able to – did you get any sense whether the Transnet Negotiating Team was negotiating effectively or was carrying out their duties to negotiate the best price for Transnet to the best of their abilities or were they just going through the motions and I accept that you might not be able to say? So – but I am just wanting – wondering whether ...

10 **MR THOBANI TREVOR MNYANDU:** Chair ...

CHAIRPERSON: Having gone through the transcript you got any impression.

MR THOBANI TREVOR MNYANDU: Chair it is a question that is linked to the findings that we make ...

CHAIRPERSON: Hm.

MR THOBANI TREVOR MNYANDU: And therefore from that perspective ...

CHAIRPERSON: Huh-uh.

20 **MR THOBANI TREVOR MNYANDU:** I am able to record that the negotiation team was not carrying out the negotiations in a manner ...

CHAIRPERSON: Hm.

MR THOBANI TREVOR MNYANDU: That would best serve the interest ...

CHAIRPERSON: Hm.

MR THOBANI TREVOR MNYANDU: Of Transnet ...

CHAIRPERSON: Hm.

MR THOBANI TREVOR MNYANDU: At least.

CHAIRPERSON: Okay.

MR THOBANI TREVOR MNYANDU: At least Chair insofar as firstly or principally ...

CHAIRPERSON: Hm.

MR THOBANI TREVOR MNYANDU: In relation to the advice that was given in the beginning by PWC ...

CHAIRPERSON: Hm.

10 **MR THOBANI TREVOR MNYANDU:** When they said you must interrogate ...

CHAIRPERSON: Hm.

MR THOBANI TREVOR MNYANDU: Or ask the OEMs to justify their costs ...

CHAIRPERSON: Yes.

MR THOBANI TREVOR MNYANDU: And what we understood from the second part of the advice is that is that if it was going to be prohibitive ...

CHAIRPERSON: Hm.

20 **MR THOBANI TREVOR MNYANDU:** Then you should seek alternative measures in order to go to locations that would not cost ...

CHAIRPERSON: Hm.

MR THOBANI TREVOR MNYANDU: Too much.

CHAIRPERSON: Hm and your investigations did not reveal that that advice was followed or taken further in anyway?

MR THOBANI TREVOR MNYANDU: Yes Chair.

CHAIRPERSON: Okay, thank you.

ADV MAHLAPE SELLO: And if I may just enquire along the same lines when you started with your presentation you indicated that PWC – I think you said it was – had or you told us as a fact that Transnet Engineering had different facilities. Some in Durban and some in Uitenhage and both were an option – both Durban and Uitenhage were an option?

MR THOBANI TREVOR MNYANDU: Yes Chair.

10 **ADV MAHLAPE SELLO:** Did you find any documentation as regards whether or not there was a consideration for you Uitenhage to see if it might result in cheaper costs than Durban?

MR THOBANI TREVOR MNYANDU: No Chair but it is – but it is relevant to also point out that having weighed out the pros and cons in relation to the stimulation of the economy along the coastline particular recommendation was firstly Durban ...

ADV MAHLAPE SELLO: Okay.

MR THOBANI TREVOR MNYANDU: But the line of questioning as I understand it Chair is – okay – so if we proceed from the basis that
20 Durban is now going to be cost prohibitive is there a study that was done pursuant to that in order to consider another location.

ADV MAHLAPE SELLO: Yes.

MR THOBANI TREVOR MNYANDU: Yes.

ADV MAHLAPE SELLO: And ...

MR THOBANI TREVOR MNYANDU: No we have not discovered such.

ADV MAHLAPE SELLO: You have no indication that was done?

MR THOBANI TREVOR MNYANDU: No.

ADV MAHLAPE SELLO: Okay, thank you.

MR THOBANI TREVOR MNYANDU: Chair at slide 23 having dealt with the fact that there was just a single meeting that was held we now wish to draw your attention to critical communication amongst the negotiating team members with particular reference to volume 13 at page 9119 ...

CHAIRPERSON: I am sorry. By the way Mr Mnyandu the leader of the
10 negotiation team of Transnet was whom?

MR THOBANI TREVOR MNYANDU: The Group Chief Executive – Group Chief Financial Officer ...

CHAIRPERSON: Yes.

MR THOBANI TREVOR MNYANDU: Mr Anoj Singh.

CHAIRPERSON: Okay, thank you.

MR THOBANI TREVOR MNYANDU: Yes Chair. With particular reference Chair to volume 13 at page 9119.

ADV MAHLAPE SELLO: Yes.

MR THOBANI TREVOR MNYANDU: We draw your attention to an email
20 sent by Mr Garry Pita – apologies Chair. It is - 9119 is where the appendix cover is. So we should actually go ...

CHAIRPERSON: Yes. It is 9120. Is that right – 9120?

ADV MAHLAPE SELLO: You have – in your slide you indicate that as Appendix 11?

MR THOBANI TREVOR MNYANDU: Yes.

ADV MAHLAPE SELLO: At 9119 is Appendix 12.

MR THOBANI TREVOR MNYANDU: Oh apologies.

