

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

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10

27 MAY 2019

DAY 99

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PROCEEDINGS HELD ON 27 MAY 2019

CHAIRPERSON: Good morning Mr Pretorius, good morning everybody.

ADV PAUL JOSEPH PRETORIUS SC: Good morning DCJ.

CHAIRPERSON: Are you ready?

ADV PAUL JOSEPH PRETORIUS SC: Yes Chair. Chair the witness to be called today is a Mr Van Der Westhuizen. He is a former employee – Transnet. He resigned in December 2014. At that time he was responsible for amongst other things procurement in relation to information, communications, technology in other words the computer  
10 network and communications systems in the whole of Transnet. He was the business owner of that particular function. His evidence is not original in the sense that he will tell you a complete and new story. You will have heard evidence about the matters to which he is to testify from a number of witnesses and will be detailed. So his evidence is really supplementary. It is explanatory and to an extent corroborated. But it fills in gaps that are necessary to fill in to begin to raise questions and answer questions of a broader nature. So he will build on previous evidence and he will compliment evidence that has been given previously to enable the Chair to consider a totality of evidence  
20 which will hopefully paint a more comprehensive picture than just simply the acts, the regular acts which have been testified to to date.

CHAIRPERSON: So to the extent that there might be what might appear to be repetition of evidence already given I should not be concerned it would be to compliment or corroborate?

ADV PAUL JOSEPH PRETORIUS SC: Yes Chair.

CHAIRPERSON: Okay.

ADV PAUL JOSEPH PRETORIUS SC: And the purpose for this for example you heard in previous tranches of testimony from Ms Chetty and Mr Mahomed and others. You heard of decisions taken by the former Group Chief Executive Transnet where he overruled certain procurement decisions and that that was irregular or prima facie irregular. Now it is one thing to say that Chair but what arises from that is why was that decision made? Who else was involved in the making of that decision? Was it an individual decision or was it part of  
10 a decision involving a group of people? What were the reasons for those decisions? Who benefited importantly from those decisions? And so that will begin to answer the question that we posed right in the beginning last year Chair was this just a series of random or ad-hoc acts of irregularity or was there something bigger at play? Or was there an organised project? And although these questions will not be answered by Mr Van Der Westhuizen in their totality they will give important evidence that will enable us later together with other evidence to begin to examine those questions. So it will enable us really to piece together this evidence with other evidence to tell a story  
20 that will explain the causes and the effects of the irregular acts. So for example you heard Chair that there was a parallel system from Doctor Molefe and Mr Mahomed operating in Transnet that made it possible for certain individuals to extract monies, large sums of monies from the Transnet coffers. And how this worked is a question that the legal team and the investigators will have to piece together evidence in relation to

this question. Especially in relation to one of the elements of this witness' evidence and that is the entity called Homix which was related to a Mr Salim Essa a well-known associate of the Gupta family. And so what this witness will testify to is elements of the answer to the question as to how the project came to be organised? How it was explained? Who was involved and where the money went? And in particular Mr Van Der Westhuizen has knowledge and experience from this employment with Transnet to test the apparent reasons given for many of the decisions made and to say these were baseless and  
10 obviously then the conclusion maybe that you will make that there was some other motive other than a business rationale for the decisions that were made. Chair may the witness then be sworn?

CHAIRPERSON: Yes thank you.

REGISTRAR: Please state your full names for the record?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: My full names Gerhardus Johannes Jacobus Van Der Westhuizen.

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

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: No  
20 I do not.

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

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: I do.

REGISTRAR: Do you swear that the evidence that you will give will be

the truth; the whole truth and nothing but the truth; if so please raise your right hand and say, so help me God.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: So help me God.

REGISTRAR: Thank you.

ADV PAUL JOSEPH PRETORIUS SC: Chair you have before you two bundles. There may be a need to supplement with a third bundle. A supplementary affidavit – supplementary statement rather has been prepared which will be handed up in due course dealing with certain  
10 typographical and other additions and omissions in relation to the statement. Mr Van Der Westhuizen has prepared a statement which is before you in bundle or Exhibit BB7[a] and [b].

CHAIRPERSON: The lever arch file containing Mr Van Der Westhuizen's statement will be marked Exhibit BB7[a] and the other lever arch file containing annexures to his statement – containing other annexures other than those in BB7[a] will be marked Exhibit BB7[b].

ADV PAUL JOSEPH PRETORIUS SC: As stated Chair the – it may be necessary at a later stage to hand up another bundle but that will be done.

20 CHAIRPERSON: In due course.

ADV PAUL JOSEPH PRETORIUS SC: During the course of the evidence or at the conclusion of the evidence.

CHAIRPERSON: Ja. Thank you.

ADV PAUL JOSEPH PRETORIUS SC: May the witness be sworn?

CHAIRPERSON: He has been sworn.

ADV PAUL JOSEPH PRETORIUS SC: Oh I am sorry.

CHAIRPERSON: Ja.

ADV PAUL JOSEPH PRETORIUS SC: Yes of course.

CHAIRPERSON: I take it...

ADV PAUL JOSEPH PRETORIUS SC: I was attending to other matters.

CHAIRPERSON: Well I take it it means that you address the Chair you are a hundred percent attentive to the Chair.

ADV PAUL JOSEPH PRETORIUS SC: Thank you for getting me off the  
10 hook there Chair. Mr Van Der Westhuizen you have submitted a statement?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:  
That is correct.

ADV PAUL JOSEPH PRETORIUS SC: It appears at pages 1 to 22 of Exhibit BB7[a], is that correct?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:  
That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Would you look please at page 22.

20 MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: I am there Advocate.

ADV PAUL JOSEPH PRETORIUS SC: Whose signature is that?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:  
That is mine.

ADV PAUL JOSEPH PRETORIUS SC: And is the statement from pages

1 to 25 your statement?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: 1 to 22 yes Advocate.

ADV PAUL JOSEPH PRETORIUS SC: 1 to 22 rather your statement?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: And are you satisfied that apart from what is referred to in your supplementary affidavit its contents are true and correct?

10 MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: Yes.

ADV PAUL JOSEPH PRETORIUS SC: What are your qualifications Mr Van Der Westhuizen?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: I am a chartered accountant.

ADV PAUL JOSEPH PRETORIUS SC: And how many years' experience do you have as a chartered accountant?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: I have approximately 15 years based article experience.

20 ADV PAUL JOSEPH PRETORIUS SC: Alright.

CHAIRPERSON: Well I think the first question was more about your academic qualifications than about the profession. So maybe you want to deal with that – your academic qualifications?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: Chair my academic qualifications is that I am a chartered accountant so

I have got a BCom Accounting Degree, Honours, CTA and Examination from SAICA.

CHAIRPERSON: Thank you.

ADV PAUL JOSEPH PRETORIUS SC: And how many – for how many years have you practised as a chartered accountant?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: As I completed my articles in 2004 if I recall Advocate.

ADV PAUL JOSEPH PRETORIUS SC: Right. And your experience?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: My  
10 experience spans finance needless to say being a chartered accountant and then I also have some experience in technology, vendor management, process improvement mostly ja Chair.

ADV PAUL JOSEPH PRETORIUS SC: And procurement?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:  
Chair yes I do have procurement experience which I – for the most part gained at Transnet as – well through my experience as the head of Process Improvement and Group Head of Internal Control at some point. And then obviously the last portion of my career at Transnet where I was responsible for the centres, ICT Procurement like the  
20 Advocate stated.

ADV PAUL JOSEPH PRETORIUS SC: And you have experience it appears from your statement and financial management and reporting?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:  
That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Right. You also mention

information technology audits. What would that experience involve?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

Chair so during my I – I had a short stint at KPMG which – during which period I was in the information risk management department which included audits of IT systems it was called ITGC's or IT General Control Audits where you would audit systems and access and things like that.

ADV PAUL JOSEPH PRETORIUS SC: When did you join Transnet?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:  
2007 Chair.

10 ADV PAUL JOSEPH PRETORIUS SC: And when did you resign from Transnet?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

Advocate it is in the statement I think it was 31 September 2014 but I eventually left the organisation in December 2014.

ADV PAUL JOSEPH PRETORIUS SC: And would you tell the Chair please during that period 2007 to 2014 when you were employed by Transnet what functions did you perform in the organisation and to whom did you report?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: So

20 Chair when I started off my employment at Transnet I was a manager in the internal control department and I looked after process improvements as a result of internal control deficiencies identified by both internal audit as well as items identified internally. So that was for approximately two years 2007 to 2009. After that I was promoted to the Group Head of Internal Control.

ADV PAUL JOSEPH PRETORIUS SC: Just before you go on would that function that you performed between 2007 and 2009 have involved the implementation and auditing or checking of processes within Transnet?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: So Advocate it would have. Not so much the audit, the internal audit function was out sourced to Ernst & Young at the time so they would have performed the audits but I would have had oversight and sight of all the reports and I would have had to come up and agree with a team of theirs what rectification actions we should take for various items.

10 ADV PAUL JOSEPH PRETORIUS SC: Right. So you concentrated on compliance with internal processes?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: And improvements yes.

ADV PAUL JOSEPH PRETORIUS SC: Yes okay. The second period that you refer to is 2009 to 2012 mid-2012 what were your functions then?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:  
Chair so during that period I was the Group Head of Internal Control so I provided oversight of that outsourced internal audit contract as well  
20 as the process improvement function and it had some forensic elements but we had another manager looking after the forensic function.

ADV PAUL JOSEPH PRETORIUS SC: And then after – who did you report to during that period?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: So during that period Chair I reported to Anoj Singh.

ADV PAUL JOSEPH PRETORIUS SC: Right and what was his position at that time?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:  
Chair at the time he was General Manager Group Finance and Acting Group Chief Financial Officer and he was also made permanent during that period if I recall.

ADV PAUL JOSEPH PRETORIUS SC: And then the third period from mid-2012 to April 2013?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:  
10 Chair so I was still in the – I still reported into finance or into the internal control department to Mr Singh but we had an information security incident which we were quite concerned about and because I had both finance and technology back – or experience and skills Mr Singh asked me to sort or spearhead or address that issue and see if we can get it resolved.

ADV PAUL JOSEPH PRETORIUS SC: Right. And at that time did you have to work with and become involved with particular suppliers to Transnet?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:  
20 Chair I had to absolutely. At the time our data centre was outsourced to T-Systems and our network was outsourced to Neotel so I was heavily engaged with those two vendors.

ADV PAUL JOSEPH PRETORIUS SC: Right – we will deal with that in more detail by way of introduction in a moment.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

Sure.

ADV PAUL JOSEPH PRETORIUS SC: And then from April 2013 to December 2014 what was your function?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

Chair so after that period I joined the ICT it is also referred to as the Enterprise Information Management Services Department and my role was Officer of the CIO which was predominantly to support the CIO and look at – or overseeing ICT procurement, vendor management, look at the finances of IT with some other elements vendor management I think

10 mentioned. It think those are the most important ones in that role.

ADV PAUL JOSEPH PRETORIUS SC: And your evidence will concern issues related to ICT or Information Communication Technology Procurement?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

That is correct.

ADV PAUL JOSEPH PRETORIUS SC: And the management of the processes that were involved?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

Correct.

20 ADV PAUL JOSEPH PRETORIUS SC: Right what was your title at that time?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

Chair it was Office or Executive Manager Office of the CIO but like I said it was also referred to as Enterprise Information Services.

ADV PAUL JOSEPH PRETORIUS SC: And to whom did you report in

this capacity?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

Chair initially we had an acting CIO; a gentleman by the name of Ken Jarvis so initially I reported to him. We then appointed Doctor Mantsika Matooane who I reported to after – after that.

ADV PAUL JOSEPH PRETORIUS SC: Now before going into the substance of your statement it is necessary as we discussed this weekend to provide the Chair with some background otherwise the functions and the procurement in relation to Neotel and IT-Systems can  
10 become confusing. Terms like centralisation for example can become or concentration can become confusing unless one understands the background. Before Ms Ramos became Chief Executive Officer who Chair she was Chief Executive Officer, is that right?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

That is right.

ADV PAUL JOSEPH PRETORIUS SC: Of Transnet and during the period she held office in the Transnet stable were a number of entities and as I understand the position and it is not controversial it was decided in Transnet to dispose of non-core assets so that it could  
20 concentrate on being a freight logistics business, am I correct?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Now two entities that existed within the Transnet stable are relevant to your evidence. The first is Arivia.com, is that correct?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

That is correct.

ADV PAUL JOSEPH PRETORIUS SC: That was disposed of?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Alright. What was Arivia.com or what did – function did it perform within the Transnet stable?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

Chair so Arivia.com was the owner of our data centre which included all  
10 of our servers and information and data assets. So they were  
responsible for the assets and the services linked to those assets.

ADV PAUL JOSEPH PRETORIUS SC: So Arivia.com a separate entity  
within the stable was owned and operated all the can we term it for  
want of a better word hardware on which all the data of Transnet was  
kept?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

Hardware and software I would say Advocate.

ADV PAUL JOSEPH PRETORIUS SC: Hardware and software but that  
is all the computer based information, the electronic based information  
20 used or necess – which was necessary for the operation of Transnet  
were centralised under the auspices of Arivia.com.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Both assets and operation?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

Yes.

ADV PAUL JOSEPH PRETORIUS SC: And then Transtel?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

Transtel Chair was the network services provider. So they were responsible and or owned all of our fibre assets, copper assets, routers and switches that enabled all of our applications and individuals to talk to each other to [indistinct].

ADV PAUL JOSEPH PRETORIUS SC: Alright. So you have the data in the data centre that is Arivia.com?

10 MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

Yes.

ADV PAUL JOSEPH PRETORIUS SC: But now this data has to spread between the various operations and entities within the Transnet stable?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

Correct.

ADV PAUL JOSEPH PRETORIUS SC: The communication network in other words.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

That is correct.

20 ADV PAUL JOSEPH PRETORIUS SC: Cabling. Would you give the Chair an idea of the amount of cabling that Transnet ultimately had to deal with.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

Sure. Sure Advocate. I think it is just important to distinguish there were fibre rings in the – in the Metropolises as you can call it. Then

Regional lines so from Johannesburg to Durban, Cape Town that kind of thing and then you had significant fibre and copper assets within what we refer to as Transnet campuses those would be ports, rails and although we do not have a – an exact number and we also did not have perfect designs the number quoted was between 8 and 9000 kilometres of fibre in the Sandton campuses as in the Transnet campuses sorry.

ADV PAUL JOSEPH PRETORIUS SC: So electronic communications within Transnet involved substantial infrastructure?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

10 Absolutely.

ADV PAUL JOSEPH PRETORIUS SC: Substantial assets including the switches and routers necessary for this electronic communication to take place and buried as I understand from you buried under the tarmac and the ports and in other places was 9000 kilometres approximately of cabling?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Now as I understand your evidence a decision was made and this again is not controversial to  
20 dispose of both businesses on the basis that they were not core to the operations of Transnet, is that correct?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Right. What happened then pursuant to that decision? Were they disposed of?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

Chair they were disposed of yes.

ADV PAUL JOSEPH PRETORIUS SC: And was that through an organised process?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

Chair yes although I was not intricately involved it was competitive processes from what I recall so we went to market and T-Systems was the successful bidder for the data centre or Arivia.com piece and the newly formed Neotel was the successful bidder for the network.

10 ADV PAUL JOSEPH PRETORIUS SC: So Neotel which is a PTY Limited company as I understand it.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Purchased Transtel?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

That is correct.

ADV PAUL JOSEPH PRETORIUS SC: So Neotel then purchased both the business and assets of Transtel which was as you have just described the network – communication network, right?

20 MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

That is right.

ADV PAUL JOSEPH PRETORIUS SC: And you say T-Systems purchased the business and assets of Arivia.com?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

That is correct Advocate.

ADV PAUL JOSEPH PRETORIUS SC: So at a stage after this disposal of assets and disposal of entities you have Neotel operating the network previously operated by Transtel and it now owns the relevant assets, am I correct?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:  
That is correct.

ADV PAUL JOSEPH PRETORIUS SC: And T-Systems took over the business of Arivia.com that is the data – the central data base, the hard drive and software containing all Transnet information, am I correct? I  
10 am simplifying but it helps.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:  
Sure. That is correct Advocate.

ADV PAUL JOSEPH PRETORIUS SC: And it now operated and owned what Arivia previously had operated and owned?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:  
That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Alright. And this – around what time did this transfer of business occur?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:  
20 Chair if I recall they were roughly a year apart and if memory serves it was 2008 and 2009 the two transactions.

ADV PAUL JOSEPH PRETORIUS SC: Just bear with me a moment  
Chair.

CHAIRPERSON: So you say the two transactions occurred in 2008/2009?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

That is right Chair.

CHAIRPERSON: That kind of time. That is the purchase of Arivia.com by T-Systems and the purchase of Transtel by Neotel Pty Limited?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

That is correct Chair.

CHAIRPERSON: Okay thank you.

ADV PAUL JOSEPH PRETORIUS SC: Let us move to paragraph 6 then of your statement if we may? There you talk of the period 2007  
10 January to December 2014. That is the period which is covered by your evidence, am I correct?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: And three contracts or – well at least three contracts we will discover are relevant for your evidence during this period. What are those contracts?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

Chair the three relevant contracts are the 2007 Master Services Agreement between Transnet and Neotel. The second transaction was  
20 the procurement of Cisco equipment and lastly the 2004 Master Services Agreement between Transnet and Neotel and linked to that the asset buy back agreement.

ADV PAUL JOSEPH PRETORIUS SC: Alright. Now we need to understand then how Cisco becomes relevant.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

Sure.

ADV PAUL JOSEPH PRETORIUS SC: And we need to understand what Master Services Agreements you referring to. Remember you have just told the Chair that these business were transferred from Arivia and...

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:  
Transtel.

ADV PAUL JOSEPH PRETORIUS SC: Transtel. I think you mentioned 2009 but in 6.1 we talking about a 2007 Master Network Services Agreement.

10 MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: Ja then I am probably mistaken. I know it expired on 2000 – 31 March 2013 if I recall and so it is probably correct then Chair I beg your pardon it is 2007 there or there about it appears yes.

ADV PAUL JOSEPH PRETORIUS SC: Alright. So we may have to correct that?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:  
Yes. I will – I can double check the date.

ADV PAUL JOSEPH PRETORIUS SC: The precise date for the agreement in 2007 or 2009. In paragraph 6.1. But what Master  
20 Services Agreement was that?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: So Chair as part of the sale agreement of the network assets to Neotel there was a five year Master Services Agreement which enabled Neotel to provide services to Transnet, network services to...

ADV PAUL JOSEPH PRETORIUS SC: Sorry just before you go on that

Neotel purchasing Transtel?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

That is correct.

ADV PAUL JOSEPH PRETORIUS SC: The network?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Okay. Just go on please.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: So  
the link to that sale agreement was a five year Master Services  
10 Agreement which allowed Neotel to provide services back to Transnet  
at obviously a cost just to sweeten the deal then to make it worthwhile.

ADV PAUL JOSEPH PRETORIUS SC: So the business of Transtel goes  
to Neotel.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Plus the assets?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

That is correct.

ADV PAUL JOSEPH PRETORIUS SC: But Neotel must now continue  
20 providing the services and using these assets for the benefit of  
Transnet?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

That is correct.

ADV PAUL JOSEPH PRETORIUS SC: And those obligations or the  
obligations relevant to that particular transaction are contained in the

Master Service – Master Network Services Agreement referred to in paragraph 8.1, am I correct?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

That is correct Advocate.

ADV PAUL JOSEPH PRETORIUS SC: Then the Cisco equipment. Now we are going to have to take a step back here because Cisco becomes important in your evidence. At a stage it must have been contemplated prior to the Master Services Agreement being entered into that you refer to in paragraph 6.1 that the life of Transtel is going to come to an  
10 end and Neotel is going to step into its shoes, is that correct?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

That is correct.

ADV PAUL JOSEPH PRETORIUS SC: It was also contemplated that a business would go to T-Systems?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

Advocate are you referring to the 2014 agreement or the 2007 agreement?

ADV PAUL JOSEPH PRETORIUS SC: Now I am talking about the 2007 agreement. I just want to introduce Cisco.

20 MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

Chair I think that was more linked to the 2014 agreement.

ADV PAUL JOSEPH PRETORIUS SC: Well...

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: Or the expiration of the 2007 if that is – if I am understanding you correctly.

ADV PAUL JOSEPH PRETORIUS SC: Yes. So at a time the contract between Transnet and Neotel that had been entered into in 2007 or 2009 would expire?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Correct.

ADV PAUL JOSEPH PRETORIUS SC: That was the Master Services Agreement you refer to in 6.1?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That is correct Chair.

- 10 ADV PAUL JOSEPH PRETORIUS SC: Right and at the time the Chair has been told and will learn again that it was contemplated under the management really or series of decisions made by amongst others Mr Brian Molefe that that whole business would go to T-Systems?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Right and of course the assets underlying that business all the cables and the switches you have talked about and the routers they would have to then go to T-Systems in order for the business of Transnet to continue. Am I correct?

- 20 MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That is correct Chair. They need assets to provide the service.

ADV PAUL JOSEPH PRETORIUS SC: And you have already told the Chair that all those assets had been bought five years earlier by Neotel?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That is correct.

ADV PAUL JOSEPH PRETORIUS SC: They belong to Neotel?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Yes.

ADV PAUL JOSEPH PRETORIUS SC: But there were problems. What was the essential issue? Was Neotel willing simply to hand these over to the new incumbent?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Chair no they – they were not.

10 ADV PAUL JOSEPH PRETORIUS SC: T-Systems.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: We did engage with Neotel and they formally advised me that these assets were securitised or they have – their lenders – they could not sell these assets because they have borrowed money and these assets were securitised.

ADV PAUL JOSEPH PRETORIUS SC: In other words belonged to the bank?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Correct.

