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ADV JANNIE LUBBE SC: Good morning, Mr Commissioner and members.

CHAIRPERSON: Good morning.

ADV JANNIE LUBBE SC: We are ready to proceed, Mr Commissioner and my colleague, Advocate Mohapi will deal with the evidence this morning.

CHAIRPERSON: Yes.

ADV SECHABA MOHAPI: Thank you, Mr Commissioner. Mr Commissioner, our witness this morning, Ms Botsang Morobe is ready to take the prescribed oath.

CHAIRPERSON: Ms Morobe, you do not have any objection to taking the oath?

MS BOTSANG MOROBE: No, I do not, Commissioner.

CHAIRPERSON: Do you swear that the evidence you are about to give, will be the truth, the whole truth and nothing but the truth?

MS BOTSANG MOROBE: I do.

CHAIRPERSON: Raise your righthand and say, so help me God.

MS BOTSANG MOROBE: So, help me God.

BOTSANG PHOMOLO MOROBE: (d.s.s.)

CHAIRPERSON: Thank you. You may be seated.

ADV SECHABA MOHAPI: Ms Morobe, you have prepared a statement from which you will be giving your evidence before the Commission and the Commission has your statement. Is that correct?

MS BOTSANG MOROBE: That is correct.

ADV SECHABA MOHAPI: Okay...[intervenes]

CHAIRPERSON: Sorry, just for the record. I do not think I have asked her, her full names. The full names are Botsang Phomolo Morobe?

MS BOTSANG MOROBE: That is correct, Commissioner.

CHAIRPERSON: Thank you. Just for the record.

ADV SECHABA MOHAPI: Okay, can we proceed then from your statement, Ms Morobe, paragraph 1?

MS BOTSANG MOROBE:

“I am adult female and currently employed by the Public Investment Corporation as an Associate Principal in Isibaya Private Equity Structure Investment Products. I was employed by the PIC in June 2014 as an Investment Associate in the Private Equity Team and I have held various job titles and responsibilities within the same division.

My qualifications include a Bachelor of Commerce Degree with a Double Major in Finance and Economics; a Bachelor of Commerce Honours Degree and Finance and a Master of Commerce Degree and Finance. All obtained from the University of Witwatersrand.

I am currently pursuing a Doctor of Philosophy Degree in Finance at WITS where I also occasionally serve as a lecturer for Business Finance. I have successfully completed SCFA Level 1.

The facts contained in this statement are to the best of my knowledge and believe, both true and correct...”

MR EMMANUEL LEDIGA: Can I just ask? What does a Principal or Associate Principal do?

MS BOTSANG MOROBE: So, an Associate Principal - would look through the... So, would manage the entire investment process as it relates to the DD"s which is due diligence. Conducting due diligence that relate to transactions. Evaluating various investment proposals.

Taking those proposals through to the committee. Having them approved if they are favourable and then monitoring those transactions once they have been invested into by the PIC.

Further to that, we are also involved in participating in the overall structure of investments at the PIC. We also participate in negotiating legal aspects of transactions.

MR EMMANUEL LEDIGA: Ms Morobe, *ja*.

MS BOTSANG MOROBE: Yes?

MR EMMANUEL LEDIGA: Just a quick check. It has been a while, you know. The Master of Commerce at WITS, is that course work in de-citation or is just a...? *Ja*, you know.

MS BOTSANG MOROBE: Well, there is an option to actually do it a hundred percent cost(?) work. The one that I had done was de-citation as well as a bit of cost work.

MR EMMANUEL LEDIGA: And then the PhD, which area of finance are you dealing with? What is your topic there?

MS BOTSANG MOROBE: So, it is very conceptual at the moment. I am in the process of submitting my proposal to the Faculty of Finance, but overall, the concept is to actually assess the private equity model which is seems to be very successful in Europe and the West.

But based on African businesses that obviously have their own nuisances. I would like to test whether being replicated in the African

context it is that successful or whether there needs to be variations to that model.

So, I intend to add to the body of knowledge in that regard, but as I said, Commissioner through you, this is something that is quite conceptual and developed in that proposal.

MR EMMANUEL LEDIGA: It is quite interesting work. It looks like. Thank you.

MS BOTSANG MOROBE: Thank you, Commissioner.

ADV SECHABA MOHAPI: Let us carry on, please at paragraph 4.

MS BOTSANG MOROBE:

“I have been requested to give evidence in relation to my role in Project Sierra and Project Blue Buck. Collectively, I will refer to them as the Transactions...”

MR EMMANUEL LEDIGA: Now, just before we proceed further, because you are the first witness testifying on this particular deal. Can you just briefly explain to the Commission what this is. What we referred to as Project Sierra and Project Blue Buck?

MS BOTSANG MOROBE: Through you, Commissioner. So, in 2016 the PIC was approached by Lancaster Group to help in the facilitation of Lancaster acquiring shares in Steinhoff. So, how the PIC helped with this facilitation. We advanced a loan of R9.35 billion to Lancaster Group to acquire about 2.75% in Steinhoff.

This loan was then backed by security in the form of a ratio collar. That ratio collar then provided a downside protection to the PIC.

We also had primary session on some of the shares that were bought and as a result that transaction was concluded.

A year down the line after concluding that transaction the share price in Steinhoff actually began to decline and therefore the security package that was pledge which included Steinhoff's shares was becoming inadequate and to that regard there was a need to do Project Blue Buck where Lancaster Group actually went and got a loan from Citi Bank and bought shares in Star which is now called Pepkor. Those shares were then pledged to the PIC as security in order to enhance our security package. So, those are the two transactions and pretty much the rationale in why they were done.

ADV SECHABA MOHAPI: Thank you, Ms Morobe. Let us continue.

MS BOTSANG MOROBE:

“In May 2016 I was tasked to work on Project Sierra in my capacity as an Investment Associate. I received a copy of an investment proposal prepared by Symphony Capital dated 11 May 2016 from Mervin Muller who was the Acting Executive Head of Private Equity and SIPs at the time.

I cannot confirm how the transaction was originated and whether there had been prior iterations of the investment proposal before my involvement.

Soon after I was made aware of the transaction. I attended a meeting around 20th May 2016 between the PIC and Symphony when overview of the envisaged transaction was presented by Symphony.

The investment proposal in paragraph 5 formed the basis of discussions at this meeting which I deemed an introductory briefing for myself as I had just working on the transaction.

From that meeting onwards several discussions were had between the PIC and Symphony and various iterations of the investment proposal and financial models were provided by Symphony...”

MS GILL MARCUS: Sorry. Can I just ask if this was your first interaction with Symphony?

MS BOTSANG MOROBE: Commissioner, through you. Yes, it was.

MS GILL MARCUS: And were you aware whether PIC had other previous engagements with Symphony?

MS BOTSANG MOROBE: Not at the time, Commissioner but I later learnt that there were other transactions that the PIC was doing with Symphony.

MS GILL MARCUS: Thanks.

CHAIRPERSON: So, for the record. Symphony is what? An advisor?

MS BOTSANG MOROBE: Symphony is an advisor, Commissioner.

“At this point the transaction team had begun to analyse and interrogate the proposal at hand in order to reach a point where it could produce an appraisal report to present to the Portfolio Management Committee...”

MR EMMANUEL LEDIGA: I just think maybe, once again, try to give us the difference between private equity and SIPs in the PIC? What is the main difference there?

MS BOTSANG MOROBE: So, the – as an allocation in terms of the client mandate that is given to private equity. That mandate as it stands in the current fund, we have about R15 billion worth of funds to deploy in private equity transactions.

That would be typically, you would fund a sponsor or we would go indirectly into an unlisted company with the aim of growing that company and adding some value add and existing at a later stage. Actually, not less than... I mean, not more than ten years into that underlined portfolio company and having – I think our returns would be above 25%. So, that is our private equity mandate.

MR EMMANUEL LEDIGA: So, it is sort of buy out capital and the sort of growth capital around it?

MS BOTSANG MOROBE: It would be. So, we actually do both growth capital and replacement capital in some instances.

MR EMMANUEL LEDIGA: Yes, yes. And then SIPs?

MS BOTSANG MOROBE: SIPs. My understanding is that there is also an allocation from the underlying client which is the GPF to do transaction in structured investment portfolios.

How this typically works out is we would then facilitate the entrance of an empowerment party or a BEE party into a transaction. This transaction would be backed by some form of derivative.

So, it could happen in two forms. We could either provide a loan to a sponsor and we would get a put-option or a CRO, Contingent Repurchase Obligation or a collar ratio which is really a mechanism in which we protect our downside.

Another way in which we can actually facilitate a sub-transaction is on the opposite end where a sponsor obtains funding from third parties and then we provide that downside protection to the third party funders.

Typically this is useful in the sponsor getting attractive funding rates from third parties. So, that is my understanding of how we would do structured investment products.

MR EMMANUEL LEDIGA: And private equity does not include funds-of-funds which is a separate matter? Is it?

MS BOTSANG MOROBE: Prior to – I think, maybe a year or two ago, funds-of-funds used to sit under the private equity allocation. It has since then been removed and I think it sits under research.

MR EMMANUEL LEDIGA: Okay.

ADV SECHABA MOHAPI: Thank you. Let us carry on with paragraph 8.

MS BOTSANG MOROBE:

“From that meeting onwards several discussions were had between the PIC and Symphony and...[intervenes]...”

ADV SECHABA MOHAPI: Sorry, paragraph 8.

MS BOTSANG MOROBE:

“In my understanding in terms of the governance process for approving transactions, the Transaction Team is required to seek approval to embark on a due diligence from PMC1.

Post the due diligence exercise the transaction would then be taken to PMC2 to be declined if it is not favourable or approved

to proceed to IC or the Fund Investment Panel for final approval if it is favourable.

According to my knowledge at the time of the transaction due diligence exercises on SIPs transaction where the target company was listed on the Stock Exchange would not require the appointment of an external due diligence service providers as the information was publicly available and has been regarded as sufficient for the PIC's internal teams to perform an extensive due diligence at no additional costs to the organisation.

It is for this reason that I believe that Project Sierra was taken directly to PMC2 to request to proceed to IC for final approval.

Project Sierra was therefore presented at PMC2 on the 18th July 2016. The proposal that was taken to PMC2 was for the PIC to advance a loan of R10.4 billion to Lancaster Group for the acquisition of a 3% stake in Steinhoff International Holdings.

The security package for the loan included a ratio collar from Citi Bank, cession and pledge of the Steinhoff's shares owned by Lancaster Group and dividends from the non-delta shares to repay the PIC loan..."

MS GILL MARCUS: Can I ask you in terms of paragraph 9 and your last sentence? It is PMC2 to request - to proceed to the Investment Committee for final approval. If I recall correctly, the delegation of the authority is you can go to Investment Committee up to R10 billion. This

was R10.4 billion and therefore IC could not give the final approval on that amount. It would have to go to the board.

Now is that the reason why it became R9.4 billion? Was there any reason where a billion rand suddenly disappeared to?

MS BOTSANG MOROBE: Through you, Commissioner. The initial transaction was R10.4 billion, assuming that it had passed IC level. It would have then gone to the board for final approval. That quantum was then changed to R9.3 billion. I am not sure why it was changed to R9.3 billion.

MS GILL MARCUS: But that would bring it then into the ambit of a DOA that does not longer need to go to the board.

MS BOTSANG MOROBE: That is correct, Commissioner.

MS GILL MARCUS: Okay. And perhaps if you could just deal with the question of the last sentence in paragraph 10. The security package. And obviously, then deal with the collar which I think you come back to later.

The cession and pledge of the Steinhoff shares and what and how that cession and pledge of the Steinhoff shares was going to work or do you cover that under...? I think you do cover it later, but whether you want to wait until later or do you want to deal with it now?

MS BOTSANG MOROBE: I can do it now, Commissioner. So, there was two forms or three forms of security. One which relates to the collar which provided downside protection.

The second part was that there were two classes of shares that were acquired. There were the non-delta shares that were acquired

from Steinhoff and there were the delta shares that were acquired from Citi Bank.

Those delta shares were necessary to actually keep the collar in place. So, that is the whole purpose for having the delta shares. So, they were meant to actually maintain the ratio collar.

At the time, 25% of those shares from the non-collar shares PIC would have had primary cession and pledge over. Citi Bank would then have primary cession of the 75 shares and that is because City had...

The ration collar, the way it was designed, PIC... Well, Lancaster Group had paid a premium of about 250 for that. That premium would have been higher if there was a put-option and maybe I can just elaborate on what a put-option is.

A put-option is a mechanism where you have absolute downside protection and unlimited upside protection. It is typically quite a costly structure to put in place.

In this instance, it would have meant that Lancaster Group would have paid more for a put-option. So, how it was facilitated to bring down the premium of the put-option, Lancaster Group actually sold collars to Citi.

And what that meant is that Citi then participated in the upside that would have only been attributable to Lancaster Group and PIC. So, the upside that was sold to Citi as a result was 75% and that is why the underlying shares in Steinhoff, the 75% of them were then pledge to Citi.

PIC then had reversionary on the 75% of the shares that were pledge as primary to Citi. The third component of security was that of the shares that PIC had a primary cession and pledge of which is the 25% shares, PIC then had dividends. Could then get dividends that would then service their loan to Lancaster Group.