ADV MAHLAPE SELLO: And I see that it is a string of three emails. If we start at 9121 it is from Ms Lindiwe Mdletshe to Mr Yousuf Laher. That is then followed at 9120 with a response from Mr Yousuf Laher to Ms Lindiwe Mdletshe and lastly at the top of 9120 it is once again from Mr Yousuf Laher to Ms Lindiwe Mdletshe.

MR THOBANI TREVOR MNYANDU: Yes Chair.

ADV MAHLAPE SELLO: So is that the – the – you wanted us to find
10 the email from Mr Garry Pita?

MR THOBANI TREVOR MNYANDU: Yes Chair. My apologies. It is actually 9117.

ADV MAHLAPE SELLO: Page 9117?

MR THOBANI TREVOR MNYANDU: Yes Chair.

ADV MAHLAPE SELLO: Okay. So it is the page numbering on the slide that is wrong?

MR THOBANI TREVOR MNYANDU: Yes Chair.

ADV MAHLAPE SELLO: Thank you. We have corrected to seven.

MR THOBANI TREVOR MNYANDU: Chair as is clear this is an email
20 from Mr Garry Pita sent on 20 June 2015 at 12:08. The email is sent to Mr Thamsanqa Jiyane. It is sent to as well Mr Anoj Singh, Ms Lindiwe Mdletshe, Mr Yousuf Laher and Mr Ndiphiwe Silinga. The subject reads “CNR Comments”. The email reads:

“Dear all, below first find my comments and questions for CNR. I have not received the BT

proposal as yet and cannot comment other than what I raised yesterday. I am heading off to a family function away for the rest of the weekend but cannot be contacted on my phone.”

Chair what then follows are the actual comments ...

CHAIRPERSON: I – I wonder whether what was meant was – but can be contacted on my phone but it does not seem to ...

ADV MAHLAPE SELLO: Contextual that is what is suggested here.

CHAIRPERSON: The sentence does not seem to – to – but it is okay.

10 That is him. That is not you.

MR THOBANI TREVOR MNYANDU: Yes Chair.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: Before you proceed and deal with the issues that he raises. This is date 20 June 2015?

MR THOBANI TREVOR MNYANDU: Indeed it is so Chair.

ADV MAHLAPE SELLO: And on the previous day on 19 June there was a meeting with both OEMs?

MR THOBANI TREVOR MNYANDU: Indeed Chair.

ADV MAHLAPE SELLO: Was Mr Garry Pita part of that meeting?

20 **MR THOBANI TREVOR MNYANDU:** Yes he was.

ADV MAHLAPE SELLO: So he went into that negotiation with BT without having seen the BT Proposal if this email is to be accepted because he says I have not received the BT Proposal as yet?

MR THOBANI TREVOR MNYANDU: Yes Chair unless he was referring to a revised proposal that ought to have been sent overnight.

ADV MAHLAPE SELLO: Okay.

MR THOBANI TREVOR MNYANDU: Because we at least know from our records that there was BT Proposal of April ...

ADV MAHLAPE SELLO: Yes.

MR THOBANI TREVOR MNYANDU: 2015.

ADV MAHLAPE SELLO: Okay.

MR THOBANI TREVOR MNYANDU: Going back to Appendix 11

Mr Garry Pita says:

10 “There is no mention of SD or ED for all contracts we normally either keep the percentage of the contract value, the SME ...”

Which is not understood.

“...or make it higher depending on the change. I suggest keeping it the same percentage of now greater contract value as the change was created due to our choice. Yousuf to check whether there were any contingencies in initial offer as if there was then it must be taken into account in this calculation.”

20 There is a typo we believe.

“Of they knew we were going to send them to Durban so maybe they already priced some of the risk in the initial office. Get list of suppliers they are using in Gauteng and total material they expect from them as they say they are moving R1.3 billion

material but does not make sense as they do not have many supplies set up yet per my info. They need to prove the 1.3 billion expected value. Page 3 talks of limited manufacturing skills and engineers in the area but the plant is situated in Bayhead where there are many manufacturing companies and an abundance of engineers. They also talk of the same team having to move to Durban yet charge on a number of occasions for more labour skills but they are sending the same people. So why charge for this on more than one occasion.”

ADV MAHLAPE SELLO: Huh-uh.

MR THOBANI TREVOR MNYANDU: “R54.4 million added size of team for labour and quality assurance and CST. Transnet in general need to advise if the team in KZN has such low skill to justify this additional labour from OEM. 178.8 million for material is significant. The inflatory percentage uses is 5.5 percent which they say is CPI. Yet CPI is 4.5 percent. Additionally they say they use 1.8 percent per month for four months which adds to 7.2 percent. Why? They also say it is multiplied by a total project cost. Why total project cost and not just the material? If it is material it should be 1.3 billion as per page 7/12. This number is surely

overstated by some margin. The second part of material costs being R16.8 million storage would be incurred if it was Durban or KDS.”

He is meant to denote Koedoespoort.

10 “So should not be an additional cost unless I am missing something. Technical support in my mind already has some change in the additional labour charge for engineers and additional quality assurance. Yet they charge R38.5 million for additional support especially for maintenance and post production. Why maintenance and post production? Under technical the additional cost of onsite service is high. Against the list of suppliers and how this is broken up seems excessive.”