20 CHAIRPERSON:

ADV PAUL JOSEPH PRETORIUS SC: Pledged to the bank?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Yes.

ADV PAUL JOSEPH PRETORIUS SC: Pledged or under what – ceded or whatever contract that was but they could not be sold to Transnet or

to T-Systems because the bank had them?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

(intervenes).

ADV PAUL JOSEPH PRETORIUS SC: In simple terms?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: Yes  
Chair.

ADV PAUL JOSEPH PRETORIUS SC: Alright and there was a – an  
exclusivity clause in the arrangement – the 2007 or 2009 Master  
Service Agreement between Transnet and Neotel. What was that?

10 MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Chair so what that exclusivity clause basically forced Transnet to do is  
any network equipment that we would need to buy whether it be routers  
which is fibre we have to buy from Neotel.

ADV PAUL JOSEPH PRETORIUS SC: Right. Transnet would ...

CHAIRPERSON: I am – I am sorry Mr Pretorius. I take it that it follows  
from that – that decision that even if there was somebody else who had  
what you were looking for if Neotel had it then you were bound or  
Transnet was bound to get it from Neotel?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

20 That is correct Chair.

CHAIRPERSON: Yes, okay.

ADV PAUL JOSEPH PRETORIUS SC: But Neotel was not the supplier.  
The original equipment manufacturer of the relevant equipment now  
needed by Transnet and now needed to be used by T-Systems.  
Perhaps you should just explain to the Chair the vulnerability that was

experienced by Transnet because remember under the 2007 MSA – Master Services Agreement – all its infrastructure from an electronic communications point of view was now owned by a service provider?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That is correct Chair. So due to the decision to award the business to T-Systems that you have heard about that would have entailed a network transition from Neotel to T-Systems. I think like the advocate has articulated all those assets were owned by Neotel and they were not willing to sell them. So it was almost impossible for any other  
10 service provider to provide the services unless they lease or buy those assets from Neotel or if we replace the assets. The effort and cost to replace those assets would have been astronomical and was almost not an option. So – and we also had a fairly short period of time to transition the network from Neotel to T-Systems. So we were being proactive and we in discussions with Cisco and Neotel T-Systems realised that a lot of the equipment was approaching end of life and end of software support. So we decided to buy that equipment through Neotel at that point due to the exclusivity clause and to start installing that equipment to pull the transition forward or to make it slightly  
20 possible to transition the network from Neotel to T-Systems.

ADV PAUL JOSEPH PRETORIUS SC: Now the supplier of this necessary equipment for the business of Transnet to continue from an electronic communications point of view who was that supplier?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: It was Cisco Chair.

ADV PAUL JOSEPH PRETORIUS SC: So Cisco had to supply the equipment but it had to go via Neotel to Transnet?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Because as I understand your evidence Transnet decided no longer must a supplier or a service provider own our equipment. We must own it?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That – that is ...

10 ADV PAUL JOSEPH PRETORIUS SC: That is what Transnet decided. Is that not so?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That – that is correct advocate.

ADV PAUL JOSEPH PRETORIUS SC: So Transnet had to buy it but via Neotel from Cisco?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Correct.

ADV PAUL JOSEPH PRETORIUS SC: And there were various pricing arrangements relevant to these transactions about which you are going  
20 to testify?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Perhaps you can explain one thing to the Chair. It seems rather bizarre. You talk about 9 000 kilometres of cabling – network cabling – buried beneath the tarmacs in

the ports for example. This cabling is owned or was for a period owned by the service provider Neotel. Did that make sense?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: In my opinion Chair it did not make sense. I thought it exposed Transnet to significant risk.

ADV PAUL JOSEPH PRETORIUS SC: Right. Could Transnet just not say there is the cabling under my tarmacs and my ports we are just going to use it?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

- 10 Chair well it is not that easy because Neotel can switch off our network effectively, block IP addresses and technical things like that to prohibit us from using that infrastructure.

ADV PAUL JOSEPH PRETORIUS SC: So in other words you were extremely vulnerable?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: We were a captive client – extremely vulnerable.

ADV PAUL JOSEPH PRETORIUS SC: You were a captive client?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That is correct advocate.

- 20 ADV PAUL JOSEPH PRETORIUS SC: And your bargaining position in relation to any change of this arrangement was that strong, weak?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: It was particularly weak.

ADV PAUL JOSEPH PRETORIUS SC: Right.

CHAIRPERSON: And how long was the period during which this – this

network was owned by Neotel?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Chair so they owned it for five years as part of that first Master Services Agreement ...

CHAIRPERSON: (Intervenes).

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: And we will get to it a bit later but we then – there was an agreement for us to buy back ...

CHAIRPERSON: Ja.

10 MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Relevant portions of those assets.

CHAIRPERSON: Okay.

ADV PAUL JOSEPH PRETORIUS SC: So that is the agreement you refer to in paragraph 6.2 – Procurement of Cisco Equipment – the Cisco transaction. Correct?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That is correct.

ADV PAUL JOSEPH PRETORIUS SC: And we have described how that came about and given some background to enable us to understand the  
20 evidence you give in relation to that later. Is that correct?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Let us just do the same exercise briefly in relation to 6.3. That is the 2014 Master Network Services and Asset Buyback Agreement.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Chair so like I mentioned there was a five year agreement referred to as the 2007 Master Services Agreement between Transnet and Neotel. That was reaching expiration date and we had to go through a process to on-board a whether it is the new or a different or with the same supplier for another period of three to five years. So it was really a new contract for the ICT Network Services.

ADV PAUL JOSEPH PRETORIUS SC: Alright but now as the Chair has been told by previous witnesses and you will repeat it and give some  
10 detail as to what happened in these transactions and 2014 for a period of time at least Neotel was to lose this contract. Is it correct?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That is correct.

ADV PAUL JOSEPH PRETORIUS SC: And the contract was to go to T-Systems?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Right. Now quite apart from what would happen to all the assets and infrastructure between Neotel  
20 and T-Systems we can park that for the moment but T-Systems at a time fell out of the picture. Correct?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Correct.

ADV PAUL JOSEPH PRETORIUS SC: Neotel came – comes back on-board. This is in 2014 but as you say at this time Transnet is aware

of its extreme vulnerability if it does not own the infrastructure and the assets which Neotel now is going to operate or continue to operate?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That is correct advocate.

ADV PAUL JOSEPH PRETORIUS SC: Correct. So what does it decide to do?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: So I think advocate if I understand you correctly so the strategy for Transnet was to repurchase whether from Neotel or new all the assets in what we  
10 refer to the Transnet Campuses to alleviate that risk.

ADV PAUL JOSEPH PRETORIUS SC: So now Neotel is going to come back on-board. It is going to continue to provide the services but Transnet says look we are too vulnerable if you Neotel continue to own the assets. We want to own the assets. We want to buy back the assets which we sold to you in 2009 or around that time?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That is correct. So that we will not ...

ADV PAUL JOSEPH PRETORIUS SC: Okay.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

20 Continually be a captive client.

ADV PAUL JOSEPH PRETORIUS SC: And that is the buyback that you going to refer to in your – in your evidence?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That is correct advocate.

ADV PAUL JOSEPH PRETORIUS SC: Okay and that buyback was

related to a 2014 Master Network Services Agreement?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That is correct.

ADV PAUL JOSEPH PRETORIUS SC: You were integrally involved in the negotiation of that agreement?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: Yes I was.

ADV PAUL JOSEPH PRETORIUS SC: And that much of your evidence is going to speak to the conclusion of and the negotiations preceding  
10 that agreement?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Yes.

ADV PAUL JOSEPH PRETORIUS SC: Right. Alright so let us then – we can then go through your – by way of background there may be some repetition but Chair I think it was important to deal with that background. Let us go to paragraph 7. In fact I am told by my junior that the date December 2007 is indeed correct. So what do you say to paragraph 7 of your statement?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: So  
20 Chair what I am effectively saying in paragraph 7 is that the agreement was concluded in December 2007 but effective 1 April to 31 March 2013.

ADV PAUL JOSEPH PRETORIUS SC: So from effective 1 April 2008 until 31 March 2013 a five year agreement Neotel having taken over from Transtel as you have told the Chair is now bound by a five year

agreement?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Correct.

ADV PAUL JOSEPH PRETORIUS SC: Signed in December 2007?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Yes.

ADV PAUL JOSEPH PRETORIUS SC: But it now owns all the assets and it is performing the functions?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

10 That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Good and that you say in paragraph 8 and you make the point which you have already made to the Chair that after the sale of Transtel to Neotel in 2007 Transnet found itself in the unenviable position where its IT Network upon which it relied completely for the conduct of its business was owned and managed by Neotel as an external service provider/

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That is correct advocate.

20 ADV PAUL JOSEPH PRETORIUS SC: That – that evidence you have given by way of background to the Chair.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Advocate and if I can just make one correction there. You will see I have mentioned before in that paragraph these two processes ran concurrently - the sale of the assets as well as the five year Master Services Agreement.

ADV PAUL JOSEPH PRETORIUS SC: Were they contained in separate agreements?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

From what I can recall they were.

ADV PAUL JOSEPH PRETORIUS SC: Okay but they would have obviously have run – run parallel because the one clearly depended on the other. You could not have a services agreement without owning the assets ...

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

10 Correct.

ADV PAUL JOSEPH PRETORIUS SC: Or without access to the assets at least?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Good. Alright and then at paragraph 9 you again - it is not central to your evidence but it may come up later so it is as well to place on record now – that Transnet knew that the 2007 Master Services Agreement was due to expire in March 2013. That is the Neotel Agreement. Is that correct?

20 MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That is correct.

ADV PAUL JOSEPH PRETORIUS SC: And so what did it do?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: So Chair we acquired the services of a company called Detecon to assist us with a strategy to – as to how we should go whether we should go to

market and how we should approach it taking into consideration some of these complexities and the asset ownership.

ADV PAUL JOSEPH PRETORIUS SC: Right and was a strategy developed?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: It was advocate.

ADV PAUL JOSEPH PRETORIUS SC: Was it approved by the Board?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: It was ...

10 ADV PAUL JOSEPH PRETORIUS SC: Transnet Board?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: It was approved by the Board Acquisition and Disposals Committee - from what I recall.

ADV PAUL JOSEPH PRETORIUS SC: Right. Were the services of another consulting firm employed at the time?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: Yes advocate. We employed Gartner who assisted us throughout the tender process and the conclusion of the MSA.

ADV PAUL JOSEPH PRETORIUS SC: Right. Just a small formality.

20 You can address the Chair rather than ...

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:  
Sure Chair.

ADV PAUL JOSEPH PRETORIUS SC: When you answer the question. So what was the intention of Transnet given the pending expiring of the 2007 Master Services Agreement?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Chair so the options open to us was either to extend that contract or go to market to find whether it be the same or a different service provider but ultimately to get a new five year or three to five year agreement in place.

ADV PAUL JOSEPH PRETORIUS SC: Right and the processes talked about in paragraph 9 with the two consulting entities were these rapid processes quickly finalised? Did they take time?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

10 Chair the Detecon process was reasonably rapid. Where – like I said – the Gartner process extended all the way from assisting us with the RFP documents going to market, negotiation of the Master Services Agreement. So that was a multi project.

ADV PAUL JOSEPH PRETORIUS SC: And what did this necessitate – this delay?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: So ...

ADV PAUL JOSEPH PRETORIUS SC: Because the Neotel Contract is about to expire remember?

20 MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: Ja.

ADV PAUL JOSEPH PRETORIUS SC: So what had to happen?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: So we had to agree on a strategy whether we want to renew that Neotel Contract or whether we want to go to market and – so that was – and we also had to do the documentation for the – the RFP.

ADV PAUL JOSEPH PRETORIUS SC: Yes but in the meanwhile whilst all this decision making is taking place the contract is about to expire?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Correct.

ADV PAUL JOSEPH PRETORIUS SC: So was that – what happened to that contract in the interim period?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: So Chair that necessitated multiple extensions of that original five year Master Services Agreement with Neotel.

10 ADV PAUL JOSEPH PRETORIUS SC: The first extension was for how long?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Chair the first extension was from 1 April 2013 to 30 August 2013 a five month extension.

ADV PAUL JOSEPH PRETORIUS SC: Second extension?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: The second extension was from 1 September 2013 to 31 October 2013.

ADV PAUL JOSEPH PRETORIUS SC: And the third extension?

20 MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: And the third extension was from 1 November 2013 to 31 October 2014.

ADV PAUL JOSEPH PRETORIUS SC: The first extension you say in paragraph 10 was approved by the Board although a longer extension had been asked for?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: The second and third extensions did those come much later down the line?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

They did Chair.

ADV PAUL JOSEPH PRETORIUS SC: Were they also approved by the Board at a later stage?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: All the extensions were approved by the relevant authority whether it was the Board or the Board Acquisitions and Disposals Committee yes.

10 ADV PAUL JOSEPH PRETORIUS SC: Right. Just if you would have regard to the contents of paragraph 11 of your statement and if you feel it necessary tell the Chair about the contents of that statement – in that paragraph.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Chair the ICT Management Team were extremely concerned around the proposed short term extension of this contract because we knew if we had to go to market that process is normally a six month process if you are lucky. If we then conclude with a new bidder a transition – well firstly we will need to enter into a new Master Services Agreement and  
20 all the items attached to that which - that again is probably a six month process and you would then have to go through a transition from the current provider to the next provider. So we recommended a 21 month extension to the Board Acquisitions and Disposals – well to our Executive Committee at the time. They then only proposed a 15 month extension to the Board Acquisitions and Disposals Committee who only

suggested a five month extension to the Board. So we were very concerned about that.

ADV PAUL JOSEPH PRETORIUS SC: Alright. Ultimately however to the extent necessary other witnesses may testify to that we have just flagged that issue for the moment. We need not go any further.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That is correct.

ADV PAUL JOSEPH PRETORIUS SC: In paragraph 12 to paragraph 17 of your statement you traverse evidence already given by principally  
10 Ms Sharla Chetty or Sharla Pillay. That evidence was given last week.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: It is not necessary therefore to repeat that evidence in any detail but for the purpose of now placing your evidence in context can we just go through very quickly the steps taken on the expiry of the 2007 MSA between Transnet and Neotel and the appointment of T-Systems to take over that business. Now your evidence is substantial in relation to the events surrounding the award to T-Systems and how that arose but to put it in context what do you  
20 say in paragraph 12? What happened in 2013? Now remember the MSA is coming to an end, right. So there is a decision to issue a request for proposals and RFP to initiate a tender process to bring on-board a new service provider. Correct?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Right and that authority appears in a memorandum from Mr Anoj Singh and Mr Garry Pita to the Group Chief Executive Brian Molefe or at least the request for that authority ...

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That is ...

ADV PAUL JOSEPH PRETORIUS SC: The background to that authority?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

10 That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Right and at that time Mr Garry Pita was the Head of Group Strategic Sourcing and he reported to Mr Anoj Singh in the latter's capacity as Group Chief Financial Officer. Correct?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: And that request to initiate a procurement process to replace or reemploy Neotel was approved by Mr Brian Molefe. Am I correct?

20 MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That is correct.

ADV PAUL JOSEPH PRETORIUS SC: What capacity did he hold at that stage when he approved it?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Mr Molefe was the Group Chief Executive at the time.

ADV PAUL JOSEPH PRETORIUS SC: And what powers did he have in relation to procurement because we have learnt about the BADC – the Board Acquisitions and Disposals Committee?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Chair so we had delegation of authority with various levels. So the GCE would have had authority to – to approve transactions up to a certain point. Thereafter it would need to go to the Board Acquisitions and Disposals Committee and for higher value items it would need to go to the Board of Transnet.

10 ADV PAUL JOSEPH PRETORIUS SC: Chair - may we take a short adjournment and may I see you in chambers please?

CHAIRPERSON: Yes. How much time do you think?

ADV PAUL JOSEPH PRETORIUS SC: Hm.

CHAIRPERSON: Should we just take the tea break.

DV PAUL JOSEPH PRETORIUS SC: I am not sure. If we could take the tea break now please.

CHAIRPERSON: Yes. Let us – let us say 15 minutes up to 10 past.

ADV PAUL JOSEPH PRETORIUS SC: Thank you Chair.

CHAIRPERSON: The tea might not be ready. We will take the tea  
20 break until 10 past 11. Adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Well we are grateful Ms September that you were here so you can take over. Mr Pretorius is not well and has had to be

released but Ms September is familiar with the matter and she will take over. Ms September are you ready?

ADV VERUSCHKA SEPTEMBER: Yes I am Chair.

CHAIRPERSON: Thank you.

ADV VERUSCHKA SEPTEMBER: Thank you. Mr van der Westhuizen before the short adjournment we were at page four of your statement and in particular it was placed on record that the evidence that you've recorded from paragraph 12 to paragraph 17 has in fact already been dealt with by a previous witness, that being Ms Sharla Pillay, who is  
10 now Chetty, is that correct?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That's correct.

ADV VERUSCHKA SEPTEMBER: Is it also correct that it was in fact Ms Chetty, Mrs Chetty sorry, who had in fact approved the award in her acting capacity as General Chief Executive at that particular point in time?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That's correct.

ADV VERUSCHKA SEPTEMBER: If we can then go to paragraph 18 of  
20 your statement, it is understood that T-Systems, at the time filed its bid, not independently but instead as a joint venture. Can you please give the Chair details in relation to the constitution of such joint venture?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Sure, Chair so the bid by T-systems was a joint bid between

themselves, T-Systems as well as a company called Broadband Infraco also known as BBI which was a State-owned company at the time.

ADV VERUSCHKA SEPTEMBER: And at that – and in regard to Broadband Infraco what were the assertions made that Broadband Infraco could benefit the transaction by pairing up with T-Systems?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: Well Chair, T-Systems didn't own a significant at the time so they would need additional infrastructure assets which is why they partnered, I believe with Broadband Infraco.

- 10 ADV VERUSCHKA SEPTEMBER: Chair Broadband Infraco is in fact an entity which will feature prominently when all the evidence is, in fact, placed before you. Salim Essa, in particular was a Non-Executive Board member of Broadband Infraco and he was appointed as such by the then Minister Malusi Gigaba. If you can now turn to page six of your statement, paragraphs 19, 20 and 21 is also evidence that was placed before this Commission by Ms Sharla Chetty.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: That's correct.

- 20 ADV VERUSCHKA SEPTEMBER: In the context of Ms Sharla Chetty having signed off the memorandum, which duly approved the issuance of the letter of intent, to award the Network Services contract to Neotel, was her signature necessary to complete the procurement process at all?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: Chair, so at the time the Board Acquisition and Disposal Committee

delegated its authority to the Group Chief Executive to conclude the transaction which, in this specific scenario, was Sharla Pillay, now Chetty, so yes it was.

ADV VERUSCHKA SEPTEMBER: So where was the Group Chief Executive at that time?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:  
Chair my understanding is that Mr Molefe was abroad at the time.

ADV VERUSCHKA SEPTEMBER: So, then it's correct to say that her signature, in fact, completed the procurement process in this regard?

10 MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:  
Yes.

ADV VERUSCHKA SEPTEMBER: So, to put this into context in relation to the 2007 MSA agreement which was due to expire in 2013, it is understood that when Ms Chetty – Mrs Chetty sorry, had in fact approved the awarding of the bid, letters of intent and letters of award needed to have been sent out?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:  
That's correct.

20 ADV VERUSCHKA SEPTEMBER: What exactly happened once Mrs Chetty had made that approval to award the Network Services contract to Neotel?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:  
Chair, so we were quite eager to get the documents back from Sharla at the time because our contract expired on 31 October 2013, I think it was the second extension and any expenditure post that date, we would

be out of contract and in terms of the Public Finance Management Act it could be irregular expenditure. So Sharla sent the mail back to us, I can't remember exactly who, but I remember that I had sight of it, with all the signed documents and I then followed up with procurement who oversaw and managed the process to confirm that they will send this to the relevant parties so that we are not out of contract from the next day. I then received a phone call, if I recall, from Mr Pita or an email stating that he's been instructed not to issue the documents ...(intervention).

10 ADV VERUSCHKA SEPTEMBER: And is that Mr Gary Pita?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That's correct, that's Mr Gary Pita.

ADV VERUSCHKA SEPTEMBER: And he held the position of what at that time?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Gary was the Group Chief Supply Chain Officer at the time.

ADV VERUSCHKA SEPTEMBER: Thank you, please proceed.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

20 Sure, and the feedback that he gave me Chair, is that, Mr Singh requested that he does not issue those documents on request from Mr Molefe whose abroad and he would like to review the documents personally.

CHAIRPERSON: So, you got this call and from what you were told by Mr Gary Pita, Mr Brian Molefe had given this instruction whilst still abroad, as you understood the position?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That's correct Chair.

CHAIRPERSON: Okay.

ADV VERUSCHKA SEPTEMBER: So is it then correct that the proper procurement process was followed up and until the stage of Mrs Chetty appending her signature to award the contract to Neotel?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Yes.

ADV VERUSCHKA SEPTEMBER: And it is also then correct, based on  
10 your evidence that pursuant to that process the letters of intent in alignment with that process were not sent on the instruction of Mr Brian Molefe.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That's correct.

ADV VERUSCHKA SEPTEMBER: What then happened during November 2013, following the occurrence of these events?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Chair we were called to a meeting subsequent to Mr Molefe's return and we were called to the 49<sup>th</sup> floor which is the floor which his offices  
20 were at and... (intervention).

CHAIRPERSON: And who was we – who were we?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Apologies Chair, so we were, myself, Mr Anoj Singh, Mr Edward Thomas who was in Supply Chain at the time and the Chief Information Officer, Dr Matsika Matawane, there could have been others Chair, but I

recall those individuals were at the session.

ADV VERUSCHKA SEPTEMBER: And if I may, is this the meeting you referred to that happened in November of 2013, paragraph 23 of your statement?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: It is.