MS GILL MARCUS: So, this was the initial structure and the PMC2 the Investment Committee were happy with that?

MS BOTSANG MOROBE: That was the initial structure, Commissioner. I do not think the mechanics of the structure changed during this approval. What was evident was the... The change came from the quantum as were the inclusion of a broad based component within the transaction which I will cover at a later stage.

CHAIRPERSON: Can I just take you to that paragraph 9 again, where you give an explanation for a transaction to go directly to PMC2. And then in your last sentence you say: It is for this reason that I believe that Project Sierra was taken to PMC2. Is it an assumption that you are making or is it fact that, that you know, that is so?

MS BOTSANG MOROBE: Thank you, Commissioner. So, typically when we do these transaction there is a delegation of authority that we follow. There is no clear delegation of authority that we follow for structured investment products.

What experience has taught us in the past or what we have learnt from experience is that to the extent that there are not costs incurred by the PIC and to the extent that all the information is public

and the deal teams are able to use that information to assess the underlying transaction and company.

Then we can skip the PMC1 stage, but that was never actually put on paper. It is just a principle that was carried out at the time.

CHAIRPERSON: And you believe that, that is the reason why it was – it had gone directly to PMC2?

MS BOTSANG MOROBE: Commissioner, I do believe that is the reason.

ADV SECHABA MOHAPI: If I can just understand this, Ms Morobe. So, PMC1, what is the purpose of that? Is that to approve expenditure that goes towards due diligence exercises?

MS BOTSANG MOROBE: Commissioner, through you. Yes. So, the purpose of PMC1 is obviously to assess the mandate. If there is a mandate fit and if there is an overall appetite for the transaction.

And once there is a feeling that this – the transaction is aligned to a mandate then there is a need to do further work, to the extent that there is going to be costs incurred. Then the PMC has to approve those costs.

MR EMMANUEL LEDIGA: *Ja*, to follow up on paragraph 9. One would assume that when Steinhoff in that particular point in time, you had quite some research on Steinhoff in the research portal or something.

What was...? And then there were probably were deep dive reports too, because it is not... You cannot do a DD on a listed company, generally. Is that correct?

MS BOTSANG MOROBE: Commissioner, through you. That is correct.

MR EMMANUEL LEDIGA: *Ja, ja.* What was the house view on Steinhoff at that time? Was it a buy or was it a sale, you know? Because it looks like even on the listed side, there was some buy stuff around it.

MS BOTSANG MOROBE: Commissioner, through you. At the time when we concluded the transaction or at the time when we were considering the transaction, there was a view that the asset was a buy.

That was mainly driven on the fact that when we looked at the growth of the share price over the last five years it had shown significant growth. I think, if I recall at the top of my head, it would have been something like 35% compounded return over a five-year period.

Also, Steinhoff at that time had been reporting positive earnings and paying out dividends. So, it was our view that if – when you projected the dividends and projected Steinhoff earnings we would then get a return that was in line with our mandate.

So, at the time even outside of our own internal house views we did look at what other analysts have been reporting and I think we – out of the consensus we got about 75% buys and probably one hold at the time. I do not quite recall the stats, but there was an appetite to buy the stock.

MR EMMANUEL LEDIGA: And probably why it did not get PMC1, because there was quite some research on the company.

MS BOTSANG MOROBE: Commissioner, through you. Yes, it was a widely covered stock and we had all the data and all the consensus reports to assess it.

ADV SECHABA MOHAPI: Okay, thank you. You have just also referred to non-delta and delta shares. Can you please explain those two concepts?

MS BOTSANG MOROBE: Commissioner, through you. In relation to this transaction the delta shares that I had been referred to were the shares that were actually bought from Citi and they were the shares that would then be used to maintain the ratio collar.

The non-delta shares were the shares that were then bought from Steinhoff. These shares had voting pool rights attached to them and a portion of them, about 25% of them, were then not be lend out to any particular time, to maintain this ratio collar.

ADV SECHABA MOHAPI: Thank you. Let us carry on with paragraph 11.

MS BOTSANG MOROBE:

“Project Sierra was taken to a series of IC meetings for consideration. During these meetings the committee members were not completely satisfied with the transaction and required that the Transaction Team to do additional work. According to some of my notes from the IC meetings that I attended the additional work that had to provided by this Transaction Team included, but not limited to:

1. Submission of more information on the Lancaster Group;
2. Performing and enhance due diligence on Jayendra Naidoo as he was considered a Politically Exposed Person...”

MS GILL MARCUS: Sorry. On that question of a PEP. Was there a PIC policy at that time on PEPs and how they should be dealt with?

MS BOTSANG MOROBE: Commissioner, through you. I do not recall if it is a policy or if it is a guideline, but there is a way in which Politically Exposed Persons are assessed.

At the time, there was an enhanced due diligence. If I recall from those notes and I might just – I am trying to think at the top of my head. Because of Jayhendra’s involvement in the unions and his involvement in the ANC alliance, he was considered a Politically Exposed Person.

I think the test at the time was to check if he could use that position still to be able to influence decision making and what the report had concluded was that he was not able to – or he had been removed from the unions and he had been removed from his interactions or affiliations to the party and that he was strictly involved in his business operations and therefore he was considered a low risk Politically Exposed Person.

“The contribution by Lancaster Group to be at least 5% of the transaction price in line with the PIC BEE policy...[intervenes]...”

MS GILL MARCUS: So, the R50 million or that 5%, was that the R50 million loaned to Lancaster Group to make that funding?

MS BOTSANG MOROBE: So, Commissioner, I have actually spotted this as an incorrect statement that I have put through. I would like the opportunity to correct it.

So, yes the Lancaster Group had provided an equity contribution in the form of – we typically refer to it as skin-in-the-game in the transaction of R50 million and this was mainly for the purposes of aligning our interest with that of Lancaster Group.

There are BEE, PIC BEE guidelines that sort of govern this contribution. The guidelines referred to a contribution of between 1% to 5%. The contribution by Lancaster Group was R50 million which was 0.5% of the transaction size and not 5%.

MR EMMANUEL LEDIGA: So, repeat. Are you saying it was 0.5%?

MS BOTSANG MOROBE: Commissioner, through you. Yes, the equity contribution by Lancaster Group was 0.5%.

MS GILL MARCUS: So, the policy was between 1% and 5%?

MS BOTSANG MOROBE: Commissioner, through you. Yes, there were guidelines to say between 1% and 5%.

MS GILL MARCUS: So, between 1% and 5% and they contributed 0.5% at the R50 million and was that R50 million a loan from the PIC to them?

MS BOTSANG MOROBE: Commissioner, through you. The R50 million from Lancaster Group was not a loan from the PIC. Commissioner, can I add to that?

MS GILL MARCUS: [No audible reply]

MS BOTSANG MOROBE: Parallel to that also, the PIC matched the R50 million and also contributed an equity contribution of R50 million to capitalise Lancaster 101. I think I discussed it bit later in detail.

MS GILL MARCUS: I am just a bit confused about which R50 million we are talking about because... I mean, it is a slightly – a little bit beyond, but it goes there to say – if you look at the top of page 7. It says: Lancaster SVB would be capitalise by GPF and Lancaster Group's contribution of R50 million each. Right. So, that is not the R50 million that the PIC put in.

MS BOTSANG MOROBE: Commissioner, through you. That is the R50 million.

MS GILL MARCUS: That is the same R50 million?

MS BOTSANG MOROBE: Yes.

MS GILL MARCUS: So, in essence, the PIC funded Lancaster Group for the R50 million equity that they had to put in?

MS BOTSANG MOROBE: Commissioner, through you. There were two R50 million. One by the PIC. One by Lancaster Group. These would then go and then capitalise Lancaster 101 for working capital. Over and above that, there was a loan for R9.3 billion which went to buying the shares, as well as paying for transactions costs.

So, the PIC did not fund Lancaster Group for its R50 million contribution into Lancaster 101.

ADV SECHABA MOHAPI: Just... I just want to go back to paragraph 9 just to see if we can simplify things a bit there. Is that paragraph 9?

Ja. The funding package and all that. So in terms of a collar, you know, coming back there, so tell me if I'm wrong, just to understand, so it's really to buy protection, basically? The PIC puts money there and then there's a call option and it takes that premium to buy a PUT option and then the payoffs are within certain limits in terms of the share price, that the PIC can benefit. Is that correct? In a nutshell in simple English.

MS BOTSANG MOROBE: Commissioner, that is correct. That is correct, Commissioner. So just to elaborate further, the collar was designed in such a way that there was a floor price. Below that price then Citi would then pay PIC its capital back. This... I'm just making an assumption of what would happen at maturity of this transaction. If the price was between... Sorry. Then there was a top price, which I'll call a ceiling price. If the price was above that then Citi would participate in the upside. Their participation would be limited to 75% of the upside. In between those two prices would exist a price which would then, if the position is liquidated, if the shares are sold, then the PIC would be paid in full its outstanding balance, which is the capital plus interest. In between the floor and that particular price Lancaster Group would not participate in the upside. Anything above that price that would then pay the outstanding balance. That would do PIC good. And the ceiling price that I mentioned, Lancaster Group and PIC would participate in the upside. It would have been 50/50, I think.

ADV SECHABA MOHAPI: Oh, okay. And it's called a zero collar because the premium you us for the PUT option is the same so it's – the cost is zero?

MS BOTSANG MOROBE: No, Commissioner. Through you, Commissioner. This was not actually a zero collar. This was a ratio collar and the reason why it was a ratio collar was that the upside... So there were... In simpler terms, there was a PUT option that was bought for 100% of the shares. Then there was collars that were sold for 75% of the shares. That allowed Citi to then participate in 75% of the upside. Had Citi... Had there been collar options that were sold for 100% of the shares and Citi then participated in the 100% of the upside that would have been that zero strategy.

ADV SECHABA MOHAPI: I see. Alright. Okay. Ja. Thank you very much. Thank you.

MS BOTSANG MOROBE: Pleasure.

“The inclusion of a broad-based component to the transaction structure: The IC approved Project Sierra on 5 August 2016. Although I was not present at this final IC meeting my understanding was that the transaction was approved under the following key parameters: The PIC was to provide a loan of 9.3-billion.”

Commissioner, through you, I'd like to actually say it was 9.35-billion. So:

“The PIC to provide a loan of 9.3-billion to Lancaster SPV, a special-purpose vehicle, which was later registered as Lancaster 101 for the acquisition of 2.75% equity stake in Steinhoff including transaction-related costs. The security packages under the loan

entailed primary cession of 25% Steinhoff shares bought by Lancaster. PIC...”

I would like to omit that PIC. So it was:

“...primary cession on 25% Steinhoff shares bought by Lancaster and a reversionary cession on the remaining 75 shares – 75% Steinhoff shares ceded to Citibank. A cession of the dividends on the non-Delta shares and a cession of any proceeds from the ratio collar.”

MS GILL MARCUS: Sorry, can you just read into the record the footnote to point B(2)?

MS BOTSANG MOROBE: Yes, Commissioner.

“The non-Delta shares are the shares that the PIC had a primary cession and pledge over and these formed 25% of the other ... (indistinct) shares that Lancaster 101 subscribed for in Steinhoff.”

MS GILL MARCUS: So if I understand that point 1, 2 and 3 correctly, although you say this was bought by Lancaster the question there was it was a 25% PIC and 75% Citibank in terms of the shares?

MS BOTSANG MOROBE: Commissioner, I need clarity on that question.

MS GILL MARCUS: If we looked at... You say there is primary cession of 25% Steinhoff shares bought by Lancaster cession to the PIC?

MS BOTSANG MOROBE: So maybe I should clarify. Though of the 100% shares that were bought...

MS GILL MARCUS: Right?

MS BOTSANG MOROBE: ...25% were ceded to the PIC as primary.

MS GILL MARCUS: Ja, that's what I'm saying. There's 25% was ceded to the PIC, 75% to Citibank?

MS BOTSANG MOROBE: Yes, that's correct, Commissioner.

MS GILL MARCUS: It's important because this changes just now.

MS BOTSANG MOROBE: Yes.

MS GILL MARCUS: It changes in the second tranche so that this becomes something that's quite material to the issue of security. So I just want us to be clear that it's 25% ceded to PIC, 75% to Citibank.

MS BOTSANG MOROBE: Yes.

MS GILL MARCUS: Correct?

MS BOTSANG MOROBE: "The ownership of Lancaster SPV would be 50%

held by GEPP, 25% by Lancaster Group and 25% by a broad-based black economic group. Lancaster..."

MS GILL MARCUS: Sorry, just on that question as well.

MS BOTSANG MOROBE: H'm?

MS GILL MARCUS: At this time of approval, because here we're going to the question of approvals by the investment committee, was there any information provided to the committee on this BBBEE? Or was it in principal that there would be a 25% broad-based black economic empowerment component but it was not known to the investment committee what form or shape or the components of that at the time of approval?