Chair - he then goes on to deal with transportation. In particular in the second sentence of that last paragraph on 9117. He notes:

20 “The charge R94.2 million for additional transport and advise it is for 55 percent local content. Ye they have 45 percent imported which will not have any travel costs once it has reached the port. We need this benefit back estimate as close R90 million if you use their logic.”

Turning overleaf at 9118. He then says:

“Yousuf to check assumptions they have used possibly or possibly PWC like transport costs,

average CPI, insurance costs, shelving and storage per m² costs which seem extremely excessive. Transport also include local testing for 1.8 million but what is the additional cost that would not have been incurred in Koedoespoort. Warehousing: Transnet Engineering to check this as I recall them asking Transnet Engineering to do what warehousing in initial bid. So if they are charging extra then ...”

10 I believe it is a typo.

“Eight should charge them extra bed on their numbers like R55 per m² versus R35 per m² in Koedoespoort which seems excessive and needs to be checked. They also charge for fencing and security and office furniture. Why is that additional over Koedoespoort? Same goes with additional trucks and forklifts. Why more in Durban versus Koedoespoort for the same work? Does not make sense. Under warehousing R11 200 m² for shelving and storage is ridiculous and impossible. Need to fix this. Again they charge for additional of 90 under warehousing costs of 25 – 24.5 million plus R5.8 million for engineers. This is now the third time they are charging for additional people. Yousuf to check financing costs and hedging

20

numbers. Also industry standard for training is 3 percent not 6 percent. So 3.6 million is overstated. Contingency must be talked about. This is fixed price. Regards, Garry.”

ADV MAHLAPE SELLO: Yes.

MR THOBANI TREVOR MNYANDU: Yes. Chair those are numerous concerns, attacks and requests for clarifications that Mr Garry Pita had.

ADV MAHLAPE SELLO: And not in significant concerns one may say?

MR THOBANI TREVOR MNYANDU: And not insignificant concerns one
10 must add especially when one has regard to the amounts that Mr Garry Pita is attacking or seeking clarification in respect of throughout the email correspondence.

ADV MAHLAPE SELLO: Huh-uh.

MR THOBANI TREVOR MNYANDU: Chair we would now like to take you to Appendix 12 which is to be found on page 9120 ...

ADV MAHLAPE SELLO: Yes.

MR THOBANI TREVOR MNYANDU: Of volume 13.

ADV MAHLAPE SELLO: Yes.

MR THOBANI TREVOR MNYANDU: On – halfway through the page of
20 9120 and on 21 June the Chair will recall that Mr Yousuf Laher was requested to check a number of things by Mr Garry Pita on the previous day. He send the email and he says:

“Dear all, my comments as follows: increasing the team size does not make sense considering the learning curve will mitigate this requirement within

a short time. Two, negotiating with suppliers will eliminate the inflationary costs related to four additional months. In any case material costs generally do not increase on a monthly basis thus the impact should not be as large as 1.8 percent. Also 1.8 percent for four months does not equal 5.5 percent but rather 7.2 percent which is excessive. Three, from the explanation provided the incremental cost of procurement does not relate to the move to Durban. This should not be charged. In any case 9 percent interest is excessive. Four, the additional technical support requirement in Durban does not make sense. The cost of this technical support should have been included in the original price. Five, onsite service by technicians should have been included in the original price. R31.5 million for travel and relocation seems excessive. Six, can the transport not be done by TFR via rail containers? If so then insurance costs would also be a minimum as would be internally insured. Seven, R11 200 per m² for shelving seems excessive. SCS can research this. Eight, has consideration been given to TP ...”

Which is Transnet Property Chair.

“...or Transnet Freight Rail Property for the

warehousing? Nine, why the additional forklifts?
10, how much is the incentive and relocation cost
per staff member? 11, labour inflation does not
increase on a monthly basis. The impact could
possibly only be at the end of the project. 12,
labour inflation rate applied at 5.5 percent for the
full year whereas it should only be for four months.
(Sell E23 and staff sheet).”

The 13th area of concern is:

10 “The additional cost to roll over the hedge must be
checked by Treasury.”

This point we are to understand that would be Transnet Treasury.

“14, additional bond costs must be checked by
Treasury. 15, contingency risk of 4 percent and risk
provision of 9 percent is unexplained and seems to
be additional profit. This seems excessive. 16,
obtain a detailed list of suppliers being used in
Durban versus those in Johannesburg. The cost of
the long term maintenance consulting does not
20 relate to the move to Durban (sell E29 staff). This
should not be charged as it should have been
included in the original contract. 18, labour
inflation is doubled (Ref: sell D7 and sell E23
“staff”). Best regards, Yousuf Laher.”

ADV MAHLAPE SELLO: So on 20 June Mr Pita raises a – a range of

concerns.

MR THOBANI TREVOR MNYANDU: Indeed Chair.

ADV MAHLAPE SELLO: Regarding the computation of costs by the OEMs?

MR THOBANI TREVOR MNYANDU: Indeed Chair.

ADV MAHLAPE SELLO: And request Mr Laher to do some calculations?

MR THOBAN TREVOR MNYANDU: Indeed Chair.