ADV VERUSCHKA SEPTEMBER: Thank you.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:  
Chair we arrived at Mr Molefe's office and we, from what I recall, were  
10 greeted by his personal assistant to ask us to leave our cell phones at  
her desk, which I find peculiar because I have met in his office before  
and I wasn't requested to leave my cell phone at his personal  
assistant's desk but regardless so we all handed it in and we went into  
his office and we had a meeting. Upon us all sitting down around Mr  
Molefe's table, I remember he was quite relaxed and he – if I recall his  
words correctly he said we can't give this thing to Neotel there's too  
much concentration risk. I then...(intervention).

CHAIRPERSON: Sorry Before you do that – before you proceed you  
have mentioned some of the people whose names you can remember  
20 who attended that meeting, apart from those people, from Mr Molefe's  
side, was he alone?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: He was alone Chair.

CHAIRPERSON: Okay thank you. So he said there's too much concentration we can't give this to Neotel, ja.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Chair upon that statement I then enquired, from what I recall, well exactly who he would like to give it to then because if you look at the process and the tier report that you've seen that we've recommended Dimension Data was the second preferred – or the second-best bidder and T-Systems and Broadband Infraco was the third bidder. Mr Molefe was then of the view that the 240million, which again, I believe you've seen but happy to elaborate on it if I need to, we should include in the process which would then imply that T-Systems, Broadband Infraco  
10 would be the second best bidder and due to this concentration risk that Mr Molefe articulated that the tender should then go to the second-best bidder, which in his mind was T-Systems and Broadband Infraco.

ADV VERUSCHKA SEPTEMBER: What exactly is concentration risk?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Chair, so concentration risk from my understanding of what Mr Molefe articulated was the fact that Transnet was Neotel's largest client and if something should go wrong with Neotel for whatever reason, that Transnet would be exposed to quite a big risk.

CHAIRPERSON: So in other words, did you understand the concern  
20 he was expressing as meaning that the – this tender should be given to somebody else so as to bring in some diversification?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Chair I understood his concern but I thought the argument was a logical fallacy, it was irrelevant.

CHAIRPERSON: Yes okay.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

The reason I state that Chair, is because, like advocate Pretorius took us through earlier, the Data Centre that Transnet used was outsourced to T-Systems. So, by giving T-Systems the Data Centre and now you bundle your network with that, in my mind would increase the concentration risk not mitigate the risk, so that's why I didn't quite understand that and I provided that feedback to Mr Molefe.

CHAIRPERSON: Oh you expressed your view?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

10 Absolutely Chair.

CHAIRPERSON: And what was his response?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: He didn't respond Chair, he looked up and I could note that his polite, relaxed demeanour was starting to change. He then proceeded to his second point Chair, which was...(intervention).

CHAIRPERSON: Sorry let me get that last bit, did you say he had been polite to you but that seemed to change?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: It was very informal and relaxed when we started the meeting Chair and  
20 after I now ...(intervention).

CHAIRPERSON: Expressed a different view.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: I could see that he was becoming less relaxed so to speak.

CHAIRPERSON: Yes Okay, alright thank you.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: He

then mentioned to us that he had received a letter, I think it was Nexus which was one of the Neotel BBEE subsidiaries or affiliates and that they expressed a view that Neotel was busy diluting their shareholding and they were particularly concerned about this. I can't recall that I've seen that letter or heard anything about it at the time, so again I articulated that it may or may not be a real issue but I suggest that we investigate that issue and at least give Neotel the opportunity to respond, should it be a real risk and to pose their side of the story, Chair. Again, Mr Molefe did not take kindly to the objections, he again  
10 did not respond, from what I recall and he just looked up at me with a glare in his eyes which made me realise at that point, if I continue with this objections it was not going to end well for me Chair. So, at that point...(intervention).

CHAIRPERSON: So you got the impression that he was not, to say the least, happy with these views you kept on expressing.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:  
That's my view Chair, yes.

CHAIRPERSON: Okay.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:  
20 So, upon that realisation I decided to get back in my box, so to speak, and not object to any further items. Mr Molefe did then raise a couple of other items, from what I recall, and its all captured in that memorandum around information security and CCTV issues that we experienced at the time, that is the crux of that meeting Chair.

CHAIRPERSON: What about the other people that were in the room,

did they express any views did anybody support the views you expressed that you have articulated now?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Chair I can't recall that anyone had the same level of objection that I had, they were reasonably quiet from what I can recall, so I did feel a bit isolated in the session.

CHAIRPERSON: Yes, and in respect of other issues other than those on which you expressed views, did other people in the room express views, either in support of whatever Mr Brian Molefe was saying or  
10 against?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Chair I can't recall that they either disputed or objected nor supported Mr Molefe.

CHAIRPERSON: Oh okay, alright, thank you.

ADV VERUSCHKA SEPTEMBER: In summary then, you took issue with – you raised objection rather to the three main reasons that Mr Molefe advanced to not award the contract to Neotel.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That's correct.

20 ADV VERUSCHKA SEPTEMBER: The first...(intervention).

CHAIRPERSON: I'm sorry maybe, I don't know, it's up to you two to answer yes or no or whatever way, I'm not sure whether you were objecting as opposed to simply expressing your own view which happened to be different from Mr Brian Molefe's view, there's a distinction between objecting and expressing a different view.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: Ja Chair so I'm not going to pretend to know exactly what the difference is but I definitely expressed a view that was different from Mr Molefe's.

CHAIRPERSON: Okay I mean if you object it's much more – it's like – I think it's much more stronger whereas you can express a different view without saying you're objecting particularly the person to whom you are talking maybe had the final authority to decide one way or another, you might say, well here is my view, what do you make of – what you do with it is your own decision but this is my view another  
10 approach is to say, I do object, you know, irrespective of what you might say I am objecting. So, I'm just mentioning that so that you appreciate that there can be a difference, sometimes the difference might not be important but...(intervention).

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: Chair so based on that explanation, I expressed my view because Mr Molefe had the final decision, so whether I objected or not was not going to carry any weight so.

CHAIRPERSON: Okay thank you.

ADV VERUSCHKA SEPTEMBER: Thank you Chair. In regard to the  
20 three main reasons then, the one reason which Mr Molefe had advanced concerned the 248million discount that was offered by T-Systems, can you just unpack this particular discount for the benefit of the Commission and in particular the timing of considering this discount?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Sure, Chair, so I was present in most if not all the RFP sessions and I pretty much led all of them and I recall, during the process that I made it extremely clear that our best and final offer was on the Thursday before – a particular Thursday, and we can check the dates Chair, so I recalled mentioning it over and over and over and checking that all the bidders understood it, which I'm sure they did. Post to receiving all the pricing back from the bidders there were – some included mobilisation fee and some did not so we just wanted to clarify that.

ADV VERUSCHKA SEPTEMBER: Can you just clarify what is  
10 mobilisation fee please?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:  
Yes, Chair it was referred to as mobilisation or transition fees, so as part of the 2007 Master Services Agreement there were certain service level agreements or SLA's linked to that agreement. Subsequently the world has changed and Transnet wanted stricter Service Level Agreements to give you an example we wanted redundancy so that if a network line goes down that there is another line and the port isn't down from a network perspective, things like that. So, in order for Neotel to transition or whoever the bidder would have been from Neotel  
20 to transition two, that level of service, there would have to be an investment, additional fibre lines, additional networks, switches and routers and those kinds of things. So that's what I refer to as the transition cost or – ja.

ADV VERUSCHKA SEPTEMBER: So, to not over simplify mobilisation fee, it's essentially the cost of hand-over from one service

provider to another?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

And increased service levels should it – should the current income at Neotel remain the service provider, yes.

ADV VERUSCHKA SEPTEMBER: Thank you, coming back to the discount of 248million, was it an appropriate time in the process for this discount to be considered at consideration for the award of the bid?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

- 10 Absolutely not in my opinion Chair, like I said, I made it very clear that the best and final offers had to be submitted on a certain date, which they were, subsequently there was a clarification session with T-Systems and Broadband Infraco, there was a – it was multiple people present at this meeting. There was a gentleman, however, that represented Broadband Infraco, I can't recall his names though, it wasn't Mr Essa though, that I know as a fact. He then indicated to us that due to the short timeline they couldn't meet with their minister or their shareholder which is the DPE shareholder, in time, and they managed to meet with the shareholder over the weekend and the
- 20 shareholder that they would be willing to invest an additional amount of 248million rand into this process. I then clarified and said, okay so what does that mean, does that mean that we can reduce your price with 248million, absolutely they said but it was post the best and final offers. So, if we should have even considered including that, which we did not, my view is that we should have at least given the other bidders

a similar platform to give us a view if they were happy with their pricing, because effectively now there's a second best and final offer but that opportunity, from what I recall, was only to T-Systems and Broadband Infracore.

ADV VERUSCHKA SEPTEMBER: And the other bidders were not afforded opportunity?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:  
Not that I can recall, Chair, no.

ADV VERUSCHKA SEPTEMBER: Did Mr Brian Molefe have the  
10 authority to change the process that was being followed?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:  
Chair, so I think this enjoyed some attention last week from a few legal minds, I think including Mr Volmink. In the memorandum that we've attached it does appear that there are certain leniencies and that, potentially, Mr Molefe could disagree based on risk but there was a certain process to be followed.

ADV VERUSCHKA SEPTEMBER: And what was that process please?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:  
Chair from what I recall from the documents, and we can go there if we  
20 need to, the GCE had to revert back to the Committee that you recommended that the bidder, to re-submit and re-assess. Like I said we had a meeting but in my mind that was certainly not a consultation nor a request for us to go back and reconsider, it was pretty much an instruction. So, I don't believe, in my opinion, that, that process was followed.

ADV VERUSCHKA SEPTEMBER: Do you understand...(intervention).

CHAIRPERSON: Well I'm sorry in relation to that aspect and that part of the, I think manual, the witness who gave evidence, I think, on Friday I asked her whether that procedure in terms of which the decision maker is supposed to go back to, I think, what are called recommending officials or officers, I asked her whether that procedure applies before a decision is made, so in other words when there are only recommendations from a lower structure before the person who has the power to make the decision, makes the decision, if he or she  
10 thinks, I see this recommendation that I should award this tender to A but I actually think it should go to B or C or I don't think it should be awarded to A, whether that's the process – that's when this procedure applies or whether it does apply when a decision has already been taken. Now when I asked her that question, she said, if I recall correctly, it applies before a decision is taken but much earlier in her evidence I had also asked her the question, whether, where a decision has already been taken, the person who took the decision or the person occupying that position can later on seek to change it and my understanding is that she said, yes in certain circumstances it could be  
20 done and she, I think said, if, for example something has arisen that was not foreseen or something like that. So that was as I recall the sum total of her evidence on this aspect, so I don't know what your own understanding is.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Chair so I would concur with Mrs Chetty's view, so the question then is,

was this – so she approved the process, I think, like we've confirmed before. To what extent Mr Molefe shared that view because of the documents were not distributed I don't know but nothing in my mind happened post the approval from Mrs Chetty to the turnaround, if you will, from Mr Molefe. I mean if Neotel went into liquidation or something like that, I could understand that something material has happened that will impact their ability to deliver the services and like I said nothing to that happened in my mind. So, number one, he probably couldn't have or nothing like that occurred and if something  
10 did occur, again he would have to revert back to the Committee that you referred to or the recommending officers which, again, in my mind did not happen.

CHAIRPERSON: So, would you say that there is a procedure in terms of which the decision maker may go back to the recommending committee or officials where he or she thinks – he or she doesn't agree with their recommendation but that there is also provision or – there's also provision for an award to be changed if there are certain circumstances such as the one you have cited, namely liquidation and so on?

20 MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:  
Chair in my opinion yes, there would be a procedure like that for examples like I've noted.

CHAIRPERSON: For both situations, in other words, both procedures exist as far as you understood the position namely the procedure before a decision is taken, if the decision maker thinks he or she

doesn't agree with the recommendation from the recommending officials he or she is required to go back to them and raise his or her concerns before making the decision but apart from that situation too, if a decision has been made and certain circumstances arise that were not foreseen, the decision maker can re-look at the whole thing.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Yes Chair.

CHAIRPERSON: That's what you're saying, okay thank you.

ADV VERUSCHKA SEPTEMBER: In that regard then can I take you  
10 to Exhibit Bundle BB7(b) on page 331.

CHAIRPERSON: The divider is number what?

ADV VERUSCHKA SEPTEMBER: It is Annexure K2 and it begins on  
page 331.

CHAIRPERSON: Oh okay, thank you, yes.

ADV VERUSCHKA SEPTEMBER: Do you recognise this – do you  
recognise this document?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: I  
do Chair.

ADV VERUSCHKA SEPTEMBER: For the record it is a memorandum  
20 that has been – that is from Brian Molefe, Group CE to Anoj Singh  
Group Chief Financial Officer, Matsika Matawane, Chief Information  
Officer and Gary Pita, Group Chief Supply Chain Officer. It is dated 20  
November 2013 and the subject relates to the provision of network  
services as it's amplified in the title. How were you aware of this  
document, what is your knowledge of the compilation of this document?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

So, Chair I compiled most of this document, post the session with Mr Molefe.

ADV VERUSCHKA SEPTEMBER: And when did you compile this document?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Chair I can't recall exactly but I think I compiled it shortly after, pretty much the same day from what I recall.

ADV VERUSCHKA SEPTEMBER: The same day as?

10 MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: As the meeting, from what I recall.

ADV VERUSCHKA SEPTEMBER: And on whose instruction did you prepare this document?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: So post the meeting with Mr Molefe Mr Singh and I had a brief conversation and he instructed me to compile this memorandum with the relevant input from supply chain sourcing and so on – or Group Supply Chain and so forth.

20 CHAIRPERSON: Let us go back to that meeting and round off because I do not think we did round off. What was the outcome of that meeting in Mr Brian Molefe's office?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: So Chair the outcome was that he was of the view that we need to award this tender to T-Systems and Broadband Infracore.

CHAIRPERSON: And other than the different view that – views that you

had expressed you cannot recall that anybody expressed any view different from his view on any of the – on that issue?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: Not to my recollection Chair.

CHAIRPERSON: Yes. Okay alright. Thank you. You may proceed Ms September.

ADV VERUSCHKA SEPTEMBER: Thank you. Based on the objections or rather what is the – the crux of this memorandum in relation to the award of the tender?

10 MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: So Chair effectively what this memorandum does is it reverses the decision or the recommendation from the recommending officers to award the business to Neotel and it takes into account firstly the R248 million and based on certain perceived risks by Mr Molefe it awards the tender to T-Systems or a letter of intent.

ADV VERUSCHKA SEPTEMBER: More accurately stated on page 337 of this document Mr Brian Molefe seeks approval for what you have just given evidence about, is that correct?

20 MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: So I do not think Mr Molefe wanted approval he was giving an instruction yes.

ADV VERUSCHKA SEPTEMBER: I am, sorry my mistake. Apologies. If we could then just go back to page 331. You have mentioned that you were integral in the preparation of this document. If you had such strong views about why the recommendation of Mr Brian Molefe was...

CHAIRPERSON: Well I am just thinking whether – whether he said anything about those views being strong.

ADV VERUSCHKA SEPTEMBER: Oh. Okay. Let me rephrase.

CHAIRPERSON: Well it may be that they were strong I am just wanting to make sure.

ADV VERUSCHKA SEPTEMBER: To make sure.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: Let me help I was in violent disagreement with what Mr Molefe said.

CHAIRPERSON: Sorry?

10 MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: I said just to help I was in violent disagreement with what Mr Molefe said.

CHAIRPERSON: Oh okay alright. Ja.

ADV VERUSCHKA SEPTEMBER: Well then in violent disagreement with what Mr Molefe said ...

CHAIRPERSON: That is very strong. Yes – so – so no that is what – I just wanted to make sure that we do not have a situation where the record might reflect something that he might not have intended but if that – if that is a correct description of his views how he expressed  
20 them that is okay.

ADV VERUSCHKA SEPTEMBER: Thank you for the correction Chair. Mr Van Der Westhuizen in violent disagreement of Mr Molefe's views how and why you would author a document that is contrary to views that you hold so strong.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

Chair so my views at the time were if I do not put this document or compile or author this document that my career at Transnet would be short lived and in no way was I going to sign this document. Just to add to my emotions at the time I recalled distributing or updating and distributing my CV from what I recall on that same day because I just saw affidavit written all over this to be honest. So I do not think that I had much of a choice and I thought that my employment would be ended and someone else would have compiled the memorandum.

CHAIRPERSON: Let me put this and this is not to say change what you say. I just want you to appreciate and be able to say this is the position or that is the position. There are two possibilities. The one possibility is that if what you did at the meeting was you regarded it as something necessary or your duty to express your views to say these are my views but I know that it is not necessary my views that need to prevail but these are my views. If you get persuaded that is now Mr Molefe if you are persuaded and you agree with me then that is fine but if you do not agree and you insist that this be done I will have expressed by view and if I am asked or instructed to have a role in carrying out what you as the person who has the power to decide want to be done I will do that. That does not change that I do not agree but I will do it because you – you are the one who has to decide. That is one way. Another way is to say well if I had it my way I would not even compile it for him but I did because I felt that I would be risking my job. So the one – the one situation is where you did it because you felt that you did not have a choice. Another way would be where you did it not

necessarily because you did not feel you had a choice but because you appreciated that is the one who must make a decision right or wrong and yours is to express your views and let him decide.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: So Chair ultimately he was the decision maker in this regard. I expressed my views to me and I still disagreed with it but like you said ultimately he had the delegation to make the decision. He was appointed in that role as my superior by the Department of Public Enterprises and I had to respect that and therefore I drafted the document.

10 ADV VERUSCHKA SEPTEMBER: At paragraph 28 of your statement you and I will quote you say that:

“Your objections would be tantamount to professional suicide.”

In – follow to the question raised to you by the Chair what informed your decision or your view rather that this was the ultimate outcome of professional suicide to quote you if you did not do what you were told to do?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

Chair like I said in that meeting Mr Molefe’s relaxed demeanour  
20 changed very quickly and I could see in his eye and maybe I misread the situation I doubt it though but I could see clearly that if I say another word security is going to escort me out of the building today. That was my ...

ADV VERUSCHKA SEPTEMBER: Okay. If we can then go back to this particular memorandum that you were – that you assisted in preparing.

Paragraphs 4 and further deals with the procurement process that is to be followed in relation ...

CHAIRPERSON: Maybe – maybe we might be leaving something hanging that should be dealt with.

ADV VERUSCHKA SEPTEMBER: No problem.

CHAIRPERSON: Maybe the part of your statement that Ms September just referred to maybe puts your situation more in line with fearing losing your job if you did not cooperate then then position that you had expressed your view and you left it to him to do – to decide and not  
10 necessarily that you are fearing losing your job, what do you say?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

Chair so I firmly believe that if I did not draft this memorandum.

CHAIRPERSON: Yes.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

That I would have been side lined and let go over time.

CHAIRPERSON: Yes.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

That is where the professional suicide came from.

CHAIRPERSON: That you would have been victimised in one way or  
20 another?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

Absolutely.

CHAIRPERSON: Okay alright.

ADV VERUSCHKA SEPTEMBER: So from paragraph 4 on the procurement process is in fact dealt with and in particular from

paragraph 5 the role of the acquisition council is documented. If I could ask you to go to page 333 of the same bundle. At sub-paragraph 20.5 which is titled Disagreement Regarding Award Of Business and I shall read paragraph 20.5.1 says:

10                   “Should a dispute arise between the recommending officers and the AC being the Acquisitions Council regarding a submission after the AC has referred the matter back to the recommending officer for re-motivation? The matter must be escalated to the entity’s CEO for a final decision.”

Do you have any comment in relation to the application of this process to the circumstances that you have explained now relating to Mr Molefe recommending that the award be given to Neotel?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: So Chair I think as we have sort of discussed if...

ADV VERUSCHKA SEPTEMBER: Sorry to T-Systems.

20                   MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: Ja so. So as we discussed if one could argue that something catastrophic or material happened and therefore Mr Molefe needs to overturn the decision by Mr Pillay my reading of this would be that he needs to refer the matter back to the recommending officers for re-motivation. Not that I am a lawyer but that is my reading of it and that did not happen. Like I said we did not have a consultation we had an instruction meeting.

ADV VERUSCHKA SEPTEMBER: So there was no re-motivation?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: No.

ADV VERUSCHKA SEPTEMBER: There was no referral back?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: No.

ADV VERUSCHKA SEPTEMBER: To the Acquisitions Council?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: No to the recommending officers which were the signatories to the Tier Report yes.

ADV VERUSCHKA SEPTEMBER: Thank you.

CHAIRPERSON: That was 20.5. 20.5.1 talks about a situation where  
10 there is a dispute that has arisen between the recommending officers and the AC regarding a submission after the AC has referred the matter back to the recommending officer for re-motivation. Am I right to think that that is a situation what that clause deals with is a situation where the recommending committee or officer / official sends a recommendation to me and I am the one who must make a decision and they say they recommend that the tender be given to A and I look at their motivation for that and I look at everything that I am supposed to look at and I do not agree. That then I must send it back to them and say what about this, what about that, what about that? Because it  
20 seems to me that the tender should be given to B and then I give them an opportunity to deal with my concerns and then if they revert to me after looking at the issues I have raised with them and they still stick to their recommendation and I still stick to the view that they are wrong that is when this clause applies. Is that in line with your understanding?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

That is in line with my understanding Chair yes.

CHAIRPERSON: Yes. And then with regard to – okay before I proceed because then in that situation a dispute has arisen between the one who must make the decision and the ones who made the recommendation as to who should get the award. Then – then in that event the power to make the final decision goes to the entity's CEO according to this, is that right?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

10 That is – that is my understanding of it as well.

CHAIRPERSON: That is your understanding as well?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

Chair so where I am – where I am differing slightly is that the matter must be referred back.

CHAIRPERSON: Yes.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: To the recommending officers.