MS BOTSANG MOROBE: Commissioner, through you. Perhaps maybe I should have just given a little bit of background as to how the Trust came about. Initially the SPV would have been PIC and Lancaster

Group holding a 50/50 shareholding. I think some of the key concerns raised by the committee was that Lancaster Group was solely owned by Jayendra Naidoo and this transaction was supposed to be an empowerment transaction which had a broad-based component to it. That is how the introduction of the BBEE Trust came about. When that was then put forth in the meetings the beneficiaries, or how it would be composed, how the BEE Trust would be composed, was not actually outlined, so it would then form – the beneficiaries would then be part of the implementation, if I may say so.

MS GILL MARCUS: So if I understand that correctly the PIC imposed this component on the deal to say that it must be a 25% Lancaster, 25% broad-based black economic empowerment, it has to be set up and done and implemented by Lancaster but it is a condition of the loan?

MS BOTSANG MOROBE: Commissioner, through you, it was a requirement by a committee.

“Lancaster SPV would be capitalised by GEPF and Lancaster Group through a contribution of 50-million each. According to the IC submission made by the transaction team at the IC meeting on 5 August 2015...”

I’ve annexed that submission – the submission as Annexure A.

“...the following transaction costs were presented: Acquisition of shares for 9-billion; transaction costs for 10-billion; the ratio collar premium for 350-million.”

And I’ve omitted, which I should have done, the capitalisation

of 50-million by the PIC, and that would have totalled to 9.4-billion.

“In line with the implementation summary, which I have provided as Annexure B, the deposit and escrow agreement, which I have annexed as Annexure C, and the escrow payment instruction 1 and escrow payment instruction 2, which I have annexed as Annexure D and E, the following costs were paid: The acquisition of shares from 30 for the Delta shares, 3.91-billion, was paid to Citi; acquisition of shares from Steinhoff, non-Delta shares, 5.33-billion was paid to Steinhoff; the collar premium to Citi was paid for 250-million; advisory fees to Symphony, 76.95-million; payment to Lancaster Group, 22.85-million; as well as escrow agent fees to Standard Bank for R200 000,00.”

ADV SECHABA MOHAPI: Sorry, Ms Morobe, just going back to table 1, transaction costs, the second row, for the record, that’s 100-million.

MS BOTSANG MOROBE: Commissioner, through you, that is correct.

ADV SECHABA MOHAPI: Okay, thank you.

CHAIRPERSON: And that was paid to whom?

MS BOTSANG MOROBE: The transaction costs in the table below were paid to two beneficiaries: One to Symphony for the tune of 76-million and then the other to Lancaster Group for the tune of 22-million.

MS GILL MARCUS: Is it possible to go to those two annexures, E and F, and just look at that for a minute? Because that covers both of them, and in terms of the Symphony capital, as you’ve indicated before, the PIC uses them on – has used them on a number of occasions and, I

think correctly, has, well, that's my opinion, let me leave my opinions out of it, the question of having used this, has been using advisors, transaction advisors, in promoting black economic empowerment and black firms. Is that correct?

MS BOTSANG MOROBE: Commissioner, through you, I would like to state that for this transaction Symphony were advisers to Lancaster Group and not the PIC.

MS GILL MARCUS: I understand that, but you've also used them in the PIC.

MS BOTSANG MOROBE: We have.

MS GILL MARCUS: And if one looks at Annexure... I'm not criticising it. I'm just asking for clarity. The question of saying in terms of looking at Symphony this would not look like an empowerment transaction group to me.

MS BOTSANG MOROBE: Commissioner, in trying to understand your question, are you ... (intervention)

MS GILL MARCUS: I'm just saying that the PIC's policy has been to try to promote the use of black economic empowerment, advisory firms, trying to ensure that they are brought into the financial services sector. Here there's a huge deal and the advisory, which may be perfectly fine, I'm not questioning that or their capability, I'm just saying that it is notable that it is not an empowerment firm.

MS BOTSANG MOROBE: Okay.

MS GILL MARCUS: Although it was not used by the PIC in this occasion it is a company that is used and I'm just really creating – or perhaps affirming that this is not an empowerment firm for such a big

transaction.

MS BOTSANG MOROBE: Commissioner, through you, I'm not sure how the shareholding of Symphony looks, but at face value the representatives of Symphony Capital would not be the faces of an empowered team.

MS GILL MARCUS: Right. And in relation to the fees paid to Lancaster, the 22.8-million, if one could look at that, how do we know what that was used for? Because that was paid to Lancaster.

MS BOTSANG MOROBE: Commissioner, through you, my understanding, and I stand to be corrected, was that there were taxes that had to be paid by Lancaster Group with result of the – of a result of the transaction and there was also legal fees that would have been paid to ENS, who were representing Lancaster Group at the time. To the extent that you require the breakdown between the taxes and the – and ENS, I don't have that information on me at this point in time.

MS GILL MARCUS: I think it's... Sorry?

CHAIRPERSON: But is that what normally happens, that the advisors of the people who brought the transaction also get paid by the PIC?

MS BOTSANG MOROBE: Commissioner, through you, I have seen transactions where transaction costs are capitalised to a facility that the PIC provides, so, in essence, the PIC would be funding for those advisors to be paid.

CHAIRPERSON: That's quite a relief. But is that the position here?

MS BOTSANG MOROBE: Commissioner, again through you, typically how it works is you would see the fees broken down. There will be a transparency of these fees, if I should – if I could say that.

CHAIRPERSON: H'm.

MS BOTSANG MOROBE: So there would be a whole fees agreement that outlines every transact – every advisor that contributed to the transaction. So what you would typically see is you would see Symphony, you would see ENS, you would see all the advisors in one agreement and that would be provided for everybody to see who's getting what. So that, for me, in my experience, has been the practice. I'm not sure how it was – or why it was, rather, designed the way it was for this particular transaction.

MS GILL MARCUS: If I could just stay with that a second? Sorry. The question for me... Because this is a R100-million of the deal that has gone, clearly, to pay from the PIC to Symphony to – and 20 – just under 23-million to Lancaster and I think that... I'm not asking it for the commission's point of view. I'm asking from the PIC's point of view. Would you not have wanted a breakdown of exactly who was getting what money within that total rather than just accept, okay, 22-million and I pay out who I need to? It's a significant amount of money. It may not be much in relation to the total of what was on the books, 10.45 – I mean 9.45-million – billion, but it is a lot of money, still 100-million to pay out just saying thank you to Lancaster, R23-million. I would have thought the PIC would query and they'd want the detail before you paid it out. And would that have been in addition in terms of Symphony? Would that have been in agreement between Lancaster and Symphony, that this would be the rate, their fees? You know, to look at it and say that is a very... That's not a small fee. I'm sure they did a lot of work for it, but it is not a small fee. So if PIC is adding it in... The question

I'm really asking is if PIC is adding it in to what is being paid out there should have been the agreement that could be seen between Lancaster and Symphony as to what was the basis of that fee as well as what comprised the 23-million that went to Lancaster before you simply paid it out. Now, it may be somewhere else, but I haven't seen it here and I'm just asking as a normal procedure, in the approvals of the PIC would you simply take these things at face value and not want the underlying documentation around it from a PIC-governance perspective?

MS BOTSANG MOROBE: Commissioner, through you, there are some transactions where you would have access to the mandate agreement between the sponsor and the advisor, which would obviously outline the scope of work and the remuneration thereof. For this particular transaction I don't recall seeing such a breakdown. What I do recall is a breakdown in the form of a spreadsheet, but – and as far as the underlying supporting documents are concerned, I don't have a memory of those.

ADV SECHABA MOHAPI: Ja, just to follow up, I think probably the key issue here is that on that 23-million, was that only sort of legal fees, tax opinions, or whatever? Or is there an amount that went to Lancaster? Do you know? I think a breakdown will actually help us to just see. Because on paragraph 17 you actually give some names of the legal firms that got the money. Is that correct?

MS BOTSANG MOROBE: Commissioner, through you, that is correct.

ADV SECHABA MOHAPI: Ja. So the key thing here is that 23-million, did any part of that 23-million go to Lancaster or not, I think? Ja? Ja? Because the other fees would be... And just the concern is that why was

there this breakdown? Because typically the fees are done in one batch where it's advisors, legal advisors, tax opinion people and all that. Is that correct? Is that correct?

MS BOTSANG MOROBE: Commissioner, through you, that is correct.

ADV SECHABA MOHAPI: So I guess we should just get that breakdown on the R23-million.

MS BOTSANG MOROBE: Commissioner, through you, I can get that information. Okay.

CHAIRPERSON: I'm not sure that I understand the whole concept. You've got here, at paragraph 14, a list of payments. Right? And you say 'payment to Lancaster, 22.85-million'. That's the figure that we are talking about. And then did they – did Lancaster receive that? If you know. And then spread it as in F of paragraph 17, and if so, did that 22-million – 23-million form part of the total amount that was paid to Lancaster, or that was borrowed?

MS BOTSANG MOROBE: Through you, Commissioner. I will attempt to answer the first part of the question, which relates to whether the 22-million was transferred to Lancaster Group. So I have provided, in Annexure E, payment instruction. Paragraph 3.1.2 of that refers to an amount of 22-million, being the remaining balance of the deposit account to Lancaster 101 (Pty) Ltd. So there was an instruction to pay out that money from the escrow account, which the monies were initially deposited in, to then pay Lancaster that money. As it relates to the relationship between the 22-million and the advisors that were paid in paragraph 17 of my statement, Clifford Chance was legal advisor to Citibank, so Citibank would have been responsible for settling the bill to

Clifford Chance. ENS was the legal advisor to Lancaster Group. My understanding is that the bill to – for ENS was paid out of the 22-million. DM5 was legal advisor to the PIC. My understanding is that PIC, as a corporate, took care of its own legal costs. Symphony, advisor, which was the advisor to Lancaster Group, was paid 76-million, which on the same Annexure E there is an amount of 76-million that was instructed to be paid out of the escrow account to Symphony.

ADV SECHABA MOHAPI: So the key think is that did ENS get that full R22-million?

MS BOTSANG MOROBE: My understanding is that it wouldn't have gone to ENS completely. There was a tax portion of it that was paid, and it wasn't paid to ENS, and then there was actual advisory legal services that was provided to – by ENS that was paid. I would have to with that information and the breakdown and present it to you, Commissioner.

CHAIRPERSON: The second part of the question? Is that 23-million part of the total amount that was made available to Lancaster?

MS BOTSANG MOROBE: Commissioner, through you, the 22-million plus the 76 to Symphony formed part of the transactions costs, which I think in table 1 they've been summed up as 100-million. That 100-million formed part of the 9.35-billion loan from the PIC. So, to answer your question, yes, Commissioner.

ADV SECHABA MOHAPI: It was capitalised into the transaction?

MS BOTSANG MOROBE: Yes. That is correct, Commissioner.

CHAIRPERSON: Thank you.

MS GILL MARCUS: Just stay with the amounts of money at the

moment because I'm a little bit confused. At one point we... If I go back to the deal it was the PIC to provide a loan. If we go back to 12(A), PIC to provide a loan of 9.3-billion and you said it was then 9.35-billion. Right? Is that correct?

MS BOTSANG MOROBE: Commissioner, through you, so my statement actually, I think I omitted a 5, so it has to read 9.35-billion.

MS GILL MARCUS: Yes. That's what I'm asking there. But then if we go to the following page and we look at the total, which then becomes 9-billion, 100-million, 350-million, which is 9.45-billion, okay, so there is an additional amount in that, and then there is the 50-million that was contributed, 50-million by Lancaster, 50-million by the GEPF, PIC on behalf of GEPF. Where is that 50-million accounted for in the deal, or not accounted for in that – in those numbers?

MS BOTSANG MOROBE: Commissioner, through you, so the point that I was trying to drive in my paragraph 13 and its supporting table was that when the transaction was presented at IC the costs were that. What had changed as a result of the approvals was the 350-million, so ... (intervention)

MS GILL MARCUS: For the collar?

MS BOTSANG MOROBE: On the collar. So that was reduced to 250-million. Then, in order to create that alignment of interest and ... (indistinct) Jayendra Naidoo was going to – or was supposed to contribute 50-million.

MS GILL MARCUS: Right?

MS BOTSANG MOROBE: And the PIC then matched that 50-million.

MS GILL MARCUS: Right.

MS BOTSANG MOROBE: So the presentation that I've provided in table 1 was what was actually presented. Table 2 was actually what was approved.

MS GILL MARCUS: Which paragraphs are you referring to now?

MS BOTSANG MOROBE: So, Commissioner, I'm referring to paragraph 13 and its supporting table 1. So that was the proposal to the committee.

MS GILL MARCUS: Okay. That was the proposal, and then in paragraph 2 was that – in paragraph 14, is that the table that was actually approved?

MS BOTSANG MOROBE: That was the payment as approved.

MS GILL MARCUS: Okay. Thanks.

COMMISSIONER: Is the... There is... Ja. The collar now is 250 from 350. Yes. Ja. In paragraph 14. That's correct? Ja?

MS BOTSANG MOROBE: Commissioner, through you, yes, that's correct.

COMMISSIONER: Yes, yes, proceed, ja. Can you proceed?

MS BOTSANG MOROBE: Ms Morobe, just as a point of emphasis, if we look at Annexure E, I would like you to please read into the record paragraph 4 of the – that payment instruction.