ADV MAHLAPE SELLO: This email you have just read does not
10 necessarily seem to suggest that Mr Yousuf Laher was dealing directly
with the concerns raised by Mr Pita but instead it appears to me – at
least – to be Mr Laher raising his own set of concerns?

MR THOBANI TREVOR MNYANDU: Indeed it is so Chair.

ADV MAHLAPE SELLO: Okay. Then what transpires next?

MR THOBANI TREVOR MNYANDU: Chair what then transpires next is
that on 23 June Ms Lindiwe Mdletshe shared via email and the email is
be found at Appendix 13. That is volume 13 page 9122. It will be 911
– 9123 Chair.

ADV MAHLAPE SELLO: Yes.

20 **MR THOBANI TREVOR MNYANDU:** Chair in order to follow the email
chain properly we need to read the one that is at the bottom first.
Ms Lindiwe Mdletshe sends the email and says ...

ADV MAHLAPE SELLO: Sorry Mr Mnyandu the - the mic – your voice
is ...

MR THOBANI TREVOR MNYANDU: Apologies Chair.

ADV MAHLAPE SELLO: (Interpreter).

MR THOBANI TREVOR MNYANDU: The email from

Ms Lindiwe Mdletshe reads:

“Good day, please find attached revised CNR Proposal for your review and comments. Please note that both meetings that were scheduled to take place today – 23 June 2015 – were postponed. BTs Proposal is still outstanding. They are having an alignment session this afternoon and they will revert back to us today with an indication on when the revised proposal will be submitted to Transnet.”

Then it says:

“Kind regards.”

Chair we then go to the middle section of the – of the page. The email is sent by Mr Yousuf Laher to be in response to Ms Lindiwe Mdletshe.

He says:

“Hi Lindiwe ...”

CHAIRPERSON: And that is 25 June?

MR THOBANI TREVOR MNYANDU: 25 June 2015.

20 **CHAIRPERSON:** *Ja.*

MR THOBANI TREVOR MNYANDU: Which is two days after the email from Ms Mdletshe. The email reads:

“Hi Lindiwe, their proposal has not changed from the previous submission except for their new offer on payment terms. As such the comments per my

email over the weekend would still apply. Their payment terms offer needs to be considered in light of Transnet cash flow situation for which Treasury must advice.”

Chair on our investigation 20 June 2015 was a Friday which was when Mr Garry Pita sent his email. The response from Mr Yousuf Laher was on the 21st being a Saturday and therefore when he refers on 25 June to an email over the weekend he is referring to Appendix 12 which we have just considered.

10 **ADV MAHLAPE SELLO**: Okay.

MR THOBANI TREVOR MNYANDU: Chair there – there then seems to be silence. There is a break in communication insofar as email correspondences between the Transnet Relocation Negotiating Team up until 10 July.

CHAIRPERSON: And so far we have not seen any comments following that meeting – those two meetings at - I think you said O R Tambo. You have not seen any comments from the senior people in the team - Mr Anoj Singh ...

MR THOBANI TREVOR MNYANDU: Indeed Chair.

20 **CHAIRPERSON**: For example. Okay, alright.

MR THOBANI TREVOR MNYANDU: Indeed Chair. Additionally we have not seen any email correspondences sent to Transnet Engineering for them ...

CHAIRPERSON: Yes.

MR THOBANI TREVOR MNYANDU: To check the considerations of the

team – concerns of the team members.

CHAIRPERSON: Yes.

MR THOBANI TREVOR MNYANDU: Nor has there been any correspondences sent to Transnet's Treasury Department for them to validate amongst other things ...

CHAIRPERSON: Hm.

MR THOBANI TREVOR MNYANDU: The additional bonds that are required and whether they would be acceptable. Nor have we seen any correspondences sent to the Transnet Property Division which would be
10 considered for items like warehousing in a different location.

ADV MAHLAPE SELLO: Hm.

CHAIRPERSON: Yes.

MR THOBANI TREVOR MNYANDU: Chair as we say slide 27 – there then seems to be a break in communication up until 10 July 2015 on which date beginnings the process to finalise the relocation costs.

ADV MAHLAPE SELLO: And just so we are clear following Mr Yousuf Laher's last communication of 25 June reminding Ms Mdletshe that the issues I raised remain outstanding. I have not received an answer thereto – thereon and Mr Garry Pita's own concerns
20 as reflected in the email you read into the record and that period 23 June to the date you say 10 July 2015 finalisation begins. Is there any record of at least Mr Garry Pita been addressed on the concerns that he raised?

MR THOBANI TREVOR MNYANDU: No there is not Chair.

ADV MAHLAPE SELLO: And I – similarly I'll take it neither are Mr

Yusuf Laher's concerns raised?

MR THOBANI TREVOR MNYANDU: No there isn't Chair, particularly in respect of him, there isn't a response to the mail of 25 June.

ADV MAHLAPE SELLO: Which reminds them of the earlier email where he set out these concerns.

MR THOBANI TREVOR MNYANDU: Yes Chair.

ADV MAHLAPE SELLO: Yes.