CHAIRPERSON: Yes.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: And

20 in my mind that did not happen. Like I said we have – we had a meeting where Mr Molefe expressed his concerns.

CHAIRPERSON: Hm.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: I raised my – or gave him my views.

CHAIRPERSON: Hm.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: But at no point were we asked to re-motivate.

CHAIRPERSON: Hm.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: So I suppose it depends on your interpretation of whether that meeting constitutes the re-motivation.

CHAIRPERSON: Yes.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: Or not.

10 CHAIRPERSON: Well I was just – I am going to go to 20.5.2 just now but I think you are saying that the scenario that I have put to you falls under 20.5.1?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: In my ...

CHAIRPERSON: Ja.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: In my understanding Chair.

CHAIRPERSON: That is your understanding. So in that event it would be the CEO of the entity who makes a final decision and not the person  
20 who otherwise would have made the decision because there is disagreement.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: That is correct.

CHAIRPERSON: Now 20.5.2 says:

“Where the recommendation of the evaluation team

are seeing that now they are not talking about a recommending officer where the recommendation of the evaluation team conflicts with your opinion of the end user the matter must be referred to the AC for a ruling.”

So this – that is a different stage – a different scenario, is that right?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

That is my understanding Chair. So if you go – if you look at 20.5.2.

CHAIRPERSON: Hm.

- 10 MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: To try and explain it even – my understanding of this is that if the evaluation team had – make a recommendation and Group ICT in this scenario of the Technology Team had a different view. So let us say they came up with the scenario and said it should be T-Systems and we said guys they – T-Systems cannot for whatever reason deliver it so prior to it going to the final decision maker we already have a difference of opinion.

CHAIRPERSON: Hm.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

- 20 That is my mind is – 20.5.2 would apply to that scenario.

CHAIRPERSON: Yes, yes.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

Where in this case we – there was not a difference between what the recommending officers and business or the end user were recommending. We were all in agreement that based on the process

followed including all the technicalities Neotel was the preferred bidder.

CHAIRPERSON: Hm. But – but we agree that the scenarios are different for the two?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: I agree Chair.

CHAIRPERSON: Clauses ja.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: Yes.

CHAIRPERSON: And in regard to the – to clause 20.5.1 that – that  
10 does not seem to have been applicable because a decision had already been taken by Ms Chetty in this case so by the time Mr Brian Molefe got involved a decision had already been taken. So clause 20.5.1 does not appear to have been applicable, is that your understanding as well?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: I would concur with that view Chair.

CHAIRPERSON: Yes.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: Unless something catastrophic or material happened.

CHAIRPERSON: Yes.

20 MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: Where we needed to relook at the situation and like I said..

CHAIRPERSON: Yes.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: In my view nothing did.

CHAIRPERSON: Yes. But I think that probably is dealt with by another

provision.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

Sure okay.

CHAIRPERSON: And then it also 20.5.2 was also not applicable in this case?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: I agree.

CHAIRPERSON: Ja okay alright. Thank you. So as far as you know there was nothing in the policies of Transnet which justified that Mr  
10 Molefe should re-visit a decision that had already been taken by somebody who was – who had the power to make that decision when she – when he was not around?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: Not aware of any such.

CHAIRPERSON: Yes okay.

ADV VERUSCHKA SEPTEMBER: Thank you Chair. If we could then turn to page 335 of the same document. Is it correct that paragraph 7 documents your specific concerns in relation to the recommendation that was advanced to you by Mr Brian Molefe?

20 MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: So Chair these highlights the concerns raised by Mr Molefe in the session.

ADV VERUSCHKA SEPTEMBER: Okay and just for record then it would read:

“That I have the following specific concerns with your recommendation and responses to me including the

responses to me in the various meetings held with the recommending officers for re-motivation which is discussed further in this document.

- a. Counterparty risk and alienation of state assets.
- b. Concentration risk as Net – Transnet is Neotel's largest client.
- c. BBBEE partners which is your Broad Based Black Economic Empowerment partners.
- d. Information security incident and
- 10 e. CCTV, camera, exposures."

This paragraph talks specifically to a re-motivation. Are you aware of any re-motivation that took place?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: No I am not Chair.

CHAIRPERSON: At the meeting in Mr Brian Molefe's office at the meeting that you talked about where you expressed certain views when he said that he thought that the R240 million should be taken into account you did express your view about that as well and did tell him how this issue had been dealt with before?

20 MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: Chair I cannot recall if I specifically mentioned it in the meeting but the Tier Report that we signed was very clear on the R248 million and why we think we should and cannot include it in {indistinct}.

CHAIRPERSON: Yes. Is it possible that the – he raised the issue of the R240 million after you had expressed your views I think on two

aspects and you got the impression that he was not very receptive to different views. Could it be that he raised it after and after that and you felt look I am not going to be saying anything now?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

Chair I think it was raised ...

CHAIRPERSON: At the beginning.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

Sort of at the beginning.

CHAIRPERSON: Yes.

10 MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: The reason I am saying that is the – I would not have counter argued or expressed a view that it increases the concentration risk if we gave the tender to T-Systems. If we gave it to Dimension Data as an example who was the second best bidder if for whatever reason you felt you wanted to exclude Neotel that would not necessarily increase it would probably mitigate the concentration risk to some extent because they were a large organisation with far more clients. So we had to have discussed the R248 to get from bidder 1 to bidder 3 which is now bidder 2.

20 CHAIRPERSON: Okay thank you.

ADV VERUSCHKA SEPTEMBER: Throughout the communication exchanged with Mr Brian Molefe and the memorandum that you prepared which was eventually signed – signed off. What was Anoj Singh's views on the change of the – of decision?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

Chair I cannot recall if Mr Singh had a specific view or whether he supported or was in disagreement with the view it was pretty much just we need to get it done and therefore the instruction on the memorandum. But I cannot recall that Mr Singh was either in disagreement or support of the overturning if you will of the recommendation.

ADV VERUSCHKA SEPTEMBER: Okay. Who was respon – ultimately responsible for the overall procurement of this particular contract?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: So  
10 Chair at that stage if I recall correctly Group Chief Supply Chain Officer was Garry Pita but that function reported into the Group Chief Financial Officer being Anoj Singh at the time so in my mind Mr Singh would have been overall responsible for procurement.

ADV VERUSCHKA SEPTEMBER: An absent raise – an absent Mr Singh raising any contrary views to the position taken by Mr Brian Molefe. Is there any reason for you to believe that he did not agree with the approach adopted by Mr Brian Molefe?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: Ja  
20 Chair like I said I cannot recall if he had any objections but in the absence of that like you state Advocate it probably means that he was likely supportive.

ADV VERUSCHKA SEPTEMBER: And then lastly based on the evidence that you have given in relation to this change of decision is it to be understood that the decision – the change of decision to grant the award to T-Systems was independently done by Mr Brian Molefe?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: Is in my opinion Chair.

ADV VERUSCHKA SEPTEMBER: Are you aware as to whether or not you...

CHAIRPERSON: Sorry what was the answer?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: I said in my opinion yes Chair. It was Mr Molefe unilaterally made this decision.

CHAIRPERSON: Okay well she said independently and I am not sure  
10 what you have in mind Ms September?

ADV VERUSCHKA SEPTEMBER: That the witness has actually just answered.

CHAIRPERSON: So she asked whether you – you thought that Mr Molefe made the decision independently. Are you saying yes he made it independently whatever – if you are – if you are not sure what that means you can ask for clarification?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: So Advocate Ja maybe just help me with what you mean with independently in this scenario?

20 ADV VERUSCHKA SEPTEMBER: Was it a unilateral decision by Mr Brian Molefe to change the decision from awarding the tender to Neotel – from Neotel to T-Systems?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: In my opinion yes it was.

CHAIRPERSON: Hm. I guess unilateral in the sense that those who

were – who had been involved in working on the matter were as far as you are concerned were – well certainly not – or did not agree to it?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

Absolutely.

CHAIRPERSON: But are you able to say that he did not consult them?

You know unilaterally can mean without consulting?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

Chair so ...

CHAIRPERSON: It may can mean without agreement from somebody

10 else just on your own.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: Ja.

Chair so the only session that I am aware of.

CHAIRPERSON: Hm.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: And

that I was present at was that particular meeting where he raised his views.

CHAIRPERSON: Ja.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: We

expect – or expressed a different view and the decision was made

20 pretty much at that meeting.

CHAIRPERSON: Ja.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

From what I understood. I do not believe there were other consultations but...

CHAIRPERSON: Ja. Ja. But you would also not know everyone he

may have talked to about it?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

Correct.

CHAIRPERSON: Ja.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

That is correct Chair.

CHAIRPERSON: Okay.

ADV VERUSCHKA SEPTEMBER: Thank you. Who had to manage this contract going forward?

10 MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: I was.

ADV VERUSCHKA SEPTEMBER: So were you the business owner if that is correctly stated?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: So ultimately the Group Chief Information Officer would be the business owner but I was the representative in this scenario because obviously she could not attend all meetings so it would have been me indirectly yes. And also I was the head of vendor management for Transnet ICT so this would have been one contract that yes the team would have  
20 managed.

ADV VERUSCHKA SEPTEMBER: And despite the views that you raised your views were ignored?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: I believe so Chair yes.

ADV VERUSCHKA SEPTEMBER: So the decision is taken by Mr

Molefe.

CHAIRPERSON: Ms September I do not know whether you intend – ignored ...

ADV VERUSCHKA SEPTEMBER: Okay.

CHAIRPERSON: And I am saying this just so that the witness when he agrees or does not agree he should appreciate what he is agreeing to or not agreeing to. Some people say somebody's views have been ignored when they actually mean that those views were not agreed to. But their views might not have been agreed to but they may have been  
10 taken into account and that means they were not ignored. You know you can express your views, you can make yourself submissions the fact that I do not agree with your submissions does not mean I have ignored them. I may take into account but do not agree with them and therefore I go ahead and make my own decision. But I have taken them into account so therefore I have not ignored them. So – so I am just saying I am not sure ...

ADV VERUSCHKA SEPTEMBER: I will rephrase.

CHAIRPERSON: Whether you meant ignored or what you meant?

ADV VERUSCHKA SEPTEMBER: Let me rephrase.

20 CHAIRPERSON: Because Mr Molefe may have taken it into account – taken the views into account but just did not agree with them.

ADV VERUSCHKA SEPTEMBER: You rephrase then. Mr Van Der Westhuizen you were the business owner, is that correct?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:  
Yes.

ADV VERUSCHKA SEPTEMBER: It is also correct that you have given evidence that you were the one that was responsible to manage this contract going forward?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:  
Yes.

ADV VERUSCHKA SEPTEMBER: You then important and particularly your views were important in the process of the award of the tender?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: I believe so.

- 10 ADV VERUSCHKA SEPTEMBER: Despite the views that you raised which were important to the process it was not considered persuasive enough to alter the decision that had been taken to re-award the tender from Neotel to T-Systems?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:  
Correct.

CHAIRPERSON: That is much better. Ja. The decision was made to change Ms Chetty's decision notwithstanding the views you had expressed?

- 20 MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:  
That is correct Chair.

CHAIRPERSON: Ja.

ADV VERUSCHKA SEPTEMBER: What then happened once the decision was changed by Mr Molefe? What was the process that was then followed?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

Chair so post that decision and the relevant documents being signed T-Systems would have received a letter of intent and all the other bidders would have received a letter of regret. What would then have pursued is that we would have started negotiations with T-Systems in order to conclude a three to five year master services agreement as per the RFP process.

ADV VERUSCHKA SEPTEMBER: Did Neotel raise any concerns with Transnet following receipt of a letter of regret?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

- 10 Chair they did. I can recall that Mr Sunil Joshi who was the CEO or Managing Director at the time of Neotel wrote to us formally to the GCE - Mr Brian Molefe – requiring or requesting some clarity on the reasons we posed in the letter of regret which stated from what I recall business risk was the reason why it was not awarded to Neotel and Mr Joshi then also asked or stated that he and the team could not recall that that was a prequalification criteria or mentioned anywhere in the request for proposals.

ADV VERUSCHKA SEPTEMBER: We are now at page 10 of your statement paragraph 35. If I could ask you to go to the Bundle BB7.

- 20 MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Sorry advocate just say ...

ADV VERUSCHKA SEPTEMBER: B ...

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: The page number again please.

ADV VERUSCHKA SEPTEMBER: So if you could go to page 414 of the

second bundle which is EXHIBIT BB7B.

CHAIRPERSON: Oh I thought you said we are going back to the statement.

ADV VERUSCHKA SEPTEMBER: Oh no sorry.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: So did I.

CHAIRPERSON: Is that what you heard also?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: Yes Chair.

10 CHAIRPERSON: Ja.

ADV VERUSCHKA SEPTEMBER: I am confusing myself.

CHAIRPERSON: I think she said page 10. Okay. So what page must we go to now?

ADV VERUSCHKA SEPTEMBER: Page 411.

CHAIRPERSON: Okay. Yes.

ADV VERUSCHKA SEPTEMBER: Do you recognise this document Mr van der Westhuizen?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: I do. I do Chair.

20 ADV VERUSCHKA SEPTEMBER: Please identify it.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: Chair so this appears to be the response to Mr Sunil Joshi based on the letter that he wrote to Transnet.

ADV VERUSCHKA SEPTEMBER: And if I can take you to page 413 which concludes at paragraph 13. It reads:

“Due to the above business risk considerations Transnet has made a decision not to award a three year network contract to Neotel. This network is the heart of Transnet business and awarding the business to Neotel will expose Transnet to unnecessary risk.”

And this is the letter that you had referred to earlier?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: Yes  
Chair. I just do not know if this was the final letter that we eventually  
10 sent. There could have been slight changes to it because I see this is  
the unsigned one but yes I think this was the crux of it.

ADV VERUSCHKA SEPTEMBER: Thank you for that clarity.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

ADV VERUSCHKA SEPTEMBER: How would you describe the  
relationship between Transnet and Neotel following the sending of the  
letter of regret to Neotel?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Chair it would be like the relationship was extremely strained after that  
because I do think – I mean taking into consideration the history that  
20 Neotel took over Transtel a lot of employees through a Section 197  
moved to Transtel. A lot of those individuals still have – had contacts  
with a lot of people at Transnet. So I have no doubt – to be honest –  
that the – some of the information must have gotten out regarding this  
turnaround of the – of the tender and I think they were flabbergasted  
that they lost this. They could not lose it. The current income that

they can provide the services likely the cheapest and quite frankly no one else can without them. So it was – the relationship was extremely strained post that letter of regret.

ADV VERUSCHKA SEPTEMBER: And what were your concerns around this now strained relationship with Neotel in view of the 2007 MSA?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Chair well of particular concern there was a number of concerns. One was service delivery because they do not really have an incentive to meet the Service Level Agreements at that point. I do not think the  
10 service credits were adequate to – to mitigate that risk. The second concern that I had is pricing. So prior to us concluding the process we signed an extension with Neotel and I think it was a two or three month extension. We can check from October – 31 October. So 1 November to 31 December and in that extension we managed to get Neotel to commit that should there be further extensions that the price would reduce. The price at that point Chair – if memory serves – was R42.3 million a month. Post this letter of regret that was issued to Neotel they wrote back to us stating that the fee going forward will be R58 million a month. So it increased with – well – R15/16-odd million  
20 immediately. We then met with Neotel and managed to – well – convince them that that is madness and we eventually settled with no negotiating power on 50 million. So the price went from 42.3 – if I recall correctly – to 50 million within a month for the remainder of the contract.

CHAIRPERSON: I get the impression that you did not think that there

was justification for this increase?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Absolutely not Chair. It was exactly the same services they were providing. They were cross because they lost this tender.

CHAIRPERSON: Yes and Transnet did not have much of a choice as you saw the position? In other words you did not think Transnet could say well we are not paying one cent more than what we have been paying you?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

10 Chair we could. The risk is that they switch off our network and ...

CHAIRPERSON: Yes that is what I am saying that ...

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Yes, yes.

CHAIRPERSON: You would run the risk of something much – much more ...

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: And Chair ...

CHAIRPERSON: So you were in a corner?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: We  
20 were absolutely in a corner Chair and I think just for context Transnet at that point in time – if I am not mistaken – was a billion Rand a week organisation. So if you switch off the network your rails or your trains, your ports are heavily impacted as well as safety and a number of other things. So it is really not a position you wanted to be in. So we had no negotiating power.

CHAIRPERSON: So – so in a way even if they had not come down from 58 million you might have had to just pay. Is that – is that how bad the situation was?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That is how bad it was.

CHAIRPERSON: How vulnerable Transnet?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Absolutely Chair and we will talk about it ...

CHAIRPERSON: Yes.

10 MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: A little bit later when we get to the asset buyback as well.

CHAIRPERSON: Yes, okay thank you. You were just lucky that they were able to come down about half ...

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: Ja.

CHAIRPERSON: Of the increase they had demanded?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: I think the team still had good relationships at a lower level Chair. So I think we managed to ...

CHAIRPERSON: Yes.

20 MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: Negotiate it down.

CHAIRPERSON: Okay.

ADV VERUSCHKA SEPTEMBER: Just to put it into context can you give some more detail as to what exactly it would mean for Transnet's operations if Neotel decided to pull the plug?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Chair so like I tried to explain the ports would be heavily impacted. They - from what I recall Transnet portal terminals had a system called NAVIS which was heavily reliant on the - the low latency network from what I recall. The trains would be - the communication systems although Transnet Freight Rail still had a sort of a separate system. The rail operations would have been heavily impacted as well from what I understood from the operations and more technical people. So it would have been catastrophic dare I say.

- 10 ADV VERUSCHKA SEPTEMBER: So Transnet would not have been able to deliver the service that it does if Neotel pulled the plug?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Absolutely not.

CHAIRPERSON: But this vulnerable position in which Transnet found itself now at that time when it had - it agreed to effecting an increase and putting the amount at R50 million or so per month. It was per month hey?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: I

beg your pardon Chair. It was?

- 20 CHAIRPERSON: The increase of the price it went up to 50 million?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That is right.

CHAIRPERSON: And that was per month?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That is correct.

CHAIRPERSON: Yes. That was a – a result really in – in the final analysis to Transnet having sold its network to – to Neotel?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That was a result of that decision Chair yes.

CHAIRPERSON: It put itself in a very vulnerable position?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That is correct.

CHAIRPERSON: Ja, okay.

ADV VERUSCHKA SEPTEMBER: Did you raise your concerns with the  
10 current state of play or the then current state of play in relation to the  
Neotel having this hold over Transnet in context of the MSA coming to  
an end?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Chair I think even before we went to market the ICT Management Team  
raised our concerns that we were in an impossible negotiating position  
and that is why we recommended in one of our first recommendations  
that we potentially not go to market but we extend this contract with  
Neotel because we were of the view that that would give us the ability  
to potentially buyback these assets should we commit more revenue to  
20 them over a period of time. I think the Board did not necessarily agree  
with that position and then that is why we went to market and I think  
this turnaround of the decision then again exacerbated that problem  
because now you had your – Neotel's back against the wall and they –  
they were - ja – angry.

ADV VERUSCHKA SEPTEMBER: At page 11 of your statement

paragraph 38 you were informed that it was pursuant to discussions between Anoj Singh and Sunil Joshi who was Neotel's CEO at the time. Neotel agreed to continue with its services. Is that correct/

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That is correct Chair. So upon the – if I recall the timing here was the – we were informed at this point that we were not going to issue the letter of intent to T-Systems and the letter – I beg your pardon – the letter of intent to Neotel and/or the letter of regret. So this was really the – the – let me just pause for a second. This was when procurement  
10 informed me that they were not issuing those letters as approved by Ms Chetty and like I said that was 31 October 2013 – if memory serves – which meant that from tomorrow we are out of contract. Any expenditure would potentially be irregular and we have a proper service delivery risk. I then raised it with Messieurs Pita and Singh after he communicated to me that Mr Molefe would like to review the documents upon his return to which Mr Singh replied saying that he has personally discussed it with Mr Joshi and that Neotel will continue delivering service to Transnet.

ADV VERUSCHKA SEPTEMBER: Thank you. At paragraph 9 you  
20 document a series of events.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: Hm.

ADV VERUSCHKA SEPTEMBER: Paragraph 39 page 11 of your statement. Can you take the Chair through these particular series of events which occurred during December 2013?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Sure advocate. Chair so what occurred is that we provided Neotel with a 12 month extension. I think I mentioned and covered the price increase from 42.3 to 58 and then negotiated down to R50 million and in that acceptance letter from Neotel they indicated that there was quite a lot of equipment that was end of life and should that equipment fail they cannot guarantee our Service Level Agreements anymore. So attached to correspondence they requested that we pretty much procure – if I recall – R69 million worth of Cisco equipment then and there in order for them to accept the 12 month extension which was issued in  
10 December.

ADV VERUSCHKA SEPTEMBER: So is it correctly understood that Neotel then had two holds over Transnet? On the one it was in relation to the MSA that was about to reach an end in terms of which they also then held ownership of assets that was coming to an end but they could not then guarantee the service unless you had negotiated terms and conditions in relation to that.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That is – that is – that is factual Chair and you could argue that they were in a strong legal position should they wanted to take us to court  
20 over this decision as well.

ADV VERUSCHKA SEPTEMBER: You mentioned Cisco equipment. Is this then – this may then be an appropriate time for you to unpack the involvement of Cisco ...?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Sure.