MS BOTSANG MOROBE: “We further instruct you to pay, subject to

applicable fees, all interest earned on the deposit balance to Lancaster into the account nominated by Lancaster in the agreement.”

ADV SECHABA MOHAPI: Thank you.

MS BOTSANG MOROBE: “A breakdown of the payment for Symphony and

Lancaster to be made from joint instructions.

Annexure E was also provided as per the email sent by Symphony.”

COMMISSIONER: Can you hold on a bit there? I’m just worried about that for the instruction. Why is the interest paid to Lancaster?

MS BOTSANG MOROBE: Commissioner, through you. So at the time PIC would have transferred an amount of R9.4-billion and this was prior to the actual execution of the deal so I could be skewed in terms of the timeframe, but let’s say the amount was paid a day before the transaction was executed. That amount would be sitting in an account that’s accruing interest. So to the extent that there was interest that was accruing in that account everything that – after settling the fees to the advisors, after paying Citibank for the shares and after paying Steinhoff for the shares the balance, including the interest that would have been earned, would then be transferred to this account, and that then was the 22-million.

ADV SECHABA MOHAPI: Ja. And... Ja. And just to add is that Lancaster is not only Jayendra Naidoo’s company. Actually it’s an SPV between the PIC and Jayendra’s company, isn’t it?

MS BOTSANG MOROBE: That is correct.

ADV SECHABA MOHAPI: Ja. Ja.

MS BOTSANG MOROBE: Lancaster Group is a company 100% owned by Jayendra Naidoo.

ADV SECHABA MOHAPI: H’m?

MS BOTSANG MOROBE: Lancaster 101 is the SPV that is 50% owned by the PIC, 25% owned by Lancaster Group and 25% by the broad-based component.

ADV SECHABA MOHAPI: Yes. Yes, so any interest which comes into L101 is for the PIC and Lancaster Group?

MS BOTSANG MOROBE: That is correct. It would have been paid to Lancaster 101.

ADV SECHABA MOHAPI: Yes. Yes. Which is the SPV. Yes. Yes.

MS GILL MARCUS: Can I ask you, just for clarity, give me the total of the amounts approved in paragraph 14.

MS BOTSANG MOROBE: Commissioner, through you ... (intervention)

MS GILL MARCUS: As it's reflected there. What will...? What is the total?

MS BOTSANG MOROBE: So the total was 9.4-billion, which I break down in paragraph 16.

MS GILL MARCUS: No. Just add that. Just add that column for me. I mean, I might be wrong, but just add that for me, please.

MS BOTSANG MOROBE: Which table are we looking at?

MS GILL MARCUS: Table 14.

MS BOTSANG MOROBE: So I'd be very quick in my calculation. The first two, Citi and Steinhoff, has to be 9-billion. The collar to ... (intervention)

MS GILL MARCUS: But it's not 9-billion there. I mean, just go by what the figures are there.

MS BOTSANG MOROBE: It is a little... It is 9.13-billion. Commissioner, through you, so the acquisition of the non-Delta shares

and the acquisition of the Delta shares was 3.91 plus 5.33. That comes to 9.13-billion. Sorry ... (intervention)

ADV SECHABA MOHAPI: 9.14, ja. H'm?

MS GILL MARCUS: No, I want to look at... It's not just that. I'm asking for the total amount that this costs and not just the first two, the total. What did this cost?

MS BOTSANG MOROBE: Okay.

MS BOTSANG MOROBE: Commissioner, that comes to 9.59-billion. Without the 200 000 that was paid to Standard Bank.

ADV SECHABA MOHAPI: Ja, it's 9.49-billion besides that 200 000, isn't it? 9.49-billion. 9 490-million.

CHAIRPERSON: Why don't we take the tea adjournment and you can work on the figures?

MS GILL MARCUS: I just want us to be consistent about what was actually spent on the deal and therefore when we refer to it's 4-billion or 4.5-billion or 4.3-billion that we have one figure that we know this is what the elements of the deal cost but this is the total cost to the PIC of what it actually spent on the Lancaster deal.

MS BOTSANG MOROBE: That's understood, Commissioner.

CHAIRPERSON: We'll take an adjournment until 20 past 11.

MS BOTSANG MOROBE: Thank you. Can I...?

INQUIRY ADJOURNS

INQUIRY RESUMES

COMMISSIONER: ...to say you still under oath.

MS BOTSANG MOROBE: Thank you Commissioner. Just to provide a bit of clarity on what we had discussed. In terms of reconciling the

approved amount and the amount provided in table 2 under paragraph 14. So the amount paid to Citi which was the 3.9-billion included the 250-million premium.

COMMISSIONER: You say it's included it's there.

MS BOTSANG MOROBE: It's included in the 9.31-billion. So putting it in – if you tally up that whole table you will get to 9.5 – close to 9.5 instead of 9.35 and that's because we had been double counting the premium. So if you add the 3.91 plus the 5.33 plus 76 plus the 72 you will get to 9.35-billion which was the approved quantum.

COMMISSIONER: Give those figures again? 3.91, 5.33 ...[intervenes].

MS BOTSANG MOROBE: 3.91 plus 5.33, plus 76.95, plus 22.85.

COMMISSIONER: That gives you 9.35.

MS BOTSANG MOROBE: That is correct Commissioner that was the amount that was approved.

MS GILL MARCUS: And then in terms of table 9 and 13 we've got 9.45.

MS BOTSANG MOROBE: So table 1 was what was presented. What was presented was acquisition of shares for 9-billion, transaction costs of a 100-million, the ratio caller premium at 350-million. This amount then changed to 250-million. What I didn't included in that table is the capitalisation of 50-million by the PIC.

MS GILL MARCUS: So where does that now get reflected – the 50-million capitalisation of the PIC?

MS BOTSANG MOROBE: Pardon me Commissioner?

MS GILL MARCUS: Where is that now reflected that 50-million.

MS BOTSANG MOROBE: So I would have to have stated it in paragraph – table number 2. So the loan was actually 9.35 and so as

we've just calculated in paragraph 2 we get to 9.35. The additional 50 would mean that PIC in total approved 9.4-billion.

MR EMMANUEL LEDIGA: I just think it could have worked better maybe if you separated the equity portion. The 50/50 say – the 50-million and the 50-million is the equity contribution and then the other amounts separately. Do you think it could have worked better maybe?

MS BOTSANG MOROBE: I think so Commissioner, I will provide a table to that effect to clarify this.

MR EMMANUEL LEDIGA: Okay.

COMMISSIONER: But of course that doesn't change the 9.4-billion, it's still the same amount.

MS BOTSANG MOROBE: That is correct Commissioner. There was actually two instruments that was created by the PIC. There was an equity instrument for 50-million and there was a loan instrument for 3.5-billion.

MR EMMANUEL LEDIGA: So in total the PIC paid 9.35-billion or 9 350-million plus 50-million of the equity portion which is 9 400-million which is 9.4-billion, is that correct?

MS BOTSANG MOROBE: That is correct Commissioner.

MR EMMANUEL LEDIGA: Okay alright.

MS GILL MARCUS: Thank you for that.

MS BOTSANG MOROBE: "The total amount dispersed by the PIC in relation to Project Sierra was 9.4-billion as provided in Annexure G which is composed of 12 payments as follows: Ten payments of 900-million, one payment of 350-million and one payment of 50-million. The following advisors were appointed

on Project Sierra:

- Clifford Chance - legal advisors to Citi
- ENS - legal advisors to Lancaster Group
- DM – legal advisors to the PIC
- Symphony – advisors to Lancaster Group

Script lending

The PIC has entered into a global market security lending agreement, GMSLA, with Citi under which Citi can borrow Steinhoff shares from the PIC to maintain the ratio collar. The stock loan could be made through intermediaries including but not limited to Deutsche Bank. I have annexed the GMSLA agreement in Annexure H.

On 5 August 2016 IC approved four board directors for Lancaster SPV, two representing the PIC that is Mr Roshan Morar and Ms Boitumelo Mashilane, one representing Lancaster Group and one representing the broad based empowerment trust.”

MS GILL MARCUS: Sorry just on that. At that point in time did the trust exist or was it simply a nomination of a person, do you know?

MS BOTSANG MOROBE: At that point in time the implementation of the trust hadn't been completed. But the nomination for that trust member or the board rep for the trust had not been made.

MS GILL MARCUS: It was simply an allocation of a seat not a person to sit in that seat at that point in time?

MS BOTSANG MOROBE: That is correct Commissioner. But in terms of the PIC representatives those were actually nominated at the IC.

MS GILL MARCUS: No I'm only talking about the BEE one at that point.

MS BOTSANG MOROBE: So you correct.

MR EMMANUEL LEDIGA: Just a question. In terms of the BEE trust, did it ever contribute its portion of 25%?

MS BOTSANG MOROBE: Through you Commissioner. I think at the time of the transaction the intention was not for the trust to contribute to the SPV. Lancaster Group through Mr Jahindra's contribution would then be used as part of the BEE trust contribution to the entire SPV. So in other words Mr Jahindra Naidoo actually paid for Lancaster Trust participation in the SPV.

"In January 2016 Ms Boitumelo Mashilane went on maternity leave and I was then appointed as an alternate director on the board of both L101 and L102, an entity that I discuss under Project Blue Buck section below. Simultaneously Mr Horatius Maluleka was also appointed as a director of the board of both Lancaster 101 and Lancaster 102 replacing Ms Boitumelo Mashilane.

In May 2017 the PIC received a proposal from Lancaster 101 to consider setting up a non-profit company NPC instead of the BBEE trust as per the PIC approval, approval Annexure J. The rationale provided for considering a non-profit company was as follows:

- The ease of administration and greater transparency and governance whilst at the same time ensuring limited liability for directors of NPC.
- The NPC had the added benefits of dividend withholding tax

while the trust would attract withholding tax.

The change from a trust to a NCP was approved per the attached Sierra memorandum named Annexure K and as captured in the addendum to the shareholders agreement named Annexure L.”

MS GILL MARCUS: Thanks just on that question of this, whether it’s a non-profit which you have now approved in May 2017. Just for information are you still as an alternate on the board?

MS BOTSANG MOROBE: Commissioner through you, that is correct I am.

MS GILL MARCUS: Do we know the status of this non-profit? Has it been established, has it got proper terms of reference? Is it something that you as a board member are comfortable with? Has the director to the board been appointed?

MS BOTSANG MOROBE: Commissioner through you. The NPC has been established. There is a memorandum of incorporation I believe as well as other constitutional documents that pertain to that which I’m happy to provide. There is a representative of the NCP on the entire Lancaster 101 board and 102 board. That was implemented I believe – it could have been 2017 when that was implemented.

We have been provided with the beneficiaries of the trust which in my knowledge it’s non-profit organisations in South-Africa that deal with education as well as healthcare services to townships in South-Africa.

MS GILL MARCUS: Can I ask that we be provided with – because there’s a difference between a trust and a non-profit. I understood that

the trust was no longer going to be but you'd have a non-profit company. The amount of funds that have gone through this to that non-profit company and how much has been expended in relation to the work of the non profit. Because I think it was a 25% stake in this for that purpose and I think it would just be useful to get that information from you.

MS BOTSANG MOROBE: Thank you Commissioner we can provide that. I just want to state, as it relates to the funding of the foundation I don't cover it extensively in my statement but there was as a result of Project Blue Buck – I think I've provided a table where 50-million was actually approved to capitalise the foundation. That 50-million and I'll go through the mechanics of Project Blue Buck.

There was a loan that was raised from Citi Bank to buy shares in Star and those shares would then be ceded to the PIC as security. Over and above the purchase price for the loan there was a 150-million for value in Hans Strategies that was approved. There was a 50-million to actually capitalise the foundation.

MR EMMANUEL LEDIGA: But before Blue Buck was there any money that went into L 101 - any proceeds, any returns because we know Steinhoff fell at some point.

MS BOTSANG MOROBE: Before project Blue Buck the capitalisation of 101 would have been through the 250-million equity contributions by Lancaster and the PIC. So that would have been in 101 and the Blue Buck came, there was additional money that obtained as a result of the Citi loan that now went into Lancaster 101.

ADV SECHABA MOHAPI: We shall get there. Thank you let's wait and

then we'll get there.

MS BOTSANG MOROBE: “In May 2017 I was tasked to work on project Blue Buck in my capacity as an investment associate. I received a copy of an investment proposal prepared by Lancaster Group and Symphony dated 9 May 2017 from Vusi Raseroka who was a fund principal in the PIC Private Equity and SIBS division at the time. Within the year of PIC's participation in Project Sierra the Steinhoff share price began to decline and this had an impact on the PIC security package under Project Sierra.

As a result Lancaster Group approached the PIC with a proposal for the PIC to consider facilitating Project Blue Buck. The transaction that would result in the change in PIC's security package to a much more enhanced position. Project Blue Buck entailed Lancaster Group raising third party funding from Steifhoff and Citi to acquire a c. 11.8% equity stake in Star through the vehicles Lancaster 101 and Lancaster 102 which the PIC had a shareholding of 50% in. The Star shares acquired through Lancaster 101 and Lancaster 102 vehicles would then be pledged to the PIC to offer an enhanced security package.