CHAIRPERSON: And did you come across any suggestion that there was a meeting of the members of the Transnet negotiating team where
10 they discussed the way forward in the light of the concerns that had been raised prior to talking about finalising the agreement?

MR THOBANI TREVOR MNYANDU: No Chair we were not able to come across any record that demonstrates a meeting having taken place.

CHAIRPERSON: And to what extent are you able to say that the emails to which you have referred exchanged among members of the negotiating team, to what extent are you able to say that those to which you have referred are basically the only ones that were exchanged among the members of the negotiating team of Transnet in regard to these negotiations after meeting with the two entities?

20 **MR THOBANI TREVOR MNYANDU:** Chair it is pivotal at this point to record that the email correspondences we've got were received from Transnet directly, it is also important to record that we also have had access to Transnet's server. It is possible in certain instances where the subject of a particular email does not indicate that which is discussed in the email and therefore you would not be able to find it

but insofar as our searchers on the server have confirmed there were no further engagements in relation to these issues.

CHAIRPERSON: But you say there might be some possibility that you might have missed some if the subject didn't...(intervention).

MR THOBANI TREVOR MNYANDU: Chair what I'm trying to clarify is that insofar as our searches have gone on the two OEM's being concerned there were no further engagements.

CHAIRPERSON: I'm talking about communication among the members of the Transnet negotiating team in regard to their negotiations with the
10 two OEM'S. To what extent – these emails to which you have referred could be said to be the only ones that were exchanged among this team to say, what are we going to do with the proposals from these entities?

MR THOBANI TREVOR MNYANDU: Perhaps Chair, in order to assist the Commission in this regard one can recollect that when Ms Lindiwe Mdletshe was interviewed and she was questioned about the steps that needed to be taken insofar as the comments, in particular, of Mr Yusuf Laher are concerned, her response was, Mr Yusuf Laher in any event was not part of the negotiation team. So that gives the indication that
I, as Lindiwe Mdletshe did not need to take his concern or concerns
20 seriously. So that, together with our searches and the investigations conducted therefore leads one to the conclusion that there were no further engagements.

CHAIRPERSON: But insofar as, through technical means of which I know nothing that investigators would know, their computers were checked to see that really there was – there were no other

communications that you might have missed.

MR THOBANI TREVOR MNYANDU: Yes Chair

CHAIRPERSON: Yes, so you feel quite confident that there probably were no other emails exchanged among them?

MR THOBANI TREVOR MNYANDU: Indeed Chair.

CHAIRPERSON: Yes okay thank you.

ADV MAHLAPE SELLO: At least – or through Transnet servers?

MR THOBANI TREVOR MNYANDU: At least not through Transnet servers.

10 **CHAIRPERSON**: Yes but of course it would be strange if it was through other servers isn't it?

MR THOBANI TREVOR MNYANDU: Strange, yes Chair.

CHAIRPERSON: Because this was business – this was work related.

MR THOBANI TREVOR MNYANDU: Indeed.

CHAIRPERSON: Okay, alright.

ADV MAHLAPE SELLO: Thank you then you've taken us now to the date of 10th July 2015...(intervention).

20 **CHAIRPERSON**: I'm sorry let – just before that, unless they had a meeting, that I the Transnet negotiating team, unless they had a meeting to which they made no reference in emails among themselves to say, let's have a meeting. Unless they had a meeting to which they made no reference in emails, then it would look like they went into finalising the agreement without having had another meeting to talk among themselves or to have an exchange of ideas through emails to say, how do we approach this, do we have concerns, how do we

address concerns that have been raised.

MR THOBANI TREVOR MNYANDU: Yes Chair.

CHAIRPERSON: And that would be quite strange.

MR THOBANI TREVOR MNYANDU: Strange Chair.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: And if, on that score, I may then refer you back to 9123, the email from Ms Lindiwe Mdletshe of 23 June 2015, at the bottom, the bottom email at 9123, she states to the addressees,

10 “please note that both meetings that were scheduled to take place today 23 June were postponed”.

 You see that?

MR THOBANI TREVOR MNYANDU: Indeed Chair.

ADV MAHLAPE SELLO: First question, do you know what these meetings were, these meetings were they OEM's or presumably meetings of the negotiating team.

MR THOBANI TREVOR MNYANDU: I am – we are unable to clarify Chair, save to state in our searches again on the server, these meetings had not been discussed earlier, so it might have been that they were arranged by other means other than by way of email
20 communication.

ADV MAHLAPE SELLO: And based on your responses to the Chair's questions, I take it that up until 15th June – 15th July those meetings were not held as they were postponed from the 23rd of June so they were postponed on the 23rd of June and I take postponement to mean they shall be held on a different date.

MR THOBANI TREVOR MNYANDU: Yes Chair.

ADV MAHLAPE SELLO: And you are suggesting that at least whatever that date may be it was not before the 15th of July, there's no record of those meetings being held before the 15th of July??

MR THOBANI TREVOR MNYANDU: Chair before the 10th of July.

ADV MAHLAPE SELLO: Before the 10th of July, my apologies, 10th of July.

MR THOBANI TREVOR MNYANDU: Yes Chair.