ADV VERUSCHKA SEPTEMBER: And its engagements with Transnet for the new – new equipment?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: Ja. So Chair Transnet's network that the tech involves much more technical person or people will explain to you that you introduce unnecessary risk into your network if you have multiple OEM providers due to compatibility. So Cisco was the preferred provider for – for Transnet on the Transnet network but like we mentioned before any Cisco equipment had to be procured via Neotel and I think we did also touch  
10 on it but due to the fact that we have overturned – we – Mr Molefe has overturned the tender from Neotel to Transnet – ag – to T-Systems that meant that we had to pull the transition – well we were going through a transition now and we had to try and meet the timeline and we then had a meeting with all the parties being Cisco, T-Systems, Neotel and Transnet management and said well okay so we have got to pull the trigger on this transition. How do we go about doing it? Neotel then raised with us that apart from this equipment that we procured – the 69-odd million and we can just check the value – that we procure it as part of that 12 month extension. A lot of other equipment in the ports or in  
20 the campuses were also reaching end of life and support and that is why we decided to acquire that equipment through Neotel but again like I mentioned earlier that that equipment would be owned by Transnet because our concerns were the campuses and all this equipment was in the campuses.

ADV VERUSCHKA SEPTEMBER: But it is – is it correct that there

were two Cisco equipment purchases/

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That is correct.

ADV VERUSCHKA SEPTEMBER: The one during 2013 and the one during 2014?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: Yes it is correct.

ADV VERUSCHKA SEPTEMBER: And the one you speak of now is which one?

10 MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: I actually spoke of both. So the 2013 one was an invoice attached to the 12 month extension in which Neotel had a number of terms including the R50 million monthly fee and they also accepted the outcome of the tender which they signed. Linked to that was an invoice saying please sign the – place the following order with us in an order for us to – to guarantee your service levels. That was the first purchase. Subsequent to that when we started negotiating with T-Systems we realised this transition was a problem from a timing perspective and they then informed us that there is significant other equipment that we  
20 need to replace in a period of time due to the transition and the ownership discussion we wanted to pull that forward and decided to buy it pretty much then and there.

ADV VERUSCHKA SEPTEMBER: Okay. We will unpack the Cisco transaction a bit later as it is set out in your statement.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Sure.

ADV VERUSCHKA SEPTEMBER: Is it correct that Neotel finally accepted the outcome of the tender process and the award of the tender to T-Systems?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: It is correct. In the same letter that I was just referring to.

ADV VERUSCHKA SEPTEMBER: If you could now look at page 12 of your statement. Chair paragraphs 41 to 44 on page 13 is evidence that has already been placed before this Commission by Mr Volmink. He  
10 talks specifically to the reversal of the decision to award the tender to T-Systems and in view of this evidence already been placed before the Commission we do not intend to deal with much detail in relation to it.

CHAIRPERSON: Yes. No that is fine. The part which I think was not said before which may have some significance in the context of – of Mr Singh's role or alleged role is that in paragraph 41 it is said that if Mr van der Westhuizen remembers well Mr Singh did request that an opinion be obtained on the process and reversal of the award by Mr Molefe from senior counsel.

ADV VERUSCHKA SEPTEMBER: No problem.

20 CHAIRPERSON: I think we – I did hear that a legal opinion was obtained but I do not remember that I heard that – that initiative may have come from Mr Singh.

ADV VERUSCHKA SEPTEMBER: No problem Chair.

CHAIRPERSON: Hm, thank you.

ADV VERUSCHKA SEPTEMBER: Mr van der Westhuizen ...

CHAIRPERSON: But I – I take note that you say as far as you recall?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That is correct Chair.

CHAIRPERSON: Yes.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: I  
was – my recollection I think ...

CHAIRPERSON: Ja.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: I  
cannot recall if it was an email or a discussion but I seem to recall that  
10 Mr Singh requested ...

CHAIRPERSON: Ja.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That we get the opinion.

CHAIRPERSON: Okay, alright.

ADV VERUSCHKA SEPTEMBER: In paragraph 45 you address your  
resignation that you submit to Transnet on 30 September 2014. Can  
you please extrapolate the events leading up to this resignation and the  
resignation itself?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

20 Sure. I think like I mentioned before post that meeting I decided to put  
my CV in the market so to speak. I was then approached by a – a  
company in South Africa and went through multiple interviews etcetera  
and they offered me employment if I recall somewhere in September.  
So I then formally resigned from the 30<sup>th</sup> – from Transnet on  
30 September 2014. Subsequent to – and maybe just some context as

well. During that period there was quite a lot of Transnet ICT resources of the management who resigned. I think there were three of us in the matter of a two week span and the one crucial one was Mr Yusuf Loonat who was our Head of Infrastructure and he was very involved in the technical scheme stream of these negotiations. I think Mr Singh and Dr Motwani then had – I do not know if they had a conversation – but they – we had a conversation whether I would be willing to stay on at Transnet until the end of the year and see this contract through. I then engaged with my new employer who did not  
10 have a particular problem. My concern however was that I was going to earn more at my new employer and the remuneration structure was also much better so I then indicated to Dr Motwani and Mr Singh that I would be willing. I thought it was just fair to be honest that we were three months from concluding this agreement and there was not anyone else left and Neotel was very opportunistic when it came to negotiations. So I thought – I felt obliged to see this through as long as they remunerate me accordingly to my new employer.

ADV VERUSCHKA SEPTEMBER: Was it necessary for you to receive more money to stay?

20 MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: It probably was not but they did not necessarily know that. I would have seen it through to be honest without additional remuneration.

CHAIRPERSON: They needed you?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:  
They (intervenes).

CHAIRPERSON: They needed you?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: I knew very well about vulnerability. I learnt it through this process Chair. So absolutely they needed me like we needed Neotel.

CHAIRPERSON: Yes, yes, yes okay.

ADV VERUSCHKA SEPTEMBER: Did you receive any payment of a bonus ...

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: I ...

ADV VERUSCHKA SEPTEMBER: As part of your agreement to stay?

10 MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: I did.

ADV VERUSCHKA SEPTEMBER: Please give details in relation to that.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Sure. I cannot recall the exact amount Chair. I think it was R350 000 paid through the Transnet payroll and tax deducted ja.

ADV VERUSCHKA SEPTEMBER: And why was this bonus paid to you?

20 MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: I think partially - like the Chair stated - because they needed me and also Transnet's incentive structure - so you had something called an LTI or a Long Term Incentive that would normally pay out. From what I recall roughly in June which was not Transnet - Transnet's year end was March - if I recall. So they would pay that out in June - because I was leaving earlier and now I would not get that Long Term Incentive and I would lose incentive from my new employer because I joined

later. So that was what I put forward to them.

ADV VERUSCHKA SEPTEMBER: If we can then move on to the 2014 MSA negotiations and the Asset Buyback Agreement which begins at page 13 of your statement. It is understood that there were two streams of negotiation teams that were involved in the 2014 MSA negotiations and Asset Buyback Agreement. Please provide the detail of how these negotiation teams were constituted and engaged with each other.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

- 10 Sure. Chair I think just to settle the timeline sort of. I think we referred to the evidence by Mr Volmink which included that the decision was now changed back to Neotel. So now we have started negotiations with Neotel and T-Systems was no longer the preferred bidder which was evidenced before like you mentioned by Mr Volmink, right? So now we are negotiating with Neotel and it was structured. There were quite a few people involved. There were two streams – a commercial stream that mainly looked after the Master Services Agreement or the MSA as well as all the terms and conditions linked to that and there was a technical stream that looked at all the service towers, voice services,
- 20 WAN or Wide Area Network, Local Area Network or LAN and so on and so forth.

ADV VERUSCHKA SEPTEMBER: Can I ask you to please slow down?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: I ...

ADV VERUSCHKA SEPTEMBER: I am struggling to follow you.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Apologies advocate apologies Chair. So the two streams were structured like that and we met at a lawyer's office in Sandton for quite a few months in which we fleshed out this Master Services Agreement. The ...

ADV VERUSCHKA SEPTEMBER: Which team is – you say that there were two teams – a commercial team and a technical team. Which team were you involved in and what was role in that team?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: So Chair I led the commercial stream and there were - involvement was  
10 from Transnet Procurement who provided oversight of the process. Transnet Supplier Development – we had an external legal, we had Gartner in the session and then obviously a lot of people from Neotel. I think we had an internal legal representative as well and the technical stream was led by Yusuf Loonat if I recall correctly again with various subject matters experts included in that – in that stream.

ADV VERUSCHKA SEPTEMBER: Did the commercial team and the technical team engage with each other in the process of the MSA development?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: We  
20 – we did Chair because we had to pull the requirements together with the pricing and make sure that the terms of the MSA supports the – the services and the service styles were attached to the Master Services Agreement. So yes we had to.

CHAIRPERSON: One second. Thank you. Yes we may proceed.

ADV VERUSCHKA SEPTEMBER: Thank you. So notwithstanding the

fact that you were involved in the – you were leading the commercial stream you were quite familiar as to what was happening in the technical stream as well based on your engagement with Mr Yusuf Loonat?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: At a high level Chair yes. The technicalities and the detail I was not that closed to but at a high lever we knew what the progress was and what some of the stumbling blocks were.

ADV VERUSCHKA SEPTEMBER: How exactly would you describe your  
10 involvement in this particular process?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:  
Chair I was extremely involved because whenever anyone from Transnet needed feedback as an example Mr Singh on the process or Dr Motwani it would most likely have been me that they contacted or potentially Yusuf Loonat but mostly me. So I was heavily involved and knew what was happening in this process.

ADV VERUSCHKA SEPTEMBER: Did you attend all meetings in relation to this process?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:  
20 Probably not all Chair but absolutely most of them.

ADV VERUSCHKA SEPTEMBER: Were you – were you aware of the key role players and stakeholders involved in this process?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: I was.

ADV VERUSCHKA SEPTEMBER: Would it have been possible for you

to have not known of any key role player in the process?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: I cannot see how that would have been possible Chair.

ADV VERUSCHKA SEPTEMBER: Why?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: So I think some factors to consider. Like I said I was pretty much in every single meeting bar maybe a few and the Master Services Agreement was managed by our external legal consultant who owned that document and ensured that nothing changed in the document that the  
10 parties did not agree to. So any changes would have had to go through the sessions and through our external legal consultant.

ADV VERUSCHKA SEPTEMBER: So you would have been aware of all of the material terms of the agreement?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: Yes I would.

ADV VERUSCHKA SEPTEMBER: Now just to put it into context based on the evidence that you have already given the background to this particular agreement is that Transnet sold its subsidiary Transtel as a going concern to Neotel and that was about when the 2007 MSA was  
20 concluded?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:  
That is correct.

ADV VERUSCHKA SEPTEMBER: And this particular sale included most of Transnet network equipment and infrastructure?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That is correct.

ADV VERUSCHKA SEPTEMBER: It was after the sale that Transnet found itself in a difficult situation where its IT Network was owned and managed by a service provider – external service provider – being Neotel?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That is correct.

ADV VERUSCHKA SEPTEMBER: And it was in the context of this background that it was now of paramount importance that Transnet  
10 needed to ensure it regained ownership of its IT Network ...

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: that is ...

ADV VERUSCHKA SEPTEMBER: And infrastructure?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That is correct.

ADV VERUSCHKA SEPTEMBER: So during your negotiations with Neotel in relation to this 2014 MSA Agreement how would you describe the negotiations embarked upon between the parties?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: I  
20 would describe it as extremely difficult I suppose Chair. Neotel were – were tough. They had a number of negotiators that did not take no for an answer and I think like we discussed before we did not have a whole lot of aces up our sleeves. We were playing poker with an open card deck. They knew we could not bluff because they knew exactly what cards we had because they owned the network. So it was extremely

difficult.

ADV VERUSCHKA SEPTEMBER: Did you reach a deadlock at all?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: We did.

ADV VERUSCHKA SEPTEMBER: If I could take you to page 14 of your statement, paragraph 49.4, you document some of the main issues that founded the deadlock reached. Could you take the Chair through some of these points please?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

- 10 Chair so I don't want to bore you with all of them, unless you want me to but I think the main items were the pricing of the transition or – that we touched on earlier as well as the asset buy-back. So as part of this negotiation Neotel indicated that they would now be willing to sell the assets that was ceded to the bank before, to Transnet as part – and we tried to link the two so that we don't find ourselves in a similar situation so it was crucial to us that we link the transactions and that we don't sign a Masters Services Agreement without the asset buy-back agreement. Those were two of the issues, there were also pair and company guarantee, we were still – quite a few more detailed issues
- 20 but those were the crux of the deadlock if you will.

ADV VERUSCHKA SEPTEMBER: Okay not to suggest that your offer to not bore the Chair, you still stand by the points documented in paragraph 49.4.1 to 49.4.75 is that correct.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: I do Chair, I do.

ADV VERUSCHKA SEPTEMBER: A meeting was held on the 8<sup>th</sup> of December 2014 and I'm now referring to paragraph 51 of your statement, are you aware of this meeting and how did you become aware of this meeting?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Chair I am aware of this meeting in the lead up to this – me being a witness and providing evidence the investigator shared information with me that I suspect they received from the Neotel servers which indicated that there appeared to have been a meeting between Mr Singh and Mr  
10 Francois van der Merwe who was the Account Executive or he was in charge of strategic customers for Neotel and it appeared that this meeting was held at Umhlanga in December 2014.

ADV VERUSCHKA SEPTEMBER: Was it normal protocol for the CFO to meet directly with the supplier?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Chair although we don't have documented protocols in this regard it was not normal to me that Mr Singh, not being that involved in the process would need to meet with the suppliers' Account Executive, so it wasn't normal protocol, although not documented, yes.

20 ADV VERUSCHKA SEPTEMBER: Are you aware of a meeting that happened then on the 11<sup>th</sup> of December 2014 which is about three days later?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Yes, I am Chair, I attended that meeting.

ADV VERUSCHKA SEPTEMBER: Where did this meeting take place?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

The meeting occurred at the Slow-Lounge in Sandton.

ADV VERUSCHKA SEPTEMBER: And who all was present at this meeting?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

The attendees at the meeting was Mr Sunil Joshi the MD of Neotel, Mr Francois van der Merwe the Strategic Customer Account Executive in Transnet's case, it was Anoj Singh the Transnet Group CFO and myself.

ADV VERUSCHKA SEPTEMBER: So just to clarify how many  
10 representatives were there from Neotel?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Two.

ADV VERUSCHKA SEPTEMBER: That being Sunil  
Joshi...(intervention)

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

And Francois van der Merwe.

ADV VERUSCHKA SEPTEMBER: Thank you and on Transnet's side  
your team included how many?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

20 Two, myself and Mr Anoj Singh.

ADV VERUSCHKA SEPTEMBER: Thank you. What exactly  
transpired at this meeting?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Chair from what I recall is we went through the list of items that I  
referred to the page prior and we, sort of, knocked them off the

checklist one by one and agreed what would be done around most of that. When it came to the pricing of the transition as well as the asset buy-back Mr Singh and Mr Joshi said that they will decide and discuss that further so they then – I can't recall if they went into a Boardroom or they came out of a Boardroom but they separated themselves from myself and Mr van der Merwe and they discussed the pricing from what I can recall on those two transactions, if you will.

CHAIRPERSON: Away from everybody else?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

10 Yes Chair.

CHAIRPERSON: Either in an adjacent room or just outside of the meeting?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That's correct Chair, so it wasn't the four of us anymore, Francois and myself stayed – Mr van der Merwe and myself stayed wherever we were, they separated themselves and they had a meeting just between the two of them, a private meeting to finalise the pricing.

ADV VERUSCHKA SEPTEMBER: Was pricing the biggest issue between the parties?

20 MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: In my mind Chair yes it was.

ADV VERUSCHKA SEPTEMBER: So, Mr Anoj Singh and Mr Sunil Joshi leave the room where you and the other gentleman are in, they have a private discussion and they return?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That's correct.

ADV VERUSCHKA SEPTEMBER: Are you informed about what happened in the private discussion?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Chair at some point we must have been although I can't clearly recall the conversation but that was – as the advocate mentioned on the 8<sup>th</sup> of December and we subsequently finalised the Master Service Agreement with the pricing on – was it the 13<sup>th</sup> of December, so at some point Mr Singh needed to give me feedback, that go ahead and get this  
10 agreement done and this is the pricing that we've agreed.

ADV VERUSCHKA SEPTEMBER: At paragraph 54 of your statement you inform that no feedback was provided to you after the meeting between Singh and Joshi but at some point during the 11<sup>th</sup> or 12<sup>th</sup> of December you must have been instructed to meet on the 13<sup>th</sup> of December to finalise the MSA.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That's correct.

ADV VERUSCHKA SEPTEMBER: Did you in fact, meet on the 13<sup>th</sup> of December 2014?

20 MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

We did Chair, if I recall correctly, it was a Saturday and we met at the Neotel's offices to finalise the Master Services Agreement.

ADV VERUSCHKA SEPTEMBER: And who was present at that meeting?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Chair multiple people but Mr Joshi, myself I think Mr Altaf Qadri who was one of the negotiators from Neotel, Mr van der Merwe wasn't there I think he had already left for holiday at that stage and then I think it was myself and our external legal consultant who, like I said, owned this MSA, you know we couldn't get any takers on Saturday.

ADV VERUSCHKA SEPTEMBER: Had you prepared any documents for this meeting?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:  
We didn't prepare any additional documents, the documents, like I said,  
10 would have been owned by our external legal consultant and she would have had all the documents there on her computer.

ADV VERUSCHKA SEPTEMBER: Differently stated did you present any document at this meeting?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:  
The MSA, our external legal consultant would have presented there for finalisation and printing for signature later.

ADV VERUSCHKA SEPTEMBER: So being involved in this entire negotiation...(intervention).

CHAIRPERSON: I'm sorry, did you mean – did you mean to ask  
20 whether he made any presentation or did you mean whether they gave the other people some documents...(intervention).

ADV VERUSCHKA SEPTEMBER: (Indistinct).

CHAIRPERSON: Which one did you mean?

ADV VERUSCHKA SEPTEMBER: Presented.

CHAIRPERSON: Whether they made a presentation?

ADV VERUSCHKA SEPTEMBER: Yes.

CHAIRPERSON: Okay Is your answer valid if that's the understanding if she was asking whether you made a presentation at the meeting?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

We basically just pulled up the Master Services Agreement and made final adjustments to them as agreed in the session between Mr Singh and Mr Joshi and myself and Mr van der Merwe, those two sessions.

CHAIRPERSON: And talked to the document and gave them copies  
10 or not necessarily?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Chair if I recall correctly, at that stage it was a day before I was leaving Transnet so I think I've already handed in my laptop so I think we sent the documents to Mr Joshi, if I recall, who then printed a set of documents which I presented to Mr Singh on that day for final signature.

CHAIRPERSON: Okay thank you.

ADV VERUSCHKA SEPTEMBER: So, the agreement was then in final form?

20 MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That's correct Chair.

ADV VERUSCHKA SEPTEMBER: You said that, that was your last day of employment at Transnet?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That's correct.

ADV VERUSCHKA SEPTEMBER: And this was on the 13<sup>th</sup> of December 2014?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Yes so I – I can't recall technically I was still employed up until 31 December but that was the last day I attended and I was on leave thereafter, so that was the last line of business if you will, that I executed on behalf of Transnet.

ADV VERUSCHKA SEPTEMBER: Just going back to your involvement in this particular process, you mention that you were  
10 involved in all of the formal negotiations relating to this transaction, were you involved in all of the informal discussions on it as well?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: So Chair I believe I was a part – well I don't know what I don't know but the only two informal sessions that I'm aware of that I wasn't involved in was the apparent meeting between Mr van der Merwe and Mr Singh in Umhlanga and the separation meeting at the Slow-Lounge where Mr Joshi and Mr Singh finalised the pricing, from what I recall.

ADV VERUSCHKA SEPTEMBER: Okay to summarise, and please correct me if I'm wrong, to summarise you led the commercial stream of  
20 the negotiation team?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:  
Correct.

ADV VERUSCHKA SEPTEMBER: Yusuf Loonat led the technical stream of the negotiation team?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That's correct Chair.

ADV VERUSCHKA SEPTEMBER: You had your external lawyer who was the master of the MSA?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:  
That's correct Chair.

ADV VERUSCHKA SEPTEMBER: The commercial stream and the technical stream engaged with each other to keep each other abreast of the regular updates.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

10 Yes, we did Chair.

ADV VERUSCHKA SEPTEMBER: You were aware of all of the changes to the MSA?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: I believe I had to be Chair since our external legal consultant owned that document and would have checked any changes with me.

ADV VERUSCHKA SEPTEMBER: Would it then be a fair statement to say that the negotiations and the detail of those negotiations on paper was always present to your mind?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: I  
20 would say that's a fair statement Chair.

ADV VERUSCHKA SEPTEMBER: And so you were fully aware of the negotiations and the outcome of those negotiations as documented in the final MSA which you presented for signature on the 13<sup>th</sup> of December 2014.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: I

believe so yes.

ADV VERUSCHKA SEPTEMBER: Now who is Homix?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Chair so the first time I heard the name Homix I think was five or six months after I left the employ of Transnet and I read about a company called Homix and if I recall it was Amagunganis release in the papers.

I also had a gentleman, now that I think of it, Mr Stefaans Brummer from the Sunday Times phoning me a day or two before that article was released asking me if I was willing to talk to him, which I said I was if

10 Transnet was willing to release me from confidentiality but that's the first time I heard the name Homix.

ADV VERUSCHKA SEPTEMBER: Did you encounter – not to take away from your evidence that, that was the first time you heard of the name Homix, just for the avoidance of doubt, did you come across the name Homix at all during the 2014 MSA and buy-back agreement negotiations?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: I did not.

ADV VERUSCHKA SEPTEMBER: If I could take you then – before I  
20 do take you to a paragraph, I'm not sure if my time is correct.

CHAIRPERSON: Well we are six minutes to, if we can we can exhaust this six minutes and then take the lunch break but if it's more convenient to continue after lunch, that's fine.

ADV VERUSCHKA SEPTEMBER: Could I beg an indulgence just to clarify certain aspects before we get into this detail.

CHAIRPERSON: Ja you want to do that after lunch or now.

ADV VERUSCHKA SEPTEMBER: I beg the indulgence to have the lunch break – the long adjournment now.