The transaction mechanics for Project Blue Buck are summarised as follows:

- Lancaster 101 would secure a loan from Citi to acquire 5.9% equity stake in Star. The PIC would then have a primary position and pledge over these shares.

- Lancaster 102 would then acquire funding from Steinhoff and or its affiliated companies to acquire 5.9% stake in Star. The PIC would then have a reversionary session and pledge over these shares.
- The mechanics are further demonstrated in the diagram presented below.

In terms of the PIC governance process for approving transactions Project Blue Buck was then taken to PMC1, PMC2 and IC.

Project Blue Buck was taken to PMC1 to allow the deal team to proceed to due diligence. Although no additional expenses was incurred as due diligence service providers were not appointed the deal teams due diligence entailed quantifying the impact of the proposed transaction on the PIC.

On 13 July 2017 Project Blue Buck was presented to IC. The IC members requested further comfort on the adequacy of the new security package being presented and wanted a deeper understanding or comparison between the PIC security package under Project Sierra versus Project Blue Buck. To this end internal audit was tasked with making analyses for the benefit of the IC members. The deal team was required to facilitate this by providing internal audit with the requisite information. I've provided Annexure M for this.

According to the approval letter issued to Lancaster Group by the PIC provided in Annexure – I'd like to make a correction. I make reference to Annexure M, it's actually

Annexure N. The following transaction costs were presented.

- Capitalisation of Lancaster Group Trust for 50-million.
- Investment into value enhancing strategies for 150-million.
- Transaction costs for 49-million as well as a restructuring fee to the PIC for 30-million.
- The total of this was 280-million provided in table 3”

MR EMMANUEL LEDIGA: Let’s just go through a couple of things here. So the trust was given the 50-million ja which is fine. Value enhancing strategies, where was that money deposited, where was it taken?

MS BOTSANG MOROBE: The value enhancing strategies allocation for 1150-million was borrowed from Citi by Lancaster 101.

MR EMMANUEL LEDIGA: Oh I see okay. And to do what?

MS BOTSANG MOROBE: Commissioner through you. There isn’t really a strategy that was developed – well a formal strategy that was developed and that would govern the use of the 150-million. But my understanding is that it would be deployed in various transactions that would provide some sort of upside for Lancaster 101. As far as I know there is a one transaction that has been deployed out of that value enhancement strategy.

MR EMMANUEL LEDIGA: Alright ...[indistinct] come back. And then transaction costs what would those be?

MS BOTSANG MOROBE: Commissioner through you. My understanding is that the transaction costs for 49-million would be paid to Symphony.

MR EMMANUEL LEDIGA: Okay I thought transaction meaning some trading of the stocks and you know ...[intervenes].

MS BOTSANG MOROBE: Commissioner through you.

MR EMMANUEL LEDIGA: ... not advisory ...[indistinct].

MS BOTSANG MOROBE: Commissioner through you. These were advisory fees that were paid to Symphony.

MS GILL MARCUS: Was it to Symphony because your note in 31 c is Ataraxia Capital not Symphony. Is there a relationship between Ataraxia or a connection between Ataraxia and Symphony?

MS BOTSANG MOROBE: Commissioner through you. At the time of doing Project Sierra we were having discussions and we were working alongside Symphony Capital. I think even in the beginning of Project Blue Buck we dealt with Symphony Capital. At a later point the transactors or the faces of Symphony Capital actually broke away and formed their own investment arm called Ataraxia.

So I stand to be corrected, I think by the time we concluded this transaction they had already been labelled as Ataraxia but in essence the guys from Symphony – well two the guys from Symphony then formed a company called Ataraxia.

MS GILL MARCUS: But they were advisors to Lancaster but in total for the deal it would have been the original fee to Symphony of 77-million as well as this 49-million to Ataraxia for the transaction as a whole that they earned.

MS BOTSANG MOROBE: That is correct.

MS GILL MARCUS: Whether they Symphony, Ataraxia or whichever. The fees paid then would have been the total of the two – 77 plus 49.

MS BOTSANG MOROBE: That is correct Commissioner, in Sierra they got 76 and Blue Buck they got 49.

MS GILL MARCUS: I'm rounding up not down so it might as well be 77 not 76.

MS BOTSANG MOROBE: That is correct Commissioner.

MS GILL MARCUS: Thank you. Can I go back, I don't know whether you were finished there, no. I want to go back to this question of what you had earlier in relation to the new security package and go to your Annexure N in that regard and ask you if you can help me with this. Because the question here is the change of the security package and if we went to Annexure N, page 2 on the description of rights by the current – you've got rights, you've got current – it's under 5. Have you got it?

MS BOTSANG MOROBE: I've got it Commissioner.

MS GILL MARCUS: Okay so the question the PIC will subordinate its loan to its loan advanced to L 101 under Project Sierra subject to changes in the security packages in the following manner. First of all the rights primary session and pledge on L 101 shares in Steinhoff. The current under Sierra was that the PIC had 25% of the shares and Citi had 75. Under the security package Blue Buck PIC no longer has any percentage and Citi has 100. You have a reversionary session which looks at PIC having 100 and Citi having zero and then obviously the ratio collar and in point a underneath the table.

The above changes in security are a result of Citi's funding facilitation of the transaction. Therefore PIC as I would understand it and I would need your guidance on that – as I would understand it PIC reducing its package from the 25% in the shares to zero facilitated the Citi's funding of that deal. If they had not done that would that deal

have gone through and what were the implications or the outcome given the events in Steinhoff and Lancaster and Star to the situation as it affects the PIC today on this transaction?

What in actual fact having lent R9.4-billion is the impact of that loan in its totality whether it was the original 101 or 102 and what did this change in security mean in relation to the standing of the PIC today? And the ability for Steinhoff – for Lancaster to have done the second Lancaster 102 because I want to just understand that PIC changing that security, its implications to enable Citi. Would Citi have done the deal if the PIC had not done that?

MS BOTSANG MOROBE: Commissioner through you. So my first attempt to that question would be to talk about the first transaction and how the decline in the share price affected it. So PIC had a loan of 3.5-billion which was being serviced by dividends from Steifhoff shares and was actually 25% of those shares because the other had been ceded to Citi.

As the share price declined earnings of Steinhoff also declined and consequently the dividends outlook on Steinhoff shares would have declined. What that meant for the PIC was that the serviceability of the loan would also decline. So we were brought a proposal by Lancaster Group to consider actually changing our security package from Steinhoff whose shares were declining in value to Star whose outlook on the share price was looking more attractive.

The Star shares our outlook was that the earnings would be growing because of their footprint in Africa and those market presented great growth opportunities. If earnings are projected to grow we also

projected that the dividends from those shares would also grow. So in that case having then had Star as security and the dividends of Star thereof being ceded to the PIC that then meant for the PIC that we would be able to get our loan serviced from Star shares whose dividend outlook was growing as opposed to Steinhoff whose outlook was declining.

That meant also that the loan that we had advanced to Lancaster 101 would – that repayment of that loan would be accelerated. So we actually viewed that security package at the time as a much more enhanced position than we would have had in Sierra. When we did our returns calculation on the structure it wasn't mainly on the loan. So we weren't just looking at the fact that we were providing a loan and we were going to receive interest and that was return.

The initial structure was that there was an upside component from it. So we took a view that Steinhoff would appreciate – the share would appreciate in ...[indistinct]. What that meant for us is that we would not just get the loan return. We would get a loan plus an upside return – an equity upside return. That provided us with an enhanced return position.

If now the Steinhoff share price goes down that eliminates out any possibility of getting upside participation. If we switch now to Star shares, them appreciating in value meant that we would get some form of upside from the Star shares. If we look at the two transactions – you know line by line, it means now the dividends that we were going to get from Star which we no longer now getting from Steinhoff package would provide us with a better IRR – better returns.

So in that case we then deemed that as a better security package. For Citi to then – for us to facilitate Project Sierra – Project Blue Buck we were not actually putting out any capital contribution. We had to forego some of our security. We already had 25% on the Citi shares which were declining in value. That opportunity cost if I may call it – came with us actually getting Star shares which were more ...[indistinct] outlook was looking far much better.

So our facilitation for getting session and pledge of Star shares which were essentially funded by Citi was us foregoing the Steinhoff shares and that was the level of our participation.

MR EMMANUEL LEDIGA: So project Blue Buck was leveraged by PIC having foregone its security in Sierra?

MS BOTSANG MOROBE: Commissioner through you. That was a condition yes.

MS GILL MARCUS: And the outcome at this point in time in terms of the 9.4-billion investment, what is the situation today?

MS BOTSANG MOROBE: Commissioner through you. I will try and recall figures. They might not be accurate but if I just provide them numbers maybe they would give much more clarity. So the PIC's loan today as it sits I think has rolled up to about 11.3-billion, thereabout. That loan was secured in Sierra by Steinhoff shares.

The value of the Steinhoff shares that we bought at the time for 9.35-billion and I think the share price when we did the transaction was R98.00. Steinhoff share price has now decreased I think to about R2.00 or even less. The value of those shares is not about 200-million.

If we move to project Blue Buck we still have an outstanding

balance of 11.3 billion but that is secured by shares that were bought in STAR using the loan from City. I think, as we stand, the value of those shares – so the value of Lancaster 101 shares in STAR is about 7 billion so we are looking at a payment of, you know, the difference between our outstanding balance and STAR shares versus our outstanding balance in Steinhoff shares. The gap would have been wider, you know, had it been project Siya(?).

MS GILL MARCUS: But the impairment is roughly 4.3 billion.

MS BOTSANG PHOMOLO MOROBE: Roughly, that is correct.

MS GILL MARCUS: Ja. So in essence the full investment at the initial is an impairment?

MS BOTSANG PHOMOLO MOROBE: That is correct, Commissioner.

MS GILL MARCUS: And just on that question of being secured, I'm just not quite sure, if you could explain it a little bit more, that you are secured in the STAR shares by the City investment. Just explain that a little bit because you forfeited – the PIC forfeited the 25% to enable the City deal to go through in support Steinhoff. So just explain that secure, I'm not quite sure I follow it.

MS BOTSANG PHOMOLO MOROBE: So Blue Buck project – Blue Buck, Commissioner, if I may, was a transaction where Lancaster raised the loan – Lancaster 101 raised the loan for 6.5 billion. That loan bought shares in STAR. Typically when a bank or anyone actually loans you funding, you expect them to have primary cession of the underlying security. In this case it would have probably made sense if then City got a hundred percent of the STAR shares in terms of primary cession. What then happened was City then got a 100% of the STAR shares, that

is got a cession in pledge on 100% of the STAR shares and the PIC got primary cession of the STAR shares where the value was projected to grow.

MR EMMANUEL LEDIGA: Just to check something. So if the STAR shares continued to rise would the value of the PIC, you know, rise, the amount owed by the PIC rise?

MS BOTSANG PHOMOLO MOROBE: Commissioner, through you, that is correct, if the share price of STAR continues to grow, we would assume that the impairment gap will reduce.

MR EMMANUEL LEDIGA: Will narrow. Will narrow, ja, ja. Do you take, you know, that sort of a view taken the sort of the – like if you had taken the hit, the R4 billion hit, the impairment?

MS BOTSANG PHOMOLO MOROBE: Commissioner, I bet your pardon?

MR EMMANUEL LEDIGA: Have you taken the R4 billion hit in the balance sheets or is something which is still, you know...?

MS BOTSANG PHOMOLO MOROBE: Commissioner, through you, we – I think in our last financial year we did report this impairment. We will only be able to obviously realise it at the end of the maturity of the loan. So for now we have just reported it as...

MS GILL MARCUS: And when does the loan mature?

MS BOTSANG PHOMOLO MOROBE: The loan should mature in 2023. It was a five year term, I'll just have to check quickly. 22? 2021, thereabout, Commissioner.

MS GILL MARCUS: Can I just ask a question which I've asked but perhaps a slightly different way, coming back to the Symphony/Ataraxia did PIC in any way influence or recommend the use of either of those?

MS BOTSANG PHOMOLO MOROBE: Commissioner, through you, to the best of my knowledge I'm not aware whether PIC had an influence on the appointment of Symphony.

MS GILL MARCUS: Or Ataraxia?

MS BOTSANG PHOMOLO MOROBE: Or Ataraxia ja.

MR EMMANUEL LEDIGA: You said in your evidence that these were advisers of the Lancaster Group. Were they brought to the PIC or in bringing the DO to the PIC where – were they brought to the PIC as such as having been the Lancaster Group's advisers?

MS BOTSANG PHOMOLO MOROBE: Thank you, Commissioner. My initial encounter with Symphony Capital was when the deal was – had already kick-started. So, in other words, they – at the time when I participated in the transaction, they were already representing Lancaster Group.

MR EMMANUEL LEDIGA: Your concluding paragraph in the statement, paragraph 32?

MS BOTSANG PHOMOLO MOROBE: IC approved four board directors for Lancaster 102 to represent in the PIC, one representing Lancaster Group and one representing the BBBEE Trust in order to replicate 101 structure. I've provided the Blue Buck approval in annexure N.