ADV MAHLAPE SELLO: Secondly we have heard from a few witnesses
10 as well as Mr Sedumedi, it seems common practice that when these matters are considered in Transnet, tender related and proposals are submitted for evaluation that a cross-function evaluation team is either appointed or some evaluation team is appointed, whatever it may be called and at the conclusion of whatever their mandate is, they produce a report.

MR THOBANI TREVOR MNYANDU: Indeed Chair.

ADV MAHLAPE SELLO: Did we have a cross-functional evaluation team in respect of these relocation proposals?

MR THOBANI TREVOR MNYANDU: No we did not Chair.

20 **ADV MAHLAPE SELLO:** So we only had the negotiating team as you listed there.

MR THOBANI TREVOR MNYANDU: Correct Chair.

ADV MAHLAPE SELLO: Did the negotiating team produce a record – a report on their negotiations with both Bombardier and CNR?

MR THOBANI TREVOR MNYANDU: There isn't a record of such a

report Chair.

ADV MAHLAPE SELLO: Did you enquire about one?

MR THOBANI TREVOR MNYANDU: We did enquire about one when one supposes or rather has regard to the fact that there is a report or a draft report from the Transnet Internal Audit Team, in respect of which we'll get to shortly, and we were told there wasn't such a report prepared.

ADV MAHLAPE SELLO: Was a reason advanced for why one wasn't prepared?

10 **MR THOBANI TREVOR MNYANDU:** No Chair.

ADV MAHLAPE SELLO: And in this regard who did you have discussion with, who so advised you?

MR THOBANI TREVOR MNYANDU: It was firstly Mr Yusuf Laher and the secondly Ms Lindiwe Mdletshe.

ADV MAHLAPE SELLO: Thank you.

CHAIRPERSON: So your investigations did not reveal that there was much discussion around the Transnet negation team on their negotiations with these two entities on this very high amounts that were supposed to be looked into.

20 **MR THOBANI TREVOR MNYANDU:** Chair can you please ask the question again.

ADV MAHLAPE SELLO: Your investigations it would seem did not reveal that there was much discussion among the Transnet negotiating team on these proposals that came from these two entities.

MR THOBANI TREVOR MNYANDU: Yes Chair.

CHAIRPERSON: Indeed you found nothing that suggested that the negotiation team of Transnet interrogated these amounts in any way – in any serious way.

MR THOBANI TREVOR MNYANDU: Other than the email correspondences that we've just referred to Chair, we were not able to find such communications.

CHAIRPERSON: And of course in regard to one, I think Ms Sello said Ms Mdletshe said Mr Laher was not even part of the negotiation team.

MR THOBANI TREVOR MNYANDU: Yes Chair.

10 **ADV MAHLAPE SELLO:** Except Chair that was said by Mr Mnyandu not Ms Sello, I wouldn't have known – I wouldn't have that knowledge.

CHAIRPERSON: I thought you were referring to some email...(intervention).

ADV MAHLAPE SELLO: He said that arose during the interview yes.

CHAIRPERSON: Okay no, Mr Mnyandu not Ms Sello.

ADV MAHLAPE SELLO: Thank you Chair.

CHAIRPERSON: So okay I guess we'll get to the point where, ultimately, now they agree to something.

MR THOBANI TREVOR MNYANDU: Agreed Chair.

20 **CHAIRPERSON:** Yes.

ADV MAHLAPE SELLO: Which is a topic you start now on your slide 27.

MR THOBANI TREVOR MNYANDU: Which is a topic we start now on slide 27 Chair and we take you to Appendix 40 at 9126, Chair we no longer mention the cover of the Appendix.

CHAIRPERSON: Yes.

MR THOBANI TREVOR MNYANDU: At 9126 in volume 13 Chair there's an email sent by Mr Gary Pita on 10 July 2015, it reads...(intervention).

ADV MAHLAPE SELLO: Sorry, for reference at the bottom of 9126, right?

MR THOBANI TREVOR MNYANDU: Correct Chair, for your reading from the bottom of the page,

10 “Hi Lindiwe, feedback from the meeting this morning is that BT will be sending us another letter providing further clarity on their offer. This is expected on Monday, can I ask that you update all the documentation i.e. memo for us to send to the acting GCE, which is for Group Chief Executive for approval of CNR and BT proposals and a letter from GCE to CNR and BT accepting proposals. In order to save time, should the team copied be happy with the proposals, we can the effect sign-off quickly. Please also ensure that the TIA, which is for Transnet Internal Audit Chair, sign-off from (indistinct) is included in the memo”, then it says Gary Pita, Group Chief Supply Chain
20 Officer”.

ADV MAHLAPE SELLO: Before you go to the response to that email, the first paragraph of that email reads, “feedback from the meeting this morning is that BT will be sending us another letter”.

MR THOBANI TREVOR MNYANDU: Yes Chair.

ADV MAHLAPE SELLO: That would suggest that there was a meeting held that morning, either Mr Gary Pita was or was not a part of that meeting but Ms Lindiwe Mdletshe might not have been as he is reporting to her.

MR THOBANI TREVOR MNYANDU: Indeed Chair.

ADV MAHLAPE SELLO: That would be a correct interpretation. Now were you able to establish what this meeting was and between who it was?