CHAIRPERSON: Alright we take it now. That's fine.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Are you ready?

ADV VERUSCHKA SEPTEMBER: Yes I am thank you Chair.

CHAIRPERSON: Well you may proceed.

10 ADV VERUSCHKA SEPTEMBER: Mr Van Der Westhuizen before the adjournment you were informing the Chair about an entity called Homix. It was your evidence that during your time at Transnet you had not encountered the entity called Homix at all, is that correct?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

That is correct Chair.

ADV VERUSCHKA SEPTEMBER: If I can take you to Exhibit bundle BB7[b] and ask you to please turn to page 519. Before you Mr Van Der Westhuizen is a letter on what appears to be a Homix letterhead and the letter is dated 12 December 2014. It is addressed by Mr Khan of  
20 Homix to Mr Sunil Joshi who is represented as the MD and CEO of Neotel PTY LTD. For the record this particular letter states the following in paragraph 1.

“This letter serves to confirm today's engagement with Neotel pertaining to their master services agreement and the related asset sale negotiation with Transnet SOC. The

talks have reached an impasse and Neotel wishes to engage the services of Homix to analyse both entities requirements to find a workable solution. The work is to be carried out in a pure risk basis and Homix shall not bill for any time and material nor any out of pocket expense. If successful Neotel shall pay Homix

1. For the assets sale a full and final once off fee it is written actually once of presumably a spelling error once off fee of R25 million payable 30 days after signature.
2. For the master services agreement a fee of 2% of the value of the contract currently at R1.8 billion.
3. These fees are excluding VAT.

These fees are success fee commissions' payable because of the assistance and expertise provided by Homix enabling Neotel to close these two deals that are currently agreed to be lost business as confirmed by both Neotel and Transnet."

And the last paragraph:

- 20 "Please concur the above together with the success fee structure where the latter shall become binding on Neotel."

Is it correct that this particular letter deals with the very 2014 MSA and buy back agreement that you were integrally involved in?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: It

does Chair.

ADV VERUSCHKA SEPTEMBER: And by the date of this letter which is 12 December 2014 how does that date compare to the meeting that you had at the Neotel offices at which the final MSA agreement was presented for signature?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: Chair so this letter was issued it appears the day before we finalised the Master Services Agreement and I supplied that document to Mr Singh.

- 10 ADV VERUSCHKA SEPTEMBER: And notwithstanding what is stated in this letter did you have any engagement with a company called Homix on – in relation to Neotel?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: None whatsoever Chair.

CHAIRPERSON: Do you know whether anybody from Transnet engage – was in any way engaged with or this entity?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: Not to my knowledge Chair.

CHAIRPERSON: Around that time?

- 20 MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: No not to my knowledge.

CHAIRPERSON: Thank you. What are the chances that you would have known if there had been anybody of significance in terms of position who would have been engaged?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

Chair I think the chances would have been fairly good since I led this process.

CHAIRPERSON: Yes.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: And there is a couple of items that is peculiar in this document. Like I said number 1 the date.

CHAIRPERSON: Yes.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:  
That is the day before. So I question what value they could have added  
10 in a day?

CHAIRPERSON: Yes.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: The second item is that they mentioned that the talks reached an impasse and further in the document they state both parties confirmed lost business. I mean I think we have gone through the detail. There is absolutely no way that Transnet would not have signed this Master Services Agreement.

CHAIRPERSON: Yes.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:  
20 Because we did not have an alternative.

CHAIRPERSON: Yes.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: So – and I question who at Transnet would have given that message that we have reached an impasse and we cannot go any further to that I also find quite peculiar.

CHAIRPERSON: Hm.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: Ja and then the fees I – for a day's worth of work I – is quite exorbitant yes.

CHAIRPERSON: Ja. Thank you.

ADV VERUSCHKA SEPTEMBER: Can I then ask you to turn to page 494 of the same bundle please? Do you have any personal knowledge of this document?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: I  
10 did not Chair until the investigators supplied me with the document.

ADV VERUSCHKA SEPTEMBER: Please identify this document – the nature of this document?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:  
Chair it appears to be a contract between Neotel and Homix for the supply of certain consulting services.

ADV VERUSCHKA SEPTEMBER: Okay.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: And  
..

ADV VERUSCHKA SEPTEMBER: If I can ask you to turn to the next  
20 page which is page 495. Is it correct that at paragraph 1.2.4 the commencement date which would be the commencement date of this particular agreement means 12 December 2014?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:  
That is correct Chair.

ADV VERUSCHKA SEPTEMBER: And is it correct that that is the same

date of the document we have just previously referred to which was the Homix letter to Mr Sunil Joshi?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

That is correct it is the same date.

ADV VERUSCHKA SEPTEMBER: If I can then ask you to turn to page 496 at which paragraph 4 documents consultancy services. As a short paragraph the 4.1 reads:

10            “That the consultant undertakes to facilitate the successful conclusion of the assets sale referred to in the Master Services Agreement concluded between Neotel and Transnet SOC Limited.”

4.2

“For the purposes of this agreement customer means Transnet SOC Limited project means the successful conclusion and signature of the assets sale forming part of the MSA concluded between Neotel and Transnet SOC Limited.”

And on the next page:

20            “Neotel representative means Francois Van Der Merwe.”

Do you have any observation that you can make in relation to the services that were contracted in this agreement?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: The agreement seems to be a repetition pretty much of that letter. So my commentary would be very similar Chair that an agreement signed

between the parties on 12 December to get to Transnet and Neotel to agree to a R1.8 billion contract that we have been negotiating for months on end. I fail to understand what value Homix could possibly have added.

ADV VERUSCHKA SEPTEMBER: The word asset sale in paragraph 4.1 on page 496 of this document in your understanding what would asset sale refer to?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:  
Chair my understanding it would refer to the buyback of assets that we  
10 have discussed at length this morning as well.

ADV VERUSCHKA SEPTEMBER: And that is the very buyback – the asset buyback sorry which forms part of the 2014 MSA agreement that you were involved in negotiating?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:  
That is correct.

ADV VERUSCHKA SEPTEMBER: If I can then take you to page 497 paragraph 6. Paragraph 6.1 documents the detail of – not 6.1 sorry. Paragraph 6 documents the detail of fees that would be payable in relation to the services that are contracted under this agreement. To  
20 understand the depth of the consequence of this agreement it is necessary that we deal with the detail of fees that were in fact contracted under this agreement. At paragraph 6.1.1 it records:

“That for the successful implementation and finalisation of an operational agreement relating to the future maintenance, insurance and operating of the assets bought by Transnet from Neotel a full and

once off fee – once of fee of R25 million payable 30 days after signature of the operational agreement between Neotel and Transnet SOC Limited currently anticipated for 18 March 2015 or any other later date agreed by the Neotel and Transnet SOC Limited. The fees contemplated in 6.1 above are excluding VAT.”

If we can pause there for a second? Are you aware of what operational agreement between Neotel and Transnet is referred to in paragraph – in the paragraph that has just been read?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

10 Chair my only assumption could be that it has to be the Master Services Agreement between Transnet and Neotel.

ADV VERUSCHKA SEPTEMBER: And the R25 million that is the once off fee in once again consistent with the letter of Homix sent to Mr Sunil Joshi dated 12 December 2014, is that correct?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: It appears that way Chair yes.

ADV VERUSCHKA SEPTEMBER: At paragraph 6.3 on page 498 the agreement according to this contract continues to record that clause 6 is a – at – pardon me – towards the – let me just read the full one.

20 “Notably the fees referred to above in this clause 6 is success fee commission payable because of the assistance and expertise provided by consultant enabling Neotel to successfully close the project which project is currently agreed to be lost business as confirmed by both Neotel and Transnet SOC

Limited.”

Can you please...

CHAIRPERSON: I am trying to look where you are reading at page 498.

ADV VERUSCHKA SEPTEMBER: At paragraph 6.3 Chair.

CHAIRPERSON: Oh okay thank you.

ADV VERUSCHKA SEPTEMBER: Do you have any comment to that Mr Van Der Westhuizen?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

10 Chair again I would like to understand who from Transnet they would have engaged because they do state that we concurred that this was lost business and like I have stated before Transnet did not have an option but to contract with Neotel at this stage.

CHAIRPERSON: But did you already say that to the extent that they and now I am talking about Homix talk about a business that was lost that this was a lost business as confirmed by both Neotel and Transnet SOC Limited.

1. What is your comment on the concept of a lost business number 1.

20 2. And the question of whether this had been confirmed to be the position by Transnet as well?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

Chair so it appears that these documents relate to the Master Services Agreement and the asset buyback between Transnet and Neotel. Now I mean lost business in my mind would imply that the parties are not able

to reach agreement and both parties have confirmed we are not going to get there.

CHAIRPERSON: Yes.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: We are going to walk away.

CHAIRPERSON: Yes.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: That is lost business.

CHAIRPERSON: Ja.

10 MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: At least my interpretation thereof.

CHAIRPERSON: Yes.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: Like I have articulated before that was not an option for Transnet. We could not. We were fully dependent. We were a captive client.

CHAIRPERSON: Yes.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: So that is why it is also strange I think they have taken a bit of poetic licence here to be blunt in stating that this was confirmed by both  
20 Neotel and Transnet. Like I said it would have been nonsensical for anyone from Transnet to confirm that this is lost business.

CHAIRPERSON: So is your evidence that:

1. You never had any engagement with Homix and therefore never said to them this was lost business?
2. You do not believe anybody from Transnet could genuinely have

said this was a lost business in the light of what you have already said namely Transnet could not afford not to reach agreement with Neotel on this issue. As I understand your evidence because of the consequences that would follow.

3. Even if there was somebody from Transnet who unbeknown to you said to Homix this is lost business do you say that they could not have believed that to be true?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

Chair I would say correct on all three points yes.

- 10 CHAIRPERSON: Yes. Okay. Thank you.

ADV VERUSCHKA SEPTEMBER: Important to the date that is mentioned in the next sub-paragraph 6.4 reads:

“That for the avoidance for doubt whatsoever satisfactory performance of a consultancy services shall be evidenced by the following:”

6.4.1

- 20 “Successful conclusion and signature of an agreement given effect to the sale of assets as contemplated in the Master Services Agreement concluded between Neotel and Transnet SOC on or before 19 December 2014”

And 6.4.2

“Confirmation and agreement of related asset sale and the conclusion of an operational agreement in this regard by no later than 18 March 2015.”

Are you aware of when the MSA was finally signed?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: I am Chair. The final Master Services Agreement was signed by Transnet on the 15 December 2014 and counter signed by Neotel on the 19 December 2014.

CHAIRPERSON: Was it 15 December 2014 for Transnet and 19 for Neotel – 19 December 2014?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: That is correct Chair.

10 CHAIRPERSON: Okay thank you.

ADV VERUSCHKA SEPTEMBER: In effect the successful conclusion is relative to the date of the MSA which was in fact finally signed on the 19 December 2014?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: That is correct Chair.

ADV VERUSCHKA SEPTEMBER: And if I could then ask you ...

CHAIRPERSON: I am sorry I am looking for Transnet's signature? I see Neotel's one at 504 is that the right page for that?

ADV VERUSCHKA SEPTEMBER: No Chair

20 CHAIRPERSON: It is not.

ADV VERUSCHKA SEPTEMBER: This is an agreement between Neotel and Homix.

CHAIRPERSON: Oh ja but I am having mine both. This agreement relates to the one that he is talking about?

ADV VERUSCHKA SEPTEMBER: Yes.

CHAIRPERSON: Okay so the other one was signed on different dates by Transnet and Neotel. Transnet 14 December 2014, Neotel 19 December 2014. Then that is what you will still be coming to in due course, this one? Okay.

ADV VERUSCHKA SEPTEMBER: Now may be a prudent time.

CHAIRPERSON: Ja.

ADV VERUSCHKA SEPTEMBER: To hand up the ...

CHAIRPERSON: Okay.

ADV VERUSCHKA SEPTEMBER: MSA that was concluded.

10 CHAIRPERSON: But the one that for Transnet and Neotel is – are you going to that one or have we dealt with that one?

ADV VERUSCHKA SEPTEMBER: Between ...

CHAIRPERSON: For Transnet and Neotel?

ADV VERUSCHKA SEPTEMBER: That is the agreement.

CHAIRPERSON: The agreement? That is what you are coming to?

ADV VERUSCHKA SEPTEMBER: I am wanting to hand up now.

CHAIRPERSON: Okay.

20 ADV VERUSCHKA SEPTEMBER: In fact Chair this is actually a supplementary statement which accounts for different errors in the original statement. But importantly it attaches a copy of the 2014 MSA agreement that this witness is now referring to.

CHAIRPERSON: The lever arch file containing the supplementary statement of Mr Van Der Westhuizen the witness currently on the witness stand will be marked Exhibit BB7[c].

ADV VERUSCHKA SEPTEMBER: As it pleases Chair.

CHAIRPERSON: Thank you.

ADV VERUSCHKA SEPTEMBER: In answer to your question Chair if we could turn to page 78 of the bundle and a copy will be handed to the witness now.

CHAIRPERSON: 170?

ADV VERUSCHKA SEPTEMBER: 178.

CHAIRPERSON: Yes.

ADV VERUSCHKA SEPTEMBER: Mr Van Der Westhuizen through you this is in fact the signature page for the 2014 SMA and buyback  
10 agreement.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

That is correct Chair.

ADV VERUSCHKA SEPTEMBER: And are these the dates that you informed in your evidence which was that Transnet signed this agreement on the 15 December 2014 and the 19 December 2014 this agreement was signed by Neotel?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

That is correct.

CHAIRPERSON: I think when I was clarifying the dates with you I said  
20 14 December. I see here it is 15 December so...

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: No it is fine.

CHAIRPERSON: You might not have heard that I got the date wrong.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: Ja I thought you said 15 December Chair.

CHAIRPERSON: Ja okay.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: Yes  
it is the 15h.

CHAIRPERSON: The correct date is 15?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:  
That is correct Chair.

CHAIRPERSON: Ja.

ADV VERUSCHKA SEPTEMBER: If we can then whilst still in this  
supplementary bundle if I could ask you to go to page 56. Paragraph  
10 25. Is it correct that this agreement regulates at least the asset take  
back which we have been referring to as the asset buyback?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: It  
does Chair.

ADV VERUSCHKA SEPTEMBER: And so in effect on the very day that  
the MSA was signed by the contracting parties of Transnet and Neotel  
this very agreement between Homix and Neotel was similarly signed?  
No I am getting my dates wrong.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: Yes  
so Chair I think one of the success factors.

20 ADV VERUSCHKA SEPTEMBER: Sorry it is 2015.

CHAIRPERSON: Ja.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:  
Refers to the same date yes.

CHAIRPERSON: Yes.

ADV VERUSCHKA SEPTEMBER: Sorry I am getting my dates wrong.

CHAIRPERSON: I think you want to say is it correct that on the day on which one of the parties or rather Neotel signed the Master Services Agreement with Transnet namely the 19 December is the same day on which it signed an agreement with Homix? If you look at the other agreement.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

Chair I think...

CHAIRPERSON: Of Homix and – or did I mix something – did I mix up something as well? Did not Homix

10 ADV VERUSCHKA SEPTEMBER: Chair.

CHAIRPERSON: I am sorry. I am sorry. Did Homix not and Neotel or rather – ja did one of the parties between Homix and Neotel not sign the agreement between Homix and Neotel on the 19 December 2014?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

Chair no so the correspondence between them, the letter and the document if I am not mistaken was on the 12 December the day before we finalised the Master Services Agreement.

CHAIRPERSON: Hm.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: It is

20 peculiar that the success factor in this document between them refers exactly to the date when the MSA was actually signed.

CHAIRPERSON: Hm.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: And

I think we will get to it in a second but this document was actually signed – the contract between Neotel and Homix was actually signed in

February of 2015.

CHAIRPERSON: Oh.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: A month or two after the conclusion of the MSA but the commencement date in the agreement is 12 December 2014.

CHAIRPERSON: Oh okay.

ADV VERUSCHKA SEPTEMBER: Yes.

CHAIRPERSON: Ja take it further.

ADV VERUSCHKA SEPTEMBER: So in the – in the result the very  
10 agreement between Homix and Neotel was signed long after the MSA that that agreement sought to regulate was in fact signed?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:  
That is correct Chair.

ADV VERUSCHKA SEPTEMBER: Okay.

CHAIRPERSON: I just want to make sure. That I have got this – now the agreement between Homix and Neotel is at 494 is that right?

ADV VERUSCHKA SEPTEMBER: The first agreement Chair.

CHAIRPERSON: Hm.

ADV VERUSCHKA SEPTEMBER: The first agreement.

20 CHAIRPERSON: The first – well that is ...

ADV VERUSCHKA SEPTEMBER: We will still get to the next one.

CHAIRPERSON: Oh that is 19 February not 19 December.

ADV VERUSCHKA SEPTEMBER: Yes.

CHAIRPERSON: So it is the – about two months later?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

That is correct Chair.

CHAIRPERSON: Oh that is the point you were making?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: Yes Chair.

CHAIRPERSON: For some reason I thought that it was 19 December. And then if you go back to that letter of 12 December – or before we go there is there a clause that they put in in this agreement between Neotel and Homix to the – okay let me see. Oh ja this is the date – this is what I am looking for. I think you did refer to it earlier on namely

10 clause 1.2.4 the commencement date.

ADV VERUSCHKA SEPTEMBER: Yes Chair.

CHAIRPERSON: Which says the commencement date is 12 December 2014 notwithstanding the date that this agreement is signed by the parties signing last in time.

ADV VERUSCHKA SEPTEMBER: Yes Chair.

CHAIRPERSON: So – so they are effectively saying we may not have had an agreement on the 12 December but as long as there is a signature of the agreement that happens later you must treat us as if we did have an agreement on the 12 December.

20 MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:  
That is what it appears like Chair yes.

CHAIRPERSON: Ja. Okay. And that letter of the 12 December what – where was it again?

ADV VERUSCHKA SEPTEMBER: That is page 159.

CHAIRPERSON: 159.

ADV VERUSCHKA SEPTEMBER: I mean sorry 519 sorry.

CHAIRPERSON: 519. I just want to – Ja okay.

ADV VERUSCHKA SEPTEMBER: If we could then look at same bundle which is BB7[b] and turn to page 507. Are you there Mr Van Der Westhuizen?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: I am, I am Chair.

ADV VERUSCHKA SEPTEMBER: This – this – this document appears to be another business – new business consultancy agreement between  
10 Neotel PTY LTD and Homix PTY LTD, is that correct?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:  
That is correct Chair.

ADV VERUSCHKA SEPTEMBER: Do you once again have any personal knowledge of this document?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:  
Chair the first time I became aware of this document was when the investigator shared it with me.

ADV VERUSCHKA SEPTEMBER: If I can ask you to turn to page 517 of the same bundle. It is the signature page. Whilst there is no date  
20 for the signature of Homix the date that appears for the signature of Neotel is once again 19 February 2015. Is that correct?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:  
That is correct Chair.

ADV VERUSCHKA SEPTEMBER: And then if I could ask you to go to page 508 and once again at paragraph 1.2.4 the commencement date of

this agreement is recorded as 12 December 2014 which is no different to the previous agreement.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Correct.

CHAIRPERSON: Did the first agreement between Neotel and Homix have the signature of Homix? What page was it again?

ADV VERUSCHKA SEPTEMBER: Page 504. Homix certainly signed the agreement.

CHAIRPERSON: Both parties signed?

- 10 ADV VERUSCHKA SEPTEMBER: Yes Chair but Homix did not inform of the date of signature.

CHAIRPERSON: The date was not included. So in both agreements there was no date of signature ...

ADV VERUSCHKA SEPTEMBER: Yes Chair.

CHAIRPERSON: But are – are the two documents different?

ADV VERUSCHKA SEPTEMBER: Yes Chair.

CHAIRPERSON: Oh, okay but do they have the same date for Neotel for signature?

ADV VERUSCHKA SEPTEMBER: Yes Chair.

- 20 CHAIRPERSON: Oh.

ADV VERUSCHKA SEPTEMBER: There were two agreements that appear to have been signed ...

CHAIRPERSON: On the ...

ADV VERUSCHKA SEPTEMBER: On exactly the same date.

CHAIRPERSON: Same day ja.

ADV VERUSCHKA SEPTEMBER: At least by Neotel ...

CHAIRPERSON: Ja, ja.

ADV VERUSCHKA SEPTEMBER: And that was 19 February 2015.

CHAIRPERSON: Yes, okay.

ADV VERUSCHKA SEPTEMBER: The services however contracted was somewhat different.

CHAIRPERSON: The services?

ADV VERUSCHKA SEPTEMBER: Yes Chair.

CHAIRPERSON: Oh, okay.

- 10 ADV VERUSCHKA SEPTEMBER: And so to that end if I could ask you to go to page 509 please Mr van der Westhuizen at paragraph 4 the consultancy services are recorded to be that:

“The consultant agrees to undertake to analyse the requirements of both Neotel and Transnet SOC to find a workable solution to the impasse in negotiations between Neotel and Transnet SOC in regard to their Master Services Agreement.”

- What were your observations in relation to the difference between the consultancy services contracted under this agreement and the previous  
20 agreement that we just referred to earlier between Homix and Neotel?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Chair it appears as if the first contract that we looked at earlier relates to consulting services for the asset buyback. Whereas it appears the second agreement relates to the conclusion of the Master Services Agreement between Transnet and Neotel.

ADV VERUSCHKA SEPTEMBER: And to that end on page 510 project is defined at paragraph B at the very top of the page to mean:

“The successful conclusion and signature of the asset sale forming part of the MSA concluded between Neotel and Transnet SOC Limited.”

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That is correct.