MS GILL MARCUS: Can I just ask for some clarity because I might have I misunderstood you and I apologise if I did, but you've – I've tended to hear trust, non-profit and foundation. You've used all three. Exactly what have we got here as the non-profit component, the empowerment component of the Lancaster deal?

MS BOTSANG PHOMOLO MOROBE: Commissioner, through you, the

initial approval was for a trust. Subsequent to that, about a year later, there was a request to actually convert that trust into a non-profit company.

MS GILL MARCUS: But the trust had not actually taken shape at that point in time.

MS BOTSANG PHOMOLO MOROBE: It hadn't.

MS GILL MARCUS: It was on paper or was it already in existence as a trust?

MS BOTSANG PHOMOLO MOROBE: It had not been implemented at the time.

MS GILL MARCUS: So it moved from the approval of a trust to be formed to a non-profit to be formed over a period of a year?

MS BOTSANG PHOMOLO MOROBE: That is correct, Commissioner. As it stands now we have an entity called Lancaster Foundation. It is not a foundation in my understanding the way we would know it, it just a term used loosely and the name of that non-profit company is actually Lancaster Foundation.

MS GILL MARCUS: But it exists? It's there, it exists?

MS BOTSANG PHOMOLO MOROBE: It does exist.

MS GILL MARCUS: It has functions, it distributes money?

MS BOTSANG PHOMOLO MOROBE: Yes, Commissioner, I can state as being part of the – I'm an alternate on Lancaster 101 and 102. I can state on the record that there has been a donation made by the trust to a charitable organisation.

MS GILL MARCUS: By the foundation to a charitable organisation, not the trust.

MS BOTSANG PHOMOLO MOROBE: NPC making a donation to a charitable non-profit organisation.

ADV SECHABA MOHAPI: You say NPC?

MS BOTSANG PHOMOLO MOROBE: Non-profit company, sorry, Commissioner.

ADV SECHABA MOHAPI: Ja, the last I heard was a foundation that has made a donation, now you say NPC.

MS BOTSANG PHOMOLO MOROBE: Commissioner, if I may clarify, the approval was for a non-profit company. That non-profit company, the name of that entity is Lancaster Foundation.

MS GILL MARCUS: So we have a non-profit company called Lancaster Foundation?

MS BOTSANG PHOMOLO MOROBE: Called Lancaster Foundation, that is correct.

MS GILL MARCUS: Which is now beginning to distribute some funds to different entities?

MS BOTSANG PHOMOLO MOROBE: That is correct, Commissioner.

MS GILL MARCUS: Okay, then it's clear, thank you.

MR EMMANUEL LEDIGA: Just a question, another question, is that what could have happened and I think you did try to address that, what could have happened if project Blue Buck didn't happen, if it was just a Sierra and the share price of Steinhoff kept going down and all that?

MS BOTSANG PHOMOLO MOROBE: Commissioner, through you, the way that the collar was structured was that such that the expiry date would start on year three from transaction, close off from conclusion of the transaction which meant that the collar was probably exercisable

between years three and years five. This – they way also it was designed is that this would be done in tranches and the rationale behind unwinding or the expiry in tranches was that because of the volume and the quantum of the transaction, if it happened that PIC exercised the collar at one go this would probably distort the market in terms of prices as there was a big chunk of shares from Steinhoff. So when the share price began to decline it was within the first year of the transaction being approved. We had not as yet reached year three where we could start actually expiring or realising the proceeds from the collar.

So we were faced with a situation where the share price, which was the share price of Steinhoff was going down and Steinhoff was very key in terms of the security provided to the PIC. So if they PIC had not changed its position today we would still not be within year three where the ratio collar would have given us the opportunity to unwind it or exit or – you know?

So in a nutshell we, between the time of concluding the deal in 2016 and now, we were just seeing the declining share prices and we had to act accordingly to put a security package in terms of STAR shares that would provide a better position in terms of our financial position as the PIC.

MR EMMANUEL LEDIGA: Just to go back to the foundations, Ms Morobe, do you know who the entity was – who this entity that they provided funding to, do you know who they are?

MS BOTSANG PHOMOLO MOROBE: Commissioner, through you, I believe – I know that there was a donation in the form of vehicles that was bought for a foundation called Africa Tikkun. Africa Tikkun.

MR EMMANUEL LEDIGA: And does that bear any relation to Lancaster Group or the PIC, that entity?

MS BOTSANG PHOMOLO MOROBE: Commissioner, through you, I do not think that the PIC has a relationship with Africa Tikkun, I'd have to check that. I would like to believe that the foundation does not have a relationship with Africa Tikkun but I would like to have the opportunity to clarify that.

CHAIRPERSON: Now that the changes that are effected as a result of the PIC noticing that the share price was going down in Steinhoff, who takes that decision? Is it particular section of the PIC, the board, some committee?

MS BOTSANG PHOMOLO MOROBE: Commissioner, can I ask you to clarify your question?

CHAIRPERSON: You said that the PIC decided to effect changes as a result of the share price in Steinhoff going down. My question is who took that decision in the PIC on behalf of the PIC?

MS BOTSANG PHOMOLO MOROBE: So the proposal and the initiative to change the security package came about from Lancaster Group. The decision to actually change the security package was made by the IC.

CHAIRPERSON: IC?

MS BOTSANG PHOMOLO MOROBE: Yes.

CHAIRPERSON: Investment committee.

MS BOTSANG PHOMOLO MOROBE: That is correct, Commissioner.

CHAIRPERSON: Thank you.

MR EMMANUEL LEDIGA: Just in terms of this BEE transaction, you know, we need to be – to focus on that, that there was supposed to be a

BEE transaction which will make money for the BEE sponsors and all that. In total, what has happened to that transaction? Has the BEE company made money, will it make money and all that?

MS BOTSANG PHOMOLO MOROBE: Commissioner, through you, so there was a lot of parameters in this transaction. It was an empowerment transaction in that it facilitated the acquisition by a BEE partner into Steinhoff.

Second of all, that BEE partner was going to be active so –and that was going to be facilitated by the shares that had voting powers. So, in other words, Jiandra(?) through Lancaster 101 would be part of the voting pool and therefore would obviously have an influence in terms of the strategic direction that Steinhoff would take.

Thirdly, there was KPIs imbedded in this transaction that spoke to entrepreneurship development and social development. So those were the key things.

In terms of returns, all of that value add including the KPI initiatives that Jiandra was contracted to do would – we saw them as value-enhancing, so to the extent that he is able to achieve all of that, that would be translated into a form of return in the end because essentially he would have been able to derive and drive some value in the investment. So has Lancaster or has the sponsor gotten a return as yet? The answer to that is no, that will be determined when the transaction actually closes because that is when the upside participation will probably take place, if it is there.

MR EMMANUEL LEDIGA: And this will depend a lot on what STAR and Steinhoff will do, you know, in the coming years?

MS BOTSANG PHOMOLO MOROBE: Commissioner, through you, that is correct.

MR EMMANUEL LEDIGA: So do you think Steinhoff will ever come back?

MS BOTSANG PHOMOLO MOROBE: Commissioner, through you, I think there's a lot of work to be done at Steinhoff level. It's very difficult now to make any assessment because there isn't information available on Steinhoff. I do believe thought that STAR, which is the Steinhoff Africa assets, are a good place for a Lancaster Group to be invested in as their growth projections are much more promising than Steinhoff's.

CHAIRPERSON: Have you got any further questions, Mr Mohapi?

ADV SECHABA MOHAPI: We have no further questions, Mr Commissioner, that is Ms Morobe's evidence.

CHAIRPERSON: Yes, thank you very much. Thanks, Ms Morobe. You don't have to stand up, that's okay. Thank you very much for your contribution, the evidence that you have placed before us. Certainly a lot of light has been thrown into the question of Steinhoff and its position. From my side I think you – well, I don't think, it appears to me that you are quite knowledgeable in the field that you are in and for that we thank you. If it were to happen that we want you to come back I hope you will be available to come back to give further evidence, that is if necessary. Okay, thank you so much so far.

MS BOTSANG PHOMOLO MOROBE: Thank you, Commissioner.

CHAIRPERSON: Right.

MR EMMANUEL LEDIGA: Mr Commissioner, our next witness is Mr Vusi

Raseroka, he's ready to come and give evidence.

CHAIRPERSON: We don't have to take an adjournment, do we?

MR EMMANUEL LEDIGA: No, we don't need an adjournment.

MS GILL MARCUS: Mr Mohapi, just in relation to the previous witness for clarity, given the discussion that was there. Can we get the details of who exactly who the BEE partner is or its composition is, who sits on the board, what their terms of reference are, who the beneficiaries are? They have said Advocate Dikondi. Is that the only one? What was the quantum distributed and what were their plans for distribution? So, we have a sense of what that 25% of this deal actually entails and who is involved in it. If you do not mind.

ADV SECHABA MOHAPI: Thank you, Commissioner. We will provide that to the Commission. Mr Commissioner, Mr Raseroka is ready to take the prescribed oath.

CHAIRPERSON: Thank you. Your full names, sir.

MR VUSI RASEROKA: Commissioner, my full names are Rampomane Vusumuzi Raseroka.

CHAIRPERSON: I did not get the first name?

MR VUSI RASEROKA: Rampomane Vusumuzi Raseroka.

CHAIRPERSON: Okay. I take it, you have no objection to taking the prescribed oath?

MR VUSI RASEROKA: No, objection, Commissioner.

CHAIRPERSON: Can you please stand then? Do you swear the evidence you are about to give, will be the truth, the whole truth and nothing but the truth? Raise your righthand and say, so help me God.

MR VUSI RASEROKA: So, help me God.

RAMPOMANE VUSUMUZI RASEROKA: (d.s.s.)

CHAIRPERSON: Thank you. You may be seated.

ADV SECHABA MOHAPI: Thank you. Mr Raseroka, you have also prepared a statement in relation to the evidence you will be giving before the Commission. Is that correct?

MR VUSI RASEROKA: That is correct, Commissioner.

ADV SECHABA MOHAPI: Can we start from paragraph 1 of your statement.

MR VUSI RASEROKA: Okay.

“I am an adult male and currently employed by the Public Investment Corporation, PIC as a Funds Principal of Private Equity and Structured Investment Products.

I am have been in the employment of the PIC since February 2010...”

CHAIRPERSON: The previous witness, seeing that you are the Fund Principal and she is the Associate Principal, what is the difference? Is she under you or how is the structure?

MR VUSI RASEROKA: Through you, Chair. In terms of the structure, you will have the Executive Head of Private Equity and SIPs. Thereafter or below them reporting to them, would be the Fund Principal and reporting to a Fund Principal would be an Associate Fund Principal and then an Associate and an Analyst.

Through you, Chair. In my original statement, I did not include my qualifications and my employment at the PIC.

CHAIRPERSON: Okay, you can state them for the record.

MR VUSI RASEROKA:

“I was employed by the PIC in February 2010 as a Portfolio Manager in Economic Infrastructure in the Isibaya Fund Team. In November 2013 I moved from the Development Investment Team into the Private Equity Team as an Associate Principal. My qualifications include a Bachelor of Commerce Accounting Degree from the University of Botswana and I am a Fellow of the Association of Chartered Certified Accountants, FCC.

The facts contained in this statement are to the best of my knowledge and believe both true and correct.

I have been requested to give evidence in relation to my role in the Steinhoff/Lancaster 101 Transaction and I do so voluntarily....”

MR EMMANUEL LEDIGA: The one thing I just wanted to check, Mr Raseroka or to Advocate Mohapi is that, how different is this statement to the previous one? In many ways, they seem to be similar.

ADV SECHABA MOHAPI: Commissioner, there are similarities but there are things which Mr Raseroka flashes out more in detail. So, there is more detail which he deals with, particularly in the Lancaster 101.

MR EMMANUEL LEDIGA: All right. Thanks.

MR VUSI RASEROKA:

“My first encounter with the transaction was on the 19th May 2016 when I was sent a meeting invite by Mr Mervin Muller. I accepted the meeting on the following day, 20th May 2016 and on that same day I also received an email from Mervin. Annexure 1. Project Sierra initiation email and attachments thereto.

The email had two attachments, namely, Project Sierra Investment Proposal prepared by Symphony Capital, the Lancaster Group appointed advisors and a PIC letter, an investment proposal letter from Mr Jayhendra Naidoo...”

ADV SECHABA MOHAPI: I think, Mr Raseroka. Just because the bulk of what you cover in the following paragraphs is dealt with by the previous witness. Can we jump over to Section D of your statement, paragraph 14?

MR VUSI RASEROKA: Okay.

The Citi Bank Scrip Borrow:

In terms of the Sierra transaction, given its size, it was necessary...[intervenes]...”

MR EMMANUEL LEDIGA: Sorry, just before you start. Just a broad question is. How did this transaction to the PIC? Who actually brought it to the PIC?

MR VUSI RASEROKA: Through you, Chair. I received an email from Mr Mervin Muller, but when I look into the email trail, I note that there was an email from Mr Jayhendra Naidoo, I believe to Dr Matjila. And thereafter, Dr Matjila then circulated amongst a number of executives within the PIC.

CHAIRPERSON: Would that be what is referred to in 5.2? Paragraph 5.2?

MR VUSI RASEROKA: That is correct, Chair. Commissioner. My apologies.