10 **MR THOBANI TREVOR MNYANDU:** No we were not able to Chair.

ADV MAHLAPE SELLO: Okay, and I know you said you haven't had an opportunity to interview Mr Gary Pita.

MR THOBANI TREVOR MNYANDU: Mr Gary Pita.

ADV MAHLAPE SELLO: He will shed light, I guess, the day he appears.

CHAIRPERSON: But what is clear from that email is that he says that – is that BT was going to be sending a letter providing further clarity on their offer. So – and we know that Mr Gary Pita was one of those who had sent emails seeking – giving comments, is that right?

20 **MR THOBANI TREVOR MNYANDU:** Indeed Chair.

CHAIRPERSON: So here, at least in relation to BT he talks about a letter that would be sent, giving clarity and we don't know whether it was going to be giving clarity on some of the issues he had raised or whether it was clarity on other aspects.

MR THOBANI TREVOR MNYANDU: Yes Chair

CHAIRPERSON: Yes okay thank you.

MR THOBANI TREVOR MNYANDU: Chair might I add.

CHAIRPERSON: Yes.

MR THOBANI TREVOR MNYANDU: But what we do know.

CHAIRPERSON: Yes.

MR THOBANI TREVOR MNYANDU: Is that there is still to be a clarification received from BT, however Ms Mdletshe is now being requested to prepare the necessary memorandum for the approval of both the cost in respect of BT as well as CNR.

10 **CHAIRPERSON:** Yes which may mean that they – which may mean that they know – they've been given clarity verbally and what's left is just that clarity being in writing, that's one way of looking at it. Another way of looking at it, is probably what you have in mind that they're going ahead before getting clarity.

MR THOBANI TREVOR MNYANDU: No Chair, it's not what I had in mind, I agree that, that's one way of looking at it.

CHAIRPERSON: Is there another way, you think?

MR THOBANI TREVOR MNYANDU: Chair I think you and I are *ad idem*, we are in agreement that there would be another way.

20 **CHAIRPERSON:** Yes.

ADV MAHLAPE SELLO: But even then we at least accept that it is clarity that Ms Mdletshe did not have as she prepared the memo.

MR THOBANI TREVOR MNYANDU: Indeed Chair.

ADV MAHLAPE SELLO: Okay.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: Yes you may continue, thank you.

MR THOBANI TREVOR MNYANDU: Chair sticking to or staying on page 9126, going further up the page there's an email from Ms Lindiwe Mdletshe on 10 July at 4h14, she writes,

“Hi Gary, I will prepare as requested and circulate for comments by Monday, Kid Regards, Lindiwe Mdletshe”.

ADV MAHLAPE SELLO: Yes.

MR THOBANI TREVOR MNYANDU: Chair what we would like you to note in respect of the email correspondence sent by Mr Gary Pita on that day being 10 July 2015 is that Mr Yusuf Laher notably is no longer copied in the email exchanges.

CHAIRPERSON: Yes.

ADV MAHLAPE SELLO: And it was Mr Gary Pita who directed specifically to Mr Yusuf Laher certain tasks and asked him to do certain things.

MR THOBANI TREVOR MNYANDU: Indeed Chair.

CHAIRPERSON: Just remind me again, what was Mr Lehar's position?

MR THOBANI TREVOR MNYANDU: He was an Executive Manager in the finance department of the operating division acquiring the locomotives, Transnet Freight Rail.

CHAIRPERSON: Yes.

MR THOBANI TREVOR MNYANDU: Yes.

CHAIRPERSON: That would seem to suggest it was somebody whose concerns should be given some attention.

MR THOBANI TREVOR MNYANDU: Yes Chair.

CHAIRPERSON: Ja okay yes.

ADV MAHLAPE SELLO: Yes Mr Mnyandu.

MR THOBANI TREVOR MNYANDU: Chair turning over to slide 28 of the presentation, we now take you through the approval process arising from the email sent by Mr Gary Pita, firstly in relation to CNR on 22 July 2015, Ms Lindiwe Mdletshe compiled a separate memorandum for the approval of the costs of CNR at an amount of R647 181 494.00. Chair this memorandum is to be found at volume 13 at page 9135...(intervention).

- 10 **ADV MAHLAPE SELLO:** I'm sorry Mr Mnyandu, before the Chair does that I'd like us to go back to 9126 in that email chain at the top is a further email from Mr Gary Pita but this time addressed to Mr Selinga.

MR THOBANI TREVOR MNYANDU: Yes Chair.

ADV MAHLAPE SELLO: And it seems to suggest that the document is ready and is requesting Mr Selinga to review the legal clauses and caveats only.

MR THOBANI TREVOR MNYANDU: Yes Chair.

ADV MAHLAPE SELLO: So by the 14th of July the document was, for all intents and purposes ready.

- 20 **MR THOBANI TREVOR MNYANDU:** Yes Chair.

CHAIRPERSON: Can I take you back, the Monday on which it was said the letter of clarity from BT would be received, what – do you know what date that Monday would have been?

MR THOBANI TREVOR MNYANDU: It would have been Monday 13 July
Chair.

CHAIRPERSON: Okay and the memorandum that Ms Mdletshe was preparing seems to have got – to have been ready by when?