ADV VERUSCHKA SEPTEMBER: The – the other fundamental difference is that which relates to fees. To this end can I ask you to go  
10 to page 511 paragraph 6? It is recorded at paragraph 6.1 that:

“For satisfactory performance of the consultancy services in accordance with the terms and conditions of the agreement Neotel shall pay to the consultant the fees as follows: 6.1.1, for the successful conclusion and signature of the Master Services Agreement a fee of 2 percent of the value of the contract which is currently at R1.8 billion. 6.1.2, the fees contemplated in 6.1 above are excluding VAT.”

20 6.2 reads that:

“The work is to be carried on a pure risk basis and the consultant shall not bill for any time and material nor any out of pocket expenses.”

What is highlighted of note in italics is at paragraph 6.3 which informs that:

10 “Notably the fees referred to above in Clause 6 is success fee commission payable because of the assistance and expertise provided by consultant enabling Neotel to successfully close the Master Services Agreement currently agreed to be lost business as confirmed by both Neotel and Transnet SOC Limited for the avoidance of any doubt whatsoever satisfactory performance of the consultancy services shall be evidenced in the successful conclusion and signature of the Master Services Agreement between Neotel and Transnet SOC.”

How many Master Services Agreements were concluded between Neotel and Transnet?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: Just the one Chair.

20 ADV VERUSCHKA SEPTEMBER: So is reference to Master Services Agreement in this paragraph any different to the Master Services Agreement that may have been contemplated under the first Homix Agreement?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: It does not appear that way Chair.

CHAIRPERSON: So you are able to say that without any shade of doubt anybody who says there was a stalemate reached or deadlock between Neotel and Transnet with regard to in the negotiations relating

to this agreement cannot be talking the truth?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Chair yes we - we had a stalemate where we disagreed on certain terms ...

CHAIRPERSON: Ja.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: But not to the extent that I believe either party would have walked away from this agreement.

CHAIRPERSON: Yes.

10 MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Neotel was reliant on the revenue from Transnet ...

CHAIRPERSON: Yes.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: And Transnet was reliant on Neotel because they owned our assets.

CHAIRPERSON: Yes but what you are able to say for sure is that one, you were not contacted in anyway and you did not have any communication of any kind with Homix?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: Yes Chair I did not.

20 CHAIRPERSON: And - and from the people who you knew at Transnet to be involved in these negotiations there is not a single person who you know - you know to have been contacted by Homix or to have had any contact with them. Not to say that you are sure that nobody was in contact with them but you do not have any such knowledge?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That is correct Chair.

CHAIRPERSON: And it would be strange as far as you are concerned if somebody within Transnet who was in the negotiation team had had such contact with Homix without you being aware or being informed in the light of the role you were playing in the negotiations?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Absolutely Chair.

CHAIRPERSON: Okay.

ADV VERUSCHKA SEPTEMBER: Is it correct then

10 Mr van der Westhuizen that according to paragraph B on page 510 this particular agreement includes both the asset buyback and the MSA?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: It does appear that way Chair yes.

ADV VERUSCHKA SEPTEMBER: Okay. Do you know what 2 percent of 1.8 billion calculates to?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: I believe it calculates to R36 million Chair.

ADV VERUSCHKA SEPTEMBER: To that end could I ask you to then turn to page 505 of the same bundle? What appears before you

20 Mr van der Westhuizen is what appears to be a tax invoice by Homix to Neotel dated 2 January 2015 and the description for this – for this invoice is for Master Services Agreement successful conclusion success fee. The total being R36 million which together with VAT of 5 040 000 million totals R41 040 000 million. Is that correct?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That is correct.

ADV VERUSCHKA SEPTEMBER: You said that the 2 percent of 1.8 billion calculates to what figure?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: I think it is R36 million Chair.

ADV VERUSCHKA SEPTEMBER: And so that figure would accord with this amount that has been invoiced?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:  
Yes.

10 ADV VERUSCHKA SEPTEMBER: Importantly it is highlighted that the date of this invoice is 2 January 2015. Is that correct?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:  
That is correct Chair.

ADV VERUSCHKA SEPTEMBER: And so the date of invoice precedes the date of the conclusion or rather the signature of the Homix – of both Homix agreements?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:  
That is correct. Those dates were 19 November 2015.

20 ADV VERUSCHKA SEPTEMBER: So to summarise you have a meeting or rather you attend a meeting on 13 December 2014 at which you present the final draft of the 2014 MSA and Buyback Agreement for signature?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:  
That is correct Chair.

ADV VERUSCHKA SEPTEMBER: And that is a meeting that is held at

Neotel's Offices?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That is correct.

ADV VERUSCHKA SEPTEMBER: Unbeknown to you there is a letter dated 12 December 2014 by Homix to Neotel which informs that they are going to assist in finalising the very process that you were involved in to finalise on presentation of a final MSA the day after?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That is correct Chair.

- 10 ADV VERUSCHKA SEPTEMBER: According to the date sequence it was also then that on 12 December 2014 the very agreements that were signed on 19 February 2015 between Homix and Neotel was agreed to come into effect that being the day before you have this agreement to – at which you present the final MSA Agreement for signature?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That is correct Chair.

ADV VERUSCHKA SEPTEMBER: On 15 December 2014 Transnet signs the 2014 MSA and Buyback Agreement which is then countersigned by Neotel on 19 December 2014?

- 20 MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Correct.

ADV VERUSCHKA SEPTEMBER: On 2 February 2015 an invoice is issued by Homix to Neotel for the sum of R36 million which is in line with a letter that is dated 12 December and a subsequent agreement that was concluded on 19 February 2015 between Homix and Neotel?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: Just on correction advocate. I think you said 2 February. I think it is 2 January you met.

ADV VERUSCHKA SEPTEMBER: Oops.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: But, correct in everything else.

ADV VERUSCHKA SEPTEMBER: Thank you for the correction.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:  
Sure.

10 ADV VERUSCHKA SEPTEMBER: 2 January.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:  
Yes.

ADV VERUSCHKA SEPTEMBER: And then it was only more than a month later on 19 February 2015 that these agreements between Homix and Neotel the one which appears to regulate just the asset buyback. The other which appears to regulate both the MSA and the asset buyback are signed off by both Neotel and Homix?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:  
That is incorrect Chair.

20 ADV VERUSCHKA SEPTEMBER: Okay.

CHAIRPERSON: Who – who was in your – in the Transnet negotiating team that you were leading? I take it you were the leader of the negotiating team?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: Yes Chair. So there were multiple people included in that team.

CHAIRPERSON: Ja.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Transnet Procurement, Transnet Supply and Development, external legal, internal legal ...

CHAIRPERSON: I just want the names as well if you are able to remember.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Sure. There are quite a few people Chair. It was more than 10 from what I recall.

10 CHAIRPERSON: Oh, is that so?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Yes.

CHAIRPERSON: But you can remember some names and not others?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Yes, yes, yes Chair ja. So I can remember ...

CHAIRPERSON: Okay. Mention those that – that you remember in their positions if you are able to.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

20 Okay. So Chair you just want to double check. You are specifically referring to the commercial stream and who was part of those negotiations?

CHAIRPERSON: The negotiations relating to this agreement.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Yes.

CHAIRPERSON: Yes.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: So there were two teams – the commercial team ...

CHAIRPERSON: Oh, yes.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: And the technical team.

CHAIRPERSON: Yes.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: So (intervenes).

CHAIRPERSON: And you were on the commercial team one?

10 MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:  
That is correct Chair.

CHAIRPERSON: Yes.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: So it was myself. It was a gentleman by the name of Macdonald Maluleke in charge of Procurement. Belfie (?) from – I cannot – his surname escapes me – Belfie from Supply Development. The external legal was Basetsana Molebatsi. The internal legal – his name escapes me now as well. There was an external consultant Bruce McLaren. There was Jack Matthews from Gartner. There was – I think – Clara from Neotel  
20 their legal representative. There was a gentleman by the name of (indistinct) from Neotel again. François van der Merwe from Neotel. Chair and that is who I can remember.

CHAIRPERSON: Hm, ja okay. No that is fine. Thank you.

ADV VERUSCHKA SEPTEMBER: Okay. Just ...

CHAIRPERSON: And all - and you confirm that all those who you have

mentioned and those whose names you cannot remember no one of them ever mentioned to you have – having had any contact with Homix?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: I

can confirm that Chair.

CHAIRPERSON: Thank you.

ADV VERUSCHKA SEPTEMBER: Just to close the timeline sequence to the extent that R36 million was paid for services contracted on 12 February in relation to services that you finalised on 13 December – sorry – for services contracted from Homix on 12 December 2014 to the  
10 date on which you delivered the final MSA for signature would it be correct to say that R36 million would relate to but one day of work?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: It does appear that way Chair yes.

CHAIRPERSON: But you make even a more important point as I understand it that certainly as far as you know there was no work involving Homix and Transnet ...

ADV VERUSCHKA SEPTEMBER: Yes.

CHAIRPERSON: As far as you are aware and none of the people that were in your negotiating team ever mentioned having had any contact  
20 with Homix?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That is correct Chair.

CHAIRPERSON: Ja.

ADV VERUSCHKA SEPTEMBER: Ja, based on your experience what is – is there any commercial sense of these agreements and payments

made?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Chair it does not make any sense to me. I fail to understand what value Homix could have added nor who they engage with at Transnet and how they could have possibly earned R36 million with – for a day's worth of work. So it does not make sense.

CHAIRPERSON: For no work at all ...

ADV VERUSCHKA SEPTEMBER: For no work.

CHAIRPERSON: As far as you are concerned.

10 MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: Yes that is correct Chair. No work at all.

CHAIRPERSON: Yes.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: But allegedly some work.

CHAIRPERSON: Yes. Now they were to get that money from Neotel. Is it not?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That appears the way they were paid yes.

20 CHAIRPERSON: Yes. Would this mean that Neotel in reaching an agreement with – in reaching an agreement with Transnet may have taken into account the fact that they might have to pay a certain amount of money to somebody else? In other words taking from their own money and money that would come to them anyway.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Chair it is possible yes that they could have.

CHAIRPERSON: Hm. So – so the – the fact of the matter is simply that Transnet paid – paid – you know – all the money that it was supposed to pay to Neotel and then Neotel may have then taken part of that and paid it to – to Homix?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: It does appear that way Chair yes.

CHAIRPERSON: Yes. To the extent that – to the extent that Transnet may have been satisfied that the amount agreed to between yourself and Neotel was commensurate and appropriate for what the agreement  
10 related to. Transnet cannot complain, can it – could not complain, could it?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Chair so we were not entirely over the moon with the asset buyback price nor the transition ...

CHAIRPERSON: Yes.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: Fee price.

CHAIRPERSON: Yes.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: But  
20 like I have tried to articulate before we were in a position where to be frank if Neotel charges R250 million for the assets instead of 200 million we probably would have still paid it.

CHAIRPERSON: Hm.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: So I cannot comment on whether Neotel inflated their price ...

CHAIRPERSON: Yes.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: And then use that money to pay Homix ...

CHAIRPERSON: Yes.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: For this alleged service.

CHAIRPERSON: Yes, yes. Well obviously if the amount that Neotel insisted Transnet should pay to the extent that that was an appropriate amount having regard to what was supposed to be done in terms of the  
10 agreement then whatever portion of that amount they may have given to Homix that is their business. Is it not?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Correct Chair.

CHAIRPERSON: If one proceeds from the premise that the amount agreed to between Transnet and Neotel was an appropriate amount.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Correct Chair.

CHAIRPERSON: So like if I sell you – you know – a car and I say it is R100 000. If it is worth selling that amount and you buy it for that  
20 amount but you then give part of that to somebody else then that is – that is your business with the other person.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That is correct Chair.

CHAIRPERSON: But the problem would arise if I have inflated the price that I have said you must pay because I now have to pay

somebody else.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Correct.

CHAIRPERSON: And that is what you say you do not know anything about?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Correct Chair because of the technicalities ...

CHAIRPERSON: Yes.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: And

10 the position Transnet was in ...

CHAIRPERSON: Yes.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: We felt the prices were excessive.

CHAIRPERSON: Yes.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Whether they were inflated to pay Homix I ...

CHAIRPERSON: Yes.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: I do not know and I cannot comment.

20 CHAIRPERSON: Ja, you felt they were excessive?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Yes.

CHAIRPERSON: But you were in a vulnerable position. You could not afford the consequences of not reaching an agreement with Neotel?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Absolutely Chair.

CHAIRPERSON: That is – that was your difficulty?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Correct.

CHAIRPERSON: But if you had an alternative you could have resisted the – this – the amount that Neotel wanted?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: I believe so Chair.

CHAIRPERSON: Ja, okay.

- 10 ADV VERUSCHKA SEPTEMBER: Chair – Chair may recall that evidence has been led before this Commission by Mr Ian Sinton and it was in that evidence that it was shown that Homix was a shelf company nominated by Mr Salim Essa to receive so called facilitation fees and that these fees were in fact derived from contracts awarded by Transnet to various companies. Chair ...

CHAIRPERSON: Okay.

- ADV VERUSCHKA SEPTEMBER: Chair one additional point to mention is that we will indeed be presenting at a later stage evidence on cash flows and particularly the analysis of that cash flow which would also  
20 talk to the flow of funds through Homix as an entity ...

CHAIRPERSON: Ja.

ADV VERUSCHKA SEPTEMBER: Which was not really an operational company of any sort.

CHAIRPERSON: Yes, ja but apart from that if, if your evidence is correct that there was really no stalemate in the sense that business as

the agreement says was lost. If – if one accepts that that never happened and if one accepts that Homix never facilitated any agreement between Transnet and Neotel then the question would arise why even if this was Homix's money why would it pay so much money to somebody else who did not do – facilitate any agreement. Is it not?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Absolutely Chair. It is peculiar.

CHAIRPERSON: And of course if the position is that this was just a shell company then there are more questions.

10 MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: Yes Chair.

CHAIRPERSON: Because you do not expect somebody to pay somebody such a lot of money for doing nothing and in terms of the agreement Homix is supposed to have become entitled to that money by virtue of having successfully facilitated the conclusion of the agreement and you in effect say but they could not have facilitated that agreement without talking to Transnet ...

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That is what they state.

20 CHAIRPERSON: And – and if they talk to Transnet they would have to talk to the negotiators and they never talked to the leader of at least the commercial part of the delegation. Is that right?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That is correct Chair.

CHAIRPERSON: Yes, okay.

ADV VERUSCHKA SEPTEMBER: Thank you Chair. Page 18 of your statement starts the next transaction that your evidence deals with and that is the 2014 Cisco equipment transaction.

CHAIRPERSON: So – I am sorry – just to round off. So really your evidence in regard to this is let us somebody come here and tell us what they did. How they did the facilitation of this agreement without talking to one of the parties actually the party that was supposed to pay the money – you know – to Neotel. Of course Neotel would pay to Homix but to facilitate an agreement between two parties you have got  
10 to talk to both parties.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Absolutely Chair.

CHAIRPERSON: I may have missed something. With regard to the other part – you were on the commercial team.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Stream.

CHAIRPERSON: The other – the other team do you know if they talked to them?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

20 Chair again I cannot state as fact. I have not asked everyone necessarily.

CHAIRPERSON: Yes.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That I can tell you that they have not discussed or they did not engage.

CHAIRPERSON: Yes.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Whoever they are with Yusuf Loonat ...

CHAIRPERSON: Ja.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Who was the technical lead.

CHAIRPERSON: But they would not have – that is Homix – would not have succeeded by talking to one team from Transnet and not to both. Would they?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

10 Well Chair they needed the Master Services Agreement signed ...

CHAIRPERSON: Yes.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: And the technical team – technical stream was not in charge of that. The commercial stream was.

CHAIRPERSON: Ja, your team was in charge of signing that?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That is correct.

CHAIRPERSON: You had the authority?

20 MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: So I had the authority to get it to finalisation.

CHAIRPERSON: Yes.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: To get it to Mr Molefe for signing.

CHAIRPERSON: For signing, ja.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Yes.

CHAIRPERSON: But in terms of finalising the negotiations you had the authority?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: Yes Chair.

CHAIRPERSON: Once they were finalised and they were – there was an agreement that was ready to be signed you would then take it to Mr Molefe and if he was satisfied with it he would then sign?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

10 Correct Chair.

CHAIRPERSON: Ja, thank you and it would make sense to – to facilitate or try and secure the agreement of people who do not have the authority to conclude the negotiations?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Correct Chair.

CHAIRPERSON: Ja, okay.

ADV VERUSCHKA SEPTEMBER: The 2014 Cisco equipment transaction please explain the background to this particular transaction to the Chair?

20 MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Chair so we have – we have briefly touched on it but in essence after the decision by Mr Molefe to overturn the recommendation to award the network services tender to Neotel and him ...

CHAIRPERSON: The decision hey not the recommendation is it?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Yes. To – to the recommendation. I beg your pardon Chair. Ja, so when the ...

CHAIRPERSON: Decision?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: Ja, so ...

CHAIRPERSON: The one by Ms Chetty or no or it is another one?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: No it is the same one. It is the same one Chair.

CHAIRPERSON: Ja, okay.

10 MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: So when Mr Molefe decided to overturn that decision ...

CHAIRPERSON: Yes.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Correctly by Ms Chetty that meant that we would need a neutral transition and that meant that – well – so effectively we met with Cisco, Neotel, T-Systems and Transnet Management or ITC Management and we came to the realisation that we would have to procure certain equipment that Neotel informed us was approaching end of life and end of support and T-Systems as part of their tender would have included it.

20 So we engaged with T-Systems who removed it from their tender and the pricing as well because of that exclusivity contract with Neotel. Confirmed the pricing with Gartner that the pricing seemed fair and followed the governance Chair to get those assets acquired which Transnet would then own which was effectively a portion of the switches and routers in the campuses. So we just fast tracked that

transaction effectively to transition the services in essence.

ADV VERUSCHKA SEPTEMBER: What was the value of equipment that you need to procure - that Transnet needed to procure?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Chair if I recall correctly it is R302-odd million.

ADV VERUSCHKA SEPTEMBER: If I can ask you to go to Bundle BB7B page 5256. It is Annexure W2.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Huh-uh.

10 ADV VERUSCHKA SEPTEMBER: Do you recognise ...?

CHAIRPERSON: Did you say 525?

ADV VERUSCHKA SEPTEMBER: 525. Do you recognise this memorandum dated 21 February 2014?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: I do Chair.

ADV VERUSCHKA SEPTEMBER: Who is the author of this document?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: I was the author Chair.

20 ADV VERUSCHKA SEPTEMBER: In paragraph 1 is it correct that the correct amount which was the value of the equipment to be procured was 305 million?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Chair I think at that point we were still finalising negotiations but – so it refers to a maximum value of R305 ...

ADV VERUSCHKA SEPTEMBER: Okay.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

R305million yes.

ADV VERUSCHKA SEPTEMBER: Thank you for the clarity. Please continue to outline the background in relation to this particular transaction.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Chair I think I captured it in the discussion earlier that we had an exclusivity clause with Neotel and as a result we had to procure this equipment through them, we felt that it was absolutely necessary to buy  
10 it well quickly to get the transition done in a short time of space.

ADV VERUSCHKA SEPTEMBER: Okay and at page 529 of that same bundle is it correct that your signature is dated 21/2/2014 as – and it's exactly the same for the other signatories to this document which was recommended by Mr Yusuf Loonat, Mr Gary Peter and approved by Mr Anoj Singh on the 21<sup>st</sup> of February 2014?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That's correct, I think Mr Singh wrote – it's a dash if not a 114, that's correct, 21 February 2014 by the parties.

CHAIRPERSON: He seems to have indicated that he signed it on the  
20 21<sup>st</sup> of February, 114. Okay alright yes.

ADV VERUSCHKA SEPTEMBER: Did you seek advice from any external service provider in relation to this transaction?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: I did Chair, so I approached Gartner to check the logic of what we were planning, whether it made sense to them as a technical expert, we also

checked the pricing with them to see they normally have data bases with pricing just to check the relevance and how good or bad the pricing was. I think like I mentioned I also checked with T-Systems that should we buy these assets through Neotel that they will remove it from their tender pricing so that we would not have to pay for these assets twice.

ADV VERUSCHKA SEPTEMBER: Thank you, and so at page 20 of your statement, at paragraph 64, from 64.1 to 64.3 you record the advice that you were in fact given by Gartner in order to further this particular transaction.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:  
That's correct.

ADV VERUSCHKA SEPTEMBER: What steps did you then take following receipt of such advice?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:  
Chair from what I can recall I engaged further, Gartner was of the view that we could potentially get a slightly better price although subsequent to me sending the information to Gartner we've already reduced the price. I further engaged directly with Cisco to see if we can get that price down even further, which we could slightly and I then when we placed the order, I placed the order as you will see later Chair I requested Neotel to pass that further discount that I negotiated with Cisco on to Transnet.

ADV VERUSCHKA SEPTEMBER: And so your engagement was only with Neotel and Cisco?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That's correct.

ADV VERUSCHKA SEPTEMBER: If I can ask you to turn then to page 544 of ...(intervention)

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: Just to be 100% accurate, and T-Systems to ensure that they reduce their pricing Chair, but yes.

ADV VERUSCHKA SEPTEMBER: Thank you, so again Bundle BB7B, page 544 which is the second last page of this bundle. There's an  
10 email that appears in the middle of this page on 21 February 2014, it appears that you had sent an email to Francois, who is Francois?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Chair Francois van der Merwe was the Account Executive from Neotel responsible for the Transnet account.

ADV VERUSCHKA SEPTEMBER: And what exactly is the purpose of this email?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Chair the focus of the email is to confirm that Transnet would like to place the order for that equipment to the value of R302.7million, there  
20 was some slight amendments made to some technicalities that Mr Loonat requested so I just made sure that they included that and then I also in the email asked Mr van der Merwe to make sure that the further discount I negotiated be included in the final pricing, passed on to Transnet.