CHAIRPERSON: [Indistinct] also does talk about it too.

MR VUSI RASEROKA: That is correct, Commissioner.

CHAIRPERSON: *Ja, okay.*

ADV SECHABA MOHAPI: Perhaps then just for the record, we can deal with paragraphs 5 and 6.

MR VUSI RASEROKA:

“The email had two attachments, namely, Project Sierra Investment Proposal prepared by Symphony Capital, the Lancaster Group appointed advisors and a PIC Letter Investment Proposal from Mr Jayhendra Naidoo.

The email was originally from Mr Naidoo to Dr Dan Matjila who had then forwarded the email to the following people; Mr Mervin Muller and Mr Fidelis Madavo with copies to Mr Koketso Mabe, Ms Matshepo and Mr Sholto Dolamo.

The Citi Bank Scrip Borrow:

In terms of the Sierra transaction, given its size, it was necessary for the team to put in place a lender of last resort arrangements for securities lending wherein Citi Bank City would approach the PIC as a last resort to borrow Steinhoff shares.

This arrangement will only take place if Citi had failed to find borrowed shares securities on the open market.

As a transaction involve a large block of shares and one of the parties to the transaction was the PIC, it was important for the parties to include the lender of last resort arrangement in order to facilitate Citi's abilities to manage the options under all circumstances.

The PIC entered into a Global Master Securities Lending

Agreement, GMSLA with Citi/L101. During December 2017 after the Steinhoff share collapse on the 6th December 2017, Citi approached PIC to borrow shares under the lender of last resort arrangement to enable Citi to better manage the delta.

The delta refers to the degree which the put-options and the call-options entered into by L101 would be exposed to the changes in the underlying Steinhoff share price.

As at December 2018, we received an email from the PIC Heads of Quants/Derivatives Listed Investments that R33 million borrow Steinhoff shares had been returned by Citi.

To my knowledge, there are still outstanding borrowed shares as the management of the delta by Citi is ongoing and the shares borrowed fees continued to be charged to L101.

Annexure 5: Sierra Stock Loan Correspondence.

The BEE Trust:

As part of the resolution given approval to the Sierra Transaction by the PIC Investment Committee it was recorded that the shareholding of L101 would be made up as follows:

1. Lancaster Group – 25%;
2. GEPF – 50%;
3. A broad based Black Economic Empowerment Trust – 25%. BEE Trust.

This requirement to establish the BEE Trust then became an obligation on Lancaster Group, Lancaster 101 as a result of the resolution.

In May 2017 communication was received from L101 being a

document that served before the L101 Board.

The document related to the discussion at the L101 Board about the implementation of either a trust or a non-profit company in fulfilment of the PIC's approval requirement that L101 establish a BEE Trust to hold a 25% equity stake in the group.

The implementation of the specific type of BEE Trust or NPC was motivated by the L101 Board and they would have to obtain the PIC shareholder approval.

The investment team circulated a memo for PMC to provide shareholder approval by way of a round robin. It was compiled by Ms Botsang Morobe.

Following the signing of the internal memo, despite numerous attempt to follow up with other departments, such as ESG and Company Secretariat there was nothing forthcoming in respect of the round robin approval by PMC.

It has recently come to my attention that the PIC shareholder representative, CEO did give approval for the formation of the BBEE NPC. Annexure 6, BBEE Trust. NPC motivation and approvals.

Was Sierra being monitored by PMV:

The Sierra transaction was not monitored by PMV. It is my understanding that the reason for this was historical as SIPs from the inception was never monitored by PMV, rather they were monitored by the Private Equity Team.

Furthermore, the SIPs process facilitates transformation on

listed companies and PMV does not monitor listed investments, due to the PMV process, requiring the company to commit to an information undertaking that would result in PMV receiving management accounts and having access to management.

This would result in PMV having access to market sensitive information, resulting in information asymmetry...”

MR EMMANUEL LEDIGA: Okay, I just want to ask a very broad question, you know, to get some help from you, as a Fund Principal, Mr Raseroka. This transaction has been in the media for a while and all that. So, I just want to find out. Were the issues about this things I am going to mention, two buckets of things, okay?

Did the discontent about this transaction, was it about – because it was done by one person who is sort of who is a PEP, he looks like he is a PEP or was it because Steinhoff collapsed? Was it because the BEE Trust was not formed? That is sort of one group of issues.

The second group. Could it be that the PIC processes were flaunted or whatever or there were some payments which were not sort of regular and all that?

So, I am just trying to find out. What could be the angst here about this transaction, according to you?

MR VUSI RASEROKA: Through you, Commissioner. In my opinion, there are probably two key issues that would caused the angst around this transaction. I think the first one would have been that it was a transaction that was led by one person, being Mr Jayhendra Naidoo and I think, you know, this was recognised by the Investment Committee as

the Sierra transaction was being approved and hence the requirement to then change the shareholding to include the BEE Trust.

The second issue would have been as a result of the Steinhoff collapse, where I think a lot of people in the investment industry who had invested in Steinhoff and as a result of the collapse, their investments were substantially reduced in value.

And so from my perspective the issue then became one around, with specific reference to the PIC, would be one around, was the PIC able to foresee that this was going to happen and you know, what – if it was, how did this relate to the PIC's ability as a fund manager to manage the Government Employee Pension Funds.

I think that is, in my view, that is the second issue. With regards to the BEE Trust. I think the BEE Trust came out of IC. So, at the time when the approval was done the BEE Trust was not – or post this transaction coming into the public domain, the BEE Trust was already part of the structure.

And then with regards to the PIC processes being flaunted. To my knowledge, the PIC processes were not flaunted. I think throughout the – in the annexures we show the process. You know, that this transaction went through from approval, including the approval of the BEE Trust.

With regards to irregular payments. On the surface, I cannot say... I do not see any irregular payments, but as to whether, you know behind the scenes and outside of the privy of the PIC, if there were. It is anyone's guess.

MR EMMANUEL LEDIGA: *Ja*, since the condition relating to the BBEE

requirement came from the IC. Did the CEO have authority to change it? I think in paragraph 23 you mention that at page 11. That: It has recently come to my attention that the PIC shareholder representative, CEO did give approval to the formation of the NPC. Should it not have gone back to IC to consider that?

MR VUSI RASEROKA: Chair, I need to come back to you with the section of the delegation of authority, if indeed it had the authority to change it.

CHAIRPERSON: So, meaning that, I mean, giving what you have just said. Once the BEE issues has been addressed in terms of, you know, the one person versus more people, then you have dealt with the BEE part of the transaction and the collapse of Steinhoff, probably people could not oversee that one, I guess.

And then you mentioned the payments. You are just saying where you are not sure is that the payments, once they leave the PIC, you are unsure and maybe there could be issues there which nobody knows. Is that correct, *ja*?

MR VUSI RASEROKA: Commissioner, through you. That is correct. I think the point that I was really trying to make was that, where the PIC would receive – would make payments on the basis of information that it has been told by the sponsor.

If a sponsor then goes and does something else once the money is within their bank account, we would not necessarily have sight of that.

MS GILL MARCUS: A slightly different question. A lot of this transaction revolves around the use of Steinhoff shares or access to

Steinhoff shares that the PIC had and in the question from Citi it says this number that they have access to for the use of the maximum loan securities referenced before is 51.5 million shares and then there is an outstanding amount of 33 million shares.

What...? We have been focussing so far in this hearing today about the Lancaster component of the Steinhoff deal, but what was the PIC's exposure to Steinhoff itself?

How much and at what price did it buy the shares? Obviously, it might have bought it over a period of time, but if you had to look at the average and you look at it before the Steinhoff collapse, what was the value of Steinhoff in the PIC and what is the value today of the Steinhoff Holding in the PIC unrelated to Lancaster?

MR VUSI RASEROKA: Through you, Commissioner. That information would reside within the Listed Investment Space and...

MS GILL MARCUS: If you do not know that is not a problem. We can find that out. I just think that when one looking at this as a component using Steinhoff shares, it is important to look at what actually was the exposure, the commitment to Steinhoff, what was the total investment in Steinhoff and then what is that current investment worth.

So, if you took the day before the Steinhoff collapse, PIC's investment in Steinhoff, today, what is that investment worth and therefore there are two elements of outstanding exposure or it would not necessarily be an exposure but a significant cost to the PIC in terms of the investment. So, if we could that information as from the Lancaster deal.

ADV SECHABA MOHAPI: Thank you, Commissioner. We will obtain

that info.

MR VUSI RASEROKA:

“L102, Blue Buck:

The shareholding in L101 was replicated in L102 in order to ensure a common ownership structure for the two companies. The structure also included the addition of cross-default provisions that were placed in both L101 and L102. This was done to ensure shareholding alignment across both companies, by ensuring that the whole group had a similar ownership structure as well as ensuring the group as a whole was equally at risk in the event of there being any unmitigated risk at either of one of the two entities, L101 and L102. Steinhoff Africa Retail, STAR shares were as security in Blue Buck. The investment thesis around Blue Buck transaction was as follows:

1. Given the decline in the Steinhoff share price Steinhoff began a process of separately listing its African business from the rest of its other business, Steinhoff. This resulted in the creation of Steinhoff African Retail, STAR.
2. The Blue Buck transaction was based on the PIC effectively selling or giving up its first ranking security position to Citi Bank in exchange for a loan from Citi Bank in the amount of R6.5 billion to L101.

There is a slight correction there, Commissioner. It should read L101 and not L102 and on the following line it should also read L101.

These proceeds would be used by L101 to acquire STAR shares and pay costs. The PIC would then take a first ranking security position on the STAR shares acquired.

3. As part of the Blue Buck transaction there was an agreement that Steinhoff would provide L102 with facilitation...”

So, this should also... There is a slight correction there as well, Commissioner. This should read a... This should be match funding of R6.5 billion as opposed to R4 billion.

MR EMMANUEL LEDIGA: R6...?

MR VUSI RASEROKA: R6.5 billion.

MR EMMANUEL LEDIGA: R6.5 billion. Oh.

MR VUSI RASEROKA: So, it was supposed... Commissioner, it was supposed to be match funding's. So, it was to match the funding received from Citi.

“This debt funding was to enable L102 to ultimately obtain a further exposure in STAR once STAR had completed a part acquisition of Shoprite and the L102 shares in Shoprite had been exchanged for STAR shares. Annexure 7, Project Blue Buck IC submissions..”

MR EMMANUEL LEDIGA: Which never happened?

MR VUSI RASEROKA: That never happened, Commissioner.

MR EMMANUEL LEDIGA: *Ja*, okay.

MR VUSI RASEROKA:

“Once the transaction was approved by the last Investment

Committee, IC the IC then proceeded to determine who the PIC would nominate as its two directors on the board of L101. The two nominees were Ms B Mashilane and Mr R Morar.

At the time of this nomination Mr Morar was also the Chair of the PIC Investment Committee that approved Project Sierra...”

MS GILL MARCUS: Was there no question about a conflict of interest if he is chairing the Investment Committee and that approves it and then you sit on the board?

MR VUSI RASEROKA: Commissioner, through you. To my recollection there was none.

MS GILL MARCUS: You do not think there was a conflict or there was no discussion about it?

MR VUSI RASEROKA: Through you, Commissioner. There was no discussion about it.

ADV SECHABA MOHAPI: Do you perhaps know how Mr Morar was nominated onto the board?

MR VUSI RASEROKA: Through you, Chair. In the committee there was a general discussion and he was nominated.

CHAIRPERSON: Was that after the approval had been done?

MR VUSI RASEROKA: That was after the approval, Commissioner.

“Reducing the amount of the transaction from 10.4-billion to 9.4-billion: I am not aware of any official reason to reduce the transaction amounts of the Sierra transaction to 9.4-billion. I can only speculate that the reduction was to enable the transaction to fall within the mandate limit of IC in terms of the specific product

category, which, if exceeded, would have resulted in the transaction needing to go to the full PIC board for approval. This would have had the effect of lengthening the transaction timelines whereas the transaction needed to meet the timelines set by Steinhoff as a result of their closed period, which was to begin during *circa* the first week of August 2017.”

A slight mistake there. There’s an omission there, Commissioner. After ‘August’ it should read ‘2017’. Correction, 2016. 2016. Not 2017.

CHAIRPERSON: August...? Oh, ja. Okay. Alright. Is it now 2016?

MR RAMPOMANE RASEROKA: It’s 2016. It’s in... Commissioner, through you, it’s in reference to Project Sierra, which was in 2016.

“This would have precluded the trade on the portion of shares, 43%, which were to be purchased from the Steinhoff affiliate, from happening as they would not have been able to trade during that closed period.”

ADV SECHABA MOHAPI: And, I mean, would you say this happens typically, you know, to, you know, to ensure that the transaction comes below some threshold to just fast-track it? I mean, this is normal, isn’t it?

MR RAMPOMANE RASEROKA: Commissioner, through you, it happens.

ADV SECHABA MOHAPI: There is no sinister motives about it at all?

MR RAMPOMANE RASEROKA: Through you, Commissioner. I think in this instance, to my – in my understanding, it was not sinister. It was

really around the... You know, the transaction timelines were quite tight and to then extend the transaction would have meant that the transaction would have only been effected after the closed period ended.