MR THOBANI TREVOR MNYANDU: The 22nd of July.

CHAIRPERSON: Okay thank you.

MR THOBANI TREVOR MNYANDU: Thanks Chair.

ADV MAHLAPE SELLO: Okay so then I see that Mr Gary Pita requests Mr Selinga to have regard to the document and review the legal clauses and caveats raised in both proposals especially in the BT offer.

MR THOBANI TREVOR MNYANDU: Yes Chair.

10 **ADV MAHLAPE SELLO:** Firstly were you able to consider a document that reflects the caveats, particularly raised in the BT proposal?

MR THOBANI TREVOR MNYANDU: Yes we were Chair.

ADV MAHLAPE SELLO: And what were those in brief?

MR THOBANI TREVOR MNYANDU: In summary those spoke to the amount first of all being offered by BT for relocation costs, it spoke to the payment terms in relation to the offer as well as a change in the facility to be recorded as Durban Bay Head.

ADV MAHLAPE SELLO: Okay, so – and they wanted those issues addressed before they could finally decide, is that the understanding?

20 **MR THOBANI TREVOR MNYANDU:** Yes.

ADV MAHLAPE SELLO: Okay the email then goes further to say, they raise some clauses which might have a significant impact please advise so we can sign this off ASAP, that is Mr Gary Pita on the 14th of July.

MR THOBANI TREVOR MNYANDU: Indeed Chair.

ADV MAHLAPE SELLO: Okay now do you have a record of how Mr

Selinga dealt with that request?

MR THOBANI TREVOR MNYANDU: Indeed Chair it is dealt with in our report, the response is an Appendix, it's just that we have not covered it in the presentation but we can take the Chair through if we find the Appendix on the report.

ADV MAHLAPE SELLO: If you recall, perhaps the essence of that Appendix, you may tell the Chair.

MR THOBANI TREVOR MNYANDU: The Appendix – sorry the concerned was a response from Mr Selinga in which he noted 1) 10 617million rand as an offer from BT is okay if that's what you have agreed. 2) The other clauses were fine, however, he raised a particular concern or a comment in relation to, I believe, the delays, but I stand to be corrected Chair, it would be a document that we should look at as the Appendix but indeed there was a response that dealt with the BT issues in that form.

ADV MAHLAPE SELLO: Okay thank you. Chair we are mindful...(intervention).

CHAIRPERSON: We (indistinct) achieved what we hoped to achieve...(intervention).

20 **ADV MAHLAPE SELLO:** What we set out to achieve time wise.

CHAIRPERSON: Yes but there hasn't been any delay we have been engaging Mr Mnyandu with his important issues, how much more time do you need...(intervention).

ADV MAHLAPE SELLO: He's got seven slides to go Chair, I guess if he could indicate to us, if we don't engage him any further how long

that might take him but if the Chair engages him and myself perhaps that might double or triple the time required.

CHAIRPERSON: Well I need to be out of here now.

ADV MAHLAPE SELLO: Yes Chair.

CHAIRPERSON: I was hoping that – I was hoping to be out of here at half past twelve and I was hoping that 1 o'clock would be fine so it hasn't happened. I'm wondering whether we shouldn't make space if Mr Mnyandu is available for tomorrow to finish properly before we start with the next witness.

10 **ADV MAHLAPE SELLO**: We could Chair, if Mr Mnyandu is available...(intervention).

MR THOBANI TREVOR MNYANDU: Chair I confirm I am available.

CHAIRPERSON: You are available?

MR THOBANI TREVOR MNYANDU: Yes indeed.

ADV MAHLAPE SELLO: And for that purpose we could start at 9 o'clock considering there are seven slides left that should not take us more than an hour, I'm quite mindful that we don't impact the time of the next witness.

20 **CHAIRPERSON**: Yes what's your own estimate of how much time we need, I'm trying to think whether we should say 9 o'clock or half past nine.

ADV MAHLAPE SELLO: I would – it's got references – the 7 slides have references to certain documentation and as I have seen it is when we consider the documents that perhaps we take slightly more time, I see about four or five documents that he cross-refers, I think I would

be more comfortable with one-hour Chair otherwise if we do half past nine then we may force advocate Pretorius to run till 5 and he might not be quite happy with that, so.

CHAIRPERSON: Yes no I think we – I think let's start at half past nine.

ADV MAHLAPE SELLO: Half past nine?

CHAIRPERSON: Ja let's start at half past nine because there may be something else that I need to attend to if we start at nine, there might be some difficulty, let's start at half past nine.

ADV MAHLAPE SELLO: Catering for one hour.

- 10 **CHAIRPERSON:** And hope – try and finish at least within an hour or 45 minutes depending. Okay, alright we'll adjourn then for now. So Mr Mnyando we will start at half past nine tomorrow, so if you could be back tomorrow.

MR THOBANI TREVOR MNYANDO: Thank you Chair.

CHAIRPERSON: Yes, we will adjourn until tomorrow at half past nine in the morning, we adjourn.

ADV MAHLAPE SELLO: Thank you Chair.

INQUIRY ADJOURNS TO 31 MAY 2019