ADV VERUSCHKA SEPTEMBER: Thank you. Page 539 of the same

bundle there's an email from Homix to Francois van der Merwe at Neotel, titled Project at Transnet dated February 21, February 2014, 11:46, are you familiar with this document?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Chair I am, it was shared with me by the investigators.

ADV VERUSCHKA SEPTEMBER: And what are your comments in relation to this document.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Well Chair it seems quite strange to me again that Homix engaged with  
10 Neotel on the day that we placed the order, so they appear to be quite  
good negotiators and they get things done quickly because they engage  
with Neotel on the 21<sup>st</sup>, which is the same day I placed the order with  
Neotel, so again I fail to understand.

CHAIRPERSON: But that date, the date of that email is 21 Feb 2014.

ADV VERUSCHKA SEPTEMBER: Yes Chair.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: So  
Chair it's the same date that the memorandum by the four or  
recommended and approved by the four signatures, mine included and  
it's the same date I placed the order with Neotel.

20 CHAIRPERSON: Okay.

ADV VERUSCHKA SEPTEMBER: If I can then ask you to turn to the  
new supplementary bundle, the second last page which is page 179,  
there appears to be ...(intervention)

CHAIRPERSON: 79?

ADV VERUSCHKA SEPTEMBER: 179, it's the second last page of the

supplementary bundle Chair.

CHAIRPERSON: Mine goes, oh okay, I found it. Yes?

ADV VERUSCHKA SEPTEMBER: That appears to be an email from again Francois van der Merwe at Neotel on Saturday the 22<sup>nd</sup> of February 2014, and it is sent to Howicks SA with the subject title "Neotel Acceptance letter", are you familiar with this document?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: I am, the investigators shared it with me Chair ja.

ADV VERUSCHKA SEPTEMBER: And attached to this document at  
10 page 180 there appears to be an acceptance letter from Mr Shaneel Joshe of Neotel to Mr T Kahn of Homix, the letter reads, in the second paragraph:

"We hereby confirm our acceptance in principle of the proposal on the conditions stipulated by you in paragraph 5 of the proposal, that the parties enter into a detailed written agreement pursuant to the proposal which detailed agreement will contain the terms of the proposal and incorporate other commercial terms pertinent to transactions of this nature. The parties shall conclude such detailed agreement within fourteen  
20 days of the date of the letter. The enclosing email talks specifically to an opportunity to work together, regarding an opportunity uncovered by yourselves at Transnet SOC."

What are you observations in relation to this email and the attachment, in context?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Chair the observation again is it's odd that, I can't understand how Homix could have identified this opportunity at Transnet, Neotel had an exclusivity clause in their agreement so I can only buy from Neotel, so I mean they were in a perfect position so I'm not sure why or how this Homix identified the opportunity and how Neotel would have benefitted. They could just sit back and wait, if we have to buy it we have to buy it from them, so it's unclear what value Homix would have added, number one, and number two Chair is the date of this email is the 22<sup>nd</sup> of February 2014, you would recall all the correspondence we discussed  
10 before was dated the 21<sup>st</sup> of February, but in this letter or in this email Neotel states please find attached the acceptance letter and we trust we will close the business soon, when in fact the day before I have already placed the order with Neotel, so I find that strange.

ADV VERUSCHKA SEPTEMBER: Okay, if I can then ask you to turn to page – what's this now, Bundle BB7B, page 541. This appears to be a letter on a Homix letterhead authored by Mr T Khan dated 6 January 2014.

CHAIRPERSON: Yes.

ADV VERUSCHKA SEPTEMBER: This letter reads at paragraph one,  
20 by Mr T Khan to Neotel, once again for the attention of Mr Francois van der Merwe, titled subject Opportunity at Transnet. The first two paragraphs read:

“Following our discussions we are pleased to confirm that we are in a position to deliver on an opportunity at Transnet that we have been working on for some time. The opportunity

involves replacement of network equipment for a value of approximately R315million, excluding VAT. The full details of the opportunity will be disclosed to you after we have agreed on the conditions of the deal as listed below."

Please help us to understand the involvement of Homix in the 2014 Cisco Equipment agreement?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Chair again I together with Yusuf Loonat led those negotiations, and we engaged like I mentioned before with T-Systems, Neotel and Cisco.

10 Nowhere was Homix ever mentioned, no one was – anyone ever introduced as being from Homix and again I fail to understand how they could have identified opportunities without walking the floor so to speak, being at Transnet, identifying it and again the exclusivity clause, it doesn't really make sense.

It also mentions risk factors undertaken by us in the entire project which I fail to understand what risk they would have encountered.

CHAIRPERSON: There was no risk?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: No,  
20 and there was no service.

ADV VERUSCHKA SEPTEMBER: At paragraph, at page 21 of your statement, paragraph 69 you effectively summarise your evidence as follows. You say you did not ...(intervention)

CHAIRPERSON: What page?

ADV VERUSCHKA SEPTEMBER: Page 21 of the statement which is

EXHIBIT BB7A.

CHAIRPERSON: Yes.

ADV VERUSCHKA SEPTEMBER: You effectively summarise your evidence in relation to this transaction, and Homix's involvement in that when you state that you had not met any person or representative from Homix. It remains unclear to you how Homix would have identified the opportunity and they had no interaction with anyone from Transnet and that was at least during the time period that you were there.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

10 Correct.

ADV VERUSCHKA SEPTEMBER: The MSA between Transnet and Neotel included an exclusivity clause which presented certain restrictions, and that you were the one that in fact placed the order on the 21<sup>st</sup> of February 2014 to the value of R302.7million, yet there's correspondence which details communiqué in relation to that same transaction after the placement of that order.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That's correct Chair.

ADV VERUSCHKA SEPTEMBER: Can I be given just a second or two?

20 I have been requested to ask for an indulgence of five to ten minutes to address this particular aspect.

CHAIRPERSON: Ja no that's fine, let's go back to the Master Service Agreement and it looks like whatever one says about it and Homix involvement and payment of money applies to the Cisco transaction as well, equipment transaction is that right more or less?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That's more or less correct Chair yes.

CHAIRPERSON: The Master Service Agreement if it were to be found as a fact that Homix – or let me put it this way, if the position is that Homix in order to perform in terms of its agreement with Neotel had to be in touch with somebody or some people at Transnet that person or those people, that person would either be you or those people would include you, you would be one of those that they would have to talk to, because you were the lead negotiator, is that right?

10 MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That's my understanding yes.

CHAIRPERSON: That's your understanding of what your role was?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: Yes, absolutely.

CHAIRPERSON: Without you saying okay we have no reached an agreement that I am happy to take to Mr Molefe nothing would happen?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Correct.

20 CHAIRPERSON: Yes, so it wouldn't have made much sense for them to talk to anybody at Transnet for purposes of facilitating the negotiations other than talking to at least you and if they spoke to anybody higher than you, like Mr Brian Molefe, Mr Molefe would have had to talk to you and say I understand that there's a stalemate or deadlock between you and Neotel, tell me about what's happening and then maybe overrule you on some points and say no go ahead and sign or go ahead and

prepare the agreement?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Correct, I suspect that would have or should have happened.

CHAIRPERSON: It couldn't have worked any other way if it involved Homix facilitating the conclusion of an agreement between Transnet and Neotel, you had to be involved in one way or another?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: I

would support that Chair, it would have had to be me or someone senior to me giving me an instruction to change the Master Services

10 Agreement.

CHAIRPERSON: Yes, yes, but even somebody senior to you wouldn't have, there wouldn't have been facilitation of the conclusion of the agreement from Transnet side without that senior person talking to you?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That's correct Chair.

CHAIRPERSON: And you say nobody talked to you along those lines?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: No

Chair.

20 CHAIRPERSON: Yes, so if – and that must be an indication to say the least, apart from anything else, that certainly there was no facilitation that was carried out by Homix insofar as Transnet is concerned?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That's correct Chair.

CHAIRPERSON: Yes. And if there was no facilitation that was carried

out by Homix on Transnet's side then Neotel must have known that there was no facilitation that took, that was carried out on Transnet's side.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: I would suspect so Chair yes.

CHAIRPERSON: Because unless maybe Homix went to them and told some untruths about what Transnet might have said, but it can't be because the only position that Neotel had, the only positions that Neotel knew to be Transnet's position were those that you conveyed to  
10 them?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: Correct Chair.

CHAIRPERSON: There's no other position that they could have known?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: Not to my knowledge Chair, no.

CHAIRPERSON: And if Neotel knew that one there was never any stalemate which was such that there would be no further negotiations or which could result in anybody describing the business has lost business, if the knew that and if they knew that there was no  
20 facilitation that was carried out by Homix on the part of Transnet then in all probability there was no facilitation that Homix would have or could have carried out on the side of Neotel, actually Transnet would have been the party on whom Homix would have to work in order to facilitate, because the party that would have to agree to a certain  
appraise required by Neotel was Transnet?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

That's correct Chair.

CHAIRPERSON: Because you never asked them, you never asked Homix to go and negotiate on your behalf for a lower price with Neotel?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: No Chair.

CHAIRPERSON: So the only facilitation that could have happened at the request of Neotel could have been a facilitation involving Homix asking or seeking to persuade Transnet to go up in terms of whatever  
10 price and that never happened.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:

Correct Chair.

CHAIRPERSON: And therefore there could not have been any facilitation, and Homix must have known that there was no facilitation.

Is your own analysis along the same lines?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: It's along the same lines Chair yes.

CHAIRPERSON: Yes and if Homix knew that there was no facilitation and still entered into an agreement with Homix in terms of which they  
20 said there was facilitation and were going to pay R36million plus VAT for that facilitation then they were misrepresenting the situation

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: In my opinion Chair yes.

CHAIRPERSON: It couldn't have been, it's difficult to see it any other way because if they knew that there was no facilitation but they signed

an agreement that said there was a facilitation and they paid R86million plus VAT on the basis that Homix facilitated that must have been a deliberate misrepresentation of facts if this analysis is correct?

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: I believe so Chair.

CHAIRPERSON: And if they knew all of these things and nevertheless were prepared to pay it's highly unlikely that they would have wanted to pay so much money out of an amount that was not inflated.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN: It is  
10 unlikely that they would have wanted to pay it out of their margins  
Chair yes, they would have have likely passed that price onto  
Transnet?

CHAIRPERSON: Yes, well maybe they will come and they will explain all of these things and they will show us that there is something we don't understand.

MR GERHARDUS JOHANNES JACOBUS VAN DER WESTHUIZEN:  
Sure.

CHAIRPERSON: Thank you.

ADV VERUSCHKA SEPTEMBER: Chair I am informed by our  
20 investigation team that Homix in fact received about R34million  
payment out of the 2014 Cisco equipment transaction.

CHAIRPERSON: Yes.

ADV VERUSCHKA SEPTEMBER: And that is evidence to be dealt, to be led at a later stage through the cash flow analysis.

CHAIRPERSON: Yes. No, that's fine. You asked for five minutes or so

is that right?

ADV VERUSCHKA SEPTEMBER: I have been asked to request five  
...(intervention)

CHAIRPERSON: Or ten?

ADV VERUSCHKA SEPTEMBER: Ten minutes.

CHAIRPERSON: Okay it's twenty five past three, we will adjourn and  
resume at twenty five to four.

ADV VERUSCHKA SEPTEMBER: Thank you Chair.

CHAIRPERSON: We adjourn

10 INQUIRY ADJOURNS

INQUIRY RESUMES

ADV VERUSCHKA SEPTEMBER: ...points – it may be a prudent time  
to just request this witness to confirm his supplementary statement?

CHAIRPERSON: To confirm?

ADV VERUSCHKA SEPTEMBER: His supplementary statement which I  
ought to have dealt with earlier.

CHAIRPERSON: Oh okay.

ADV VERUSCHKA SEPTEMBER: So Exhibit BB7[c] page 1 do you  
recognise this document?

20 MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: Yes  
I do.

ADV VERUSCHKA SEPTEMBER: I do not know if your microphone is  
on.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: I  
do.

ADV VERUSCHKA SEPTEMBER: Thank you. And on page 2 is that signature that appears?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: It is Chair.

ADV VERUSCHKA SEPTEMBER: And that was in fact signed today on the 27 May 2019?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: That is correct.

ADV VERUSCHKA SEPTEMBER: Is it correct that this statement  
10 merely corrects typographical errors in your original statement in addition to attaching a copy of the signed 2014 MSA agreement?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: And an email Chair yes.

ADV VERUSCHKA SEPTEMBER: Thank you for that addition. In that regard then can I ask you to turn to page 170 of this bundle. And this is a document which in fact starts on page 3 as the Master Services Agreement between Transnet SOC Limited and Neotel PTY LTD which was ultimately signed on the 15 December 2014 and finally signed – countersigned on the 19 December 2014. At page 170 can I ask you to  
20 read paragraph 65.6 into the record please?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: Sure. Chair paragraph 65.6 states:

“The service provider warrants to Transnet to the best of its knowledge and belief neither the service provider nor any of its affiliates nor any employee of

either has paid or agreed to pay any person any fee, commission, percentage, brokerage fee, gift or any other consideration that is contingent upon or resulting from the award or execution of this agreement save for such remuneration as is paid to bona fide employees working solely for the service provider or such affiliates or any of the service provider sub- contractors."

ADV VERUSCHKA SEPTEMBER: Thank you. And is it correct that  
10 when you turn to page 8 of this agreement or rather of this bundle –  
page 8.

CHAIRPERSON: Is that another point or you are still on ...

ADV VERUSCHKA SEPTEMBER: Just closing off this point quickly.

CHAIRPERSON: Connected with this. Okay.

ADV VERUSCHKA SEPTEMBER: On page 8 it is correct that Neotel  
PTY LTD is in fact the service provider that you just – in the paragraph  
that you just referred to?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

That is correct Chair.

20 ADV VERUSCHKA SEPTEMBER: Was Neotel then contractually  
entitled to pay any monies to any third party pursuant to this  
transaction according to the agreement itself?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

Just repeat please Advocate I missed the first portion?

ADV VERUSCHKA SEPTEMBER: Was Neotel contractually entitled to

pay any monies of any nature as listed in paragraph 65.6?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: Not in my understanding of that at all.

ADV VERUSCHKA SEPTEMBER: In relation to this transaction?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: Not according to my understanding of that clause Chair.

ADV VERUSCHKA SEPTEMBER: So any payment then would have been in breach of this agreement?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: In  
10 my reading of it yes.

ADV VERUSCHKA SEPTEMBER: The second point relates to Mr Francois Van Der Merwe. How close – Mr Francois Van Der Merwe as we understand it was...

CHAIRPERSON: Oh I am sorry before you move to another point if you have regard to this clause 65.6. As of the dates of that agreement which are 15 December 2014 and 19 December 2014 I guess the date of the agreement is the later one of the two 19 December 2014. As at that date had Neotel as you understand the position reached agreement with Homix?

20 MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:  
Chair I do not believe so. Those two agreements were signed 19 February 2015.

CHAIRPERSON: Yes.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: So that would have been post the signature of this agreement.

CHAIRPERSON: Yes. So – so technically they may not have misrepresented anything in 65.6 to the extent that they were saying as at the date of this agreement they had – Neotel had not agreed to pay anybody any fee or commission or brokerage fee or any consideration that is contingent upon or resulting from the award or execution of this agreement. To the extent that that did not say we will not pay, we will not agree in the future to the extent that it was saying as at that time they had not agreed to pay anybody?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: So  
10 Chair it does not really capture the timeline. It does state that it is contingent upon or resulting from the award or execution of this agreement.

CHAIRPERSON: Yes but look at the third line. Does it not say – well you have to start from the beginning. Does it not say Neotel that is the service provider warrants to Transnet that bla, bla, bla. Neither it nor any of its affiliates or any employee has paid or has agreed to pay any person. So in other words that seems to be they are talking – they are saying as of now we can warrant – we can assure you that we have not agreed to pay anybody.

20 MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: So if...

CHAIRPERSON: For any commission about the success of this agreement.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: So if that is the understanding Chair if you are I think far more eloquent in

law than I am so...

CHAIRPERSON: Yes.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: So it does look like it is at a point in time a date of signature.

CHAIRPERSON: Yes, yes.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: So it does appear at this stage yes that they did not breach this contract.

CHAIRPERSON: Yes of course it would not be easy for the part to say promise that in the future you will not agree either because you would  
10 not think that somebody would agree to pay somebody for the [indistinct] conclusion of an agreement after it has been concluded.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: It has already been... - correct Chair.

CHAIRPERSON: Okay. Alright.

ADV VERUSCHKA SEPTEMBER: Chair to – in that regard can I ask you Mr Van Der Westhuizen to turn to Exhibit BB7[b] page 519.

CHAIRPERSON: 509?

ADV VERUSCHKA SEPTEMBER: 519. To follow on from the Chairs point this particular document is dated the 12 December 2014 in terms  
20 of which Homix writes to Sunil Joshi which is the very same representative – or not representative of Neotel which is the same entity that contracts with Transnet and in terms of this letter they reach and in principle agreement in relation to services to be rendered on the MSA transaction and the fees to be paid for such services. Is it correct that the date of this letter precedes the MSA agreement?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: It is correct.

ADV VERUSCHKA SEPTEMBER: And would it also be correct that this particular document informs the agreement that was signed on the 19 February 2015 between Homix and Neotel?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: I believe so Chair.

ADV VERUSCHKA SEPTEMBER: And so in that context the prohibition contained in the Master Services Agreement which you read into the  
10 record would in fact apply to the extent that there was an agreement to pay monies to a third party pursuant to the MSA transaction. Would that be a fair statement to make?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: Chair I do not know if I am adequately skilled to answer that question because this is an intent clearly from Homix to Neotel stating that it serves to confirm today's engagement but it is not necessarily confirmation from Neotel at this stage yet.

ADV VERUSCHKA SEPTEMBER: Absolutely.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: But  
20 the agreement subsequently is aligned to this letter yes.

ADV VERUSCHKA SEPTEMBER: Yes.

CHAIRPERSON: You probably need something from Neotel that reacted to this letter that indicates they accepted at least even if the formal agreement may have signed later. You do not have something that was a response to this because at the end they say please concur

the above together with the success fee structure where the latter shall become binding on Neotel. So is that concurrence that – that – I mean it is – the – from this you can see that the – that Neotel was engaged in discussions that were aimed at concluding an agreement with Homix but until you have that last bit to say how did they respond to this there might just be some technicality.

ADV VERUSCHKA SEPTEMBER: I am informed that the investigators will certainly follow it up.

CHAIRPERSON: Yes.

10 ADV VERUSCHKA SEPTEMBER: They may or may not have something.

CHAIRPERSON: Yes.

ADV VERUSCHKA SEPTEMBER: But to the extent that they find anything it will certainly be submitted in future evidence.

CHAIRPERSON: Ja, no that is fine, that is fine.

ADV VERUSCHKA SEPTEMBER: Thank you Chair.

CHAIRPERSON: Thank you.

ADV VERUSCHKA SEPTEMBER: On the second point if I may Chair Francois Van Der Merwe was working for Neotel during the time that  
20 you were at Transnet. Did you work very closely with him?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: I did Chair.

ADV VERUSCHKA SEPTEMBER: And how would you describe the working relationship between you and Mr Van Der Merwe?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

Chair I would say that we had a very good relationship. Strained at times and especially when that tender was overturned but we had a good relationship I think it is important. I also had a good relationship with a client executive from T-Systems I think it is important in things like the 58 million and enabling you to negotiate things like that down to 50 that you do have a good relationship with your suppliers.

ADV VERUSCHKA SEPTEMBER: You will recall from the various documents that we referred to in the transaction with Homix and Neotel that Francois Van Der Merwe's name occurred on several occasions.

10 Did Mr Van Der Merwe inform you at any stage about the involvement of Homix or any third party for that matter?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: He did not Chair.

ADV VERUSCHKA SEPTEMBER: Involved in the transaction?

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: He did not.

ADV VERUSCHKA SEPTEMBER: And then finally do you have any closing remarks?

20 MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN: I do not Chair. I think we have...

CHAIRPERSON: Do not invite them. We do not invite close agreements.

ADV VERUSCHKA SEPTEMBER: I have no further questions for this witness.

CHAIRPERSON: Thank you very much Mr Van Der Westhuizen for

coming to give evidence. If a need arises for you to be asked to come back you will be asked to come back and I have no doubt that you will happily come back to assist.

MR GERHARDUS JOHANNES JOCOBUS VAN DER WESTHUIZEN:

Sure Chair.

CHAIRPERSON: Thank you. You are excused.

ADV VERUSCHKA SEPTEMBER: Chair – Chair just one point.

Following the evidence of this particular witness it will be a question to be raised and to be considered whether or not in line with the evidence  
10 of other witnesses like Mr Molefe, Mr Mahomed as to whether or not a parallel system was indeed at play at the time that these transactions took place. A parallel system which was augmented by the higher echelons of the organisation to corroborate or an outside particularly of the procurement process to facilitate these transactions. That is a question that is yet to be answered.

CHAIRPERSON: Ja. You are excused.

ADV VERUSCHKA SEPTEMBER: Thank you Chair.

CHAIRPERSON: Thank you. Is it Ms Sello who will be leading  
20 evidence tomorrow or dealing with reports? Did you know what it will be?

ADV VERUSCHKA SEPTEMBER: Correct Chair. Advocate Mahlape Sello will be dealing with the evidence of M&S and that is to commence tomorrow.

CHAIRPERSON: The evidence of?

ADV VERUSCHKA SEPTEMBER: M&S.

CHAIRPERSON: M&S or ...

ADV VERUSCHKA SEPTEMBER: Yes.

CHAIRPERSON: Okay, okay alright. Okay well then we did not make arrangements about whether we should start early or not so we will start at ten. We will adjourn for the day and tomorrow we will start at ten o'clock in the morning.

ADV VERUSCHKA SEPTEMBER: As it pleases.

CHAIRPERSON: We adjourn.

REGISTRAR: All rise.

10 INQUIRY ADJOURNS TO 28 MAY 2019