ADV SECHABA MOHAPI: Fair enough. Ja, ja. Fair enough. Fair enough.

MS GILL MARCUS: But the question, of course, is not about whether it is sinister. It's a question about whether due process and governance is followed. You have the rules of a transaction above 10-billion going to the board. The delegation of authority is that you don't have to go to the board. The investment committee can take a decision if it's below that. If it is common practice that you ensure all your decisions are below the 10-billion you are bypassing the board's authority and the intent of the delegation of authority. So, in terms of the terms of reference of this commission, it becomes a governance issue, not whether it's sinister in the sense of corruption or something else, but it is a decision to bypass the delegation of authorities and good governance in the PIC, or it could be interpreted that way if this is something that happens on a regular basis. So it's easier to get it through in terms of the timelines and the pressures, which may be very real, but you have governance there for a reason.

MR RAMPOMANE RASEROKA: Clarification? Through you, Commissioner ... (intervention)

CHAIRPERSON: You can comment if you can.

MR RAMPOMANE RASEROKA: Through you, Commissioner, the commissioner is absolutely correct. If it's an ongoing... If it's

something that happens regularly then the commissioner is absolutely correct. As to whether it does happen regularly, I'm not in a position to say due to the fact that I would not be present at – in those committees other than when I am a transactor on a transaction.

MS GILL MARCUS: But perhaps for the investigative team it might be useful to look at a period, let's say, 20 – we don't – 2016 to the beginning of 2019, three years. How many deals above 10-billion were presented to the board, to the full board, of the PIC for its consideration?

MR RAMPOMANE RASEROKA: Thank you, Commissioner. We will obtain that and provide it to the commission. Paragraph J:

“Project Sierra transaction fees: The ratio collar premium in Sierra was R350-million. In transactions where a PUT option to provide downside protection is bought a PUT premium is typically payable. The PUT premium typically ranges between approximately 9-12% of the total share price. In Sierra, therefore, this would have resulted in a PUT premium of – a PUT premium on 9.35-billion of between 841-million and 1.1-billion respectively. In order to offset and/or reduce the PUT premium it is possible to sell a call option wherein one gives away the upside potential of the share. The proceeds from the sale of the call option are then used to offset the cost of the PUT premium. On Sierra this process was able to get the ratio collar premium to 350-million, which was payable

to Citibank.”

Just clarification there, Chair. In terms of the 350-million, the 350-million was essentially what was approved, but in actual fact what happened was it was less.

MS GILL MARCUS: The actual amount paid was 250-million.

MR RAMPOMANE RASEROKA: Yes.

“Project Blue Buck transaction fees: In Project Blue Buck transactions fees were approved by the PIC.”

Correction.

“In Project Blue Buck transaction fees that were approved by the PIC IC amounted to 280-million, broken down as follows: 50-million due to the BBEE Trust; 150-million due to L101 for the value-enhancement strategies approved under Project Sierra; 49-million for Symphony/Ataraxia Capital’s fees. I have no knowledge of this fee split, if any; and a R30-million payment for the PIC. The PIC charged a fee on CIPC in the past. The quantum of the fee charge was subjective.”

MS GILL MARCUS: Can we just find out from the investigative team in relation to 38.3 what that split was? Because obviously Symphony had been the start and then Ataraxia became the finish of the two deals. Okay? If we can get that split?

ADV SECHABA MOHAPI: Thank you, Commissioner. We will obtain it. Just some clarity. On section K, being the R6.5-billion raised for STAR, was this the money that repaid some of these costs? Am I correct

there?

MR RAMPOMANE RASEROKA: Through you, Chair, the 6.5-billion loan that came from Citi to L101, within there, there were fees, and these are the fees that were to be paid, and this was what was approved by the PIC IC.

ADV SECHABA MOHAPI: The 100... The 150 in value-enhancement strategies, this is in L101, and of course I would assume that the PIC people sit there, and the Lancaster people. What are those strategies? What is it? Just explain to us.

MR RAMPOMANE RASEROKA: Through you, Chair. The value-enhancement strategies sit within the shareholder agreement.

ADV SECHABA MOHAPI: H'm. Okay. Okay.

MR RAMPOMANE RASEROKA: Which is Annexure 3. So in Annexure 3 there were – as part of the transactions KPIs were set for Lancaster. So under the shareholders' agreement in Annexure 3, page 30, section 21 it lays out the key performance indicators undertakings that were – that L01 – L101 needed to achieve.

MS GILL MARCUS: That explains the KPIs for the investment. It does not explain why it requires 150-million. I would have thought if you're buying into an entity your job is to make it perform better. That is why you're there. Why would you need another 150-million to do that? Why would there be payment in the first place?

MR RAMPOMANE RASEROKA: So, through you, Chair, I can only surmise that in terms of the Blue Buck proposal the L101, or Lancaster Group, or the proposal in this instance, indicated that in order to potentially help them achieve some of these KPIs they believe that they

would need some level of funding to help them achieve those.

ADV SECHABA MOHAPI: Perhaps we should maybe ask PMV to tell us if, you know, that cash, is it still there? Like, has it been used? What kind of projects were done? Does PMV follow this, monitor L101 and 102?

MR RAMPOMANE RASEROKA: Through you, Commissioner. PMV doesn't monitor L101, L102. So the private equity team... So the reliance is really on the private equity team and ESG to monitor the implementation of these. In... I think in the Blue Buck approval, in the Blue Buck scoping report there is... So under Annexure 7 on page 17 ... (intervention)

ADV SECHABA MOHAPI: H'm. 1-7, nê? Page ... (intervention)

MR RAMPOMANE RASEROKA: 1-7.

ADV SECHABA MOHAPI: Yes. Yes.

MR RAMPOMANE RASEROKA: There was an update to investment – to the investment committee on the achievement of some of the KPIs.

ADV SECHABA MOHAPI: H'm. H'm.

MR RAMPOMANE RASEROKA: So in terms of the ongoing achievement of these KPIs the PE team/some of the people – or my colleagues who sit on the board are in a position to detail exactly what has been achieved in terms of the KPIs.

ADV SECHABA MOHAPI: I mean, we are not attacking people who were there. We just want to see how things have gone and, you know, how is the... This seems to be a good project, you know, how it's going, you know. Ja. Ja. Ja? Make sense? Ja?

MR RAMPOMANE RASEROKA: Through you, Commissioner, it does.

We will endeavour to get that information to the commission.

MS GILL MARCUS: I understand the KPIs. I'm not... I don't necessarily understand the funding, as to why you would need 150-million to do what you are brought in as a power – as a partner to do. Be that as it may, I think that would be helpful, to get an idea of what – beyond what is put there because there were quite a few no's in that performance. And then just in the Blue Buck transaction, because it was indicated in the L101 there was no advisor to the PIC, was there any advisor to the PIC in L102?

MR RAMPOMANE RASEROKA: Through you, Chair, there were no... Through you, Commissioner ... (intervention)

MS GILL MARCUS: It was done internally?

MR RAMPOMANE RASEROKA: Pardon, Commissioner?

MS GILL MARCUS: Just done internally?

MR RAMPOMANE RASEROKA: Through you, Commissioner, it was done internally.

ADV SECHABA MOHAPI: Mr Commissioner, that's Mr Raseroka's evidence.

ADV SECHABA MOHAPI: Just to check, the final question. The 50-million equity portion that Lancaster was supposed – was paid... Was it paid? Was it paid and was it paid in cash?

MR RAMPOMANE RASEROKA: Through you, Commissioner. I have no knowledge of whether it was paid, but it is information that we can get for the commission.

ADV SECHABA MOHAPI: Yes, please do. Please do.

CHAIRPERSON: I suppose you know what 50-million is being referred

to?

MR RAMPOMANE RASEROKA: That is correct, Commissioner.

CHAIRPERSON: Yes, if that is it, thank you so much, Mr Raseroka.

MR RAMPOMANE RASEROKA: Thank you, Commissioner.

CHAIRPERSON: For the information that you've placed before us. It's very helpful.

MR RAMPOMANE RASEROKA: Thank you.

CHAIRPERSON: Thank you.

ADV SECHABA MOHAPI: Mr Commissioner, I see that we are five minutes to one and perhaps ... (intervention)

CHAIRPERSON: We might as well take the adjournment.

ADV SECHABA MOHAPI: That's ... (intervention)

CHAIRPERSON: Have you got another witness?

ADV SECHABA MOHAPI: Mr Monnahela would be leading the next witness.

CHAIRPERSON: Thank you so much. We'll then adjourn until 2 o'clock.

INQUIRY ADJOURNS

INQUIRY RESUMES

ADV ISAAC MONNAHELA: Thank you Mr Commissioner. Mr Commissioner our next witness is available and he is ready to take the oath.

COMMISSIONER: Good afternoon sir.

MR TSHEPO RAPUDI: Afternoon Commissioner.

COMMISSIONER: Your full names please?

MR TSHEPO RAPUDI: My full names is Tshepo Bernard Rapudi.

COMMISSIONER: Tshepo Bernard. Does Bernard have one R or two?

MR TSHEPO RAPUDI: One R.

COMMISSIONER: One R, Bernard. Ja I see it here. Do you have objection to taking the prescribed oath?

MR TSHEPO RAPUDI: I don't have Mr Commissioner.

COMMISSIONER: Do you swear that the evidence your about to give will be the truth, the whole truth and nothing but the truth, raise your right hand and say so help me God.

MR TSHEPO RAPUDI: So help me God.

COMMISSIONER: Thank you, you may seated. Yes Mr Monnahela?

ADV ISAAC MONNAHELA: Thank you Mr Commissioner. Mr Rapudi you have made a statement for purposes of your presentation or giving evidence at this Commission. Can I ask you to start reading your statement at paragraph 1?

MR TSHEPO RAPUDI: Thank you, afternoon Commissioner and the members.

“My name is Tshepo Bernard Rapudi, I'm an adult male. I'm employed by the Public Investment Corporation from the 15th March 2010 to date. I'm currently an associate fund principal within the Impact Investing Division. I report to the fund principal of the relevant investment portfolio. I have bachelor of commerce degree, post graduate diploma in advanced accounting sciences, post graduate diploma in accounting sciences which is called CTA and certificate in advanced company law. I am a chartered accountant. I confirm that to the best of my knowledge and recollection the contents

contained in this statement are true and accurate.

I have been requested by the evidence team of this Commission to submit a statement which details my role and understanding of facts relating to PIC's investment in Kilimanjaro Sakhumnotho Consortium (Pty) Ltd, referred to KISACO. I confirm that this statement is entirely my version of events. I have not been instructed by any member of the Commission's team to make any changes to this statement.

Commissioner I will now deal with the role I played within this transaction. I must indicate Commissioner that at the time this transaction was happening I was an investment associate, not an associate fund principal. In this transaction I lead the team which conducted the appraisal of the transaction pursuant to an application for finance by Kilimanjaro Capital (Pty) Ltd herein referred to KiliCap which was represented by Mr Lawrence Shumani Mulaudzi. I was involved in the restructuring and negotiations of the transaction up to financial close – from origination to financial close. The team which worked on this transactions concluded a team comprising of two investment analysts being Ms Bridgette Lelo and Mr James Muchena. PIC legal team represented by Ms Lindiwe Dlamini. PIC credit risk team lead by Mr Dumele Migwa and external legal teams.”

Through you Commissioner what I will deal with now is I shall now deal with how the transaction was processed from the time we received the application until implementation.

ADV ISAAC MONNAHELA: Okay can I ask you this question. When you referring to the processing of the transaction, are you referring to the processing of the KiliCap transaction or any other transaction?

MR TSHEPO RAPUDI: As I provide the statement through you Commissioner you will see the transaction will change from the borrower being KiliCap to the borrower becoming KISACO and as I proceed I will be able to provide the contents in terms of how that change occurred.

“The transaction was assigned to me on the 29th May 2015 when Mr Royith Rajdhar the executive head of impact investing asked me to join ...[intervenes].”

COMMISSIONER: Sorry are you able to give us an indication as to how the transaction got into the door of the PIC?

MR TSHEPO RAPUDI: Through you Commissioner. I think I became aware of this transaction on the 29th May 2015 but if you go through the emails you will see the transaction I think came to PIC on the 22nd May. So I've got a covering letter which I've attached as Annexure A Commissioner which shows a letter that was written by Kilimanjaro Capital addressed to the then CEO Dr Dan Matjila on the 22nd May.

COMMISSIONER: So one can then assume that it came through Dr Matjila, that's where it started.

MR TSHEPO RAPUDI: One can assume that it came through the office of the CEO yes Commissioner as this letter was sent to the office of the CEO.

COMMISSIONER: I'm just impressed by you saying that it came through the office of the CEO rather than the CEO himself that I mentioned.

MR TSHEPO RAPUDI: I will go back to paragraph 9, through you

Commissioner.

“Mr Royith Rajdhar the executive head asked me to join him in a meeting with KiliCap’s representative Mr Mulaudzi. Mr Mulaudzi in that meeting introduced the transaction which involved the acquisition of 91.8% equity interest into Total South Africa Consortium (Pty) Ltd herein referred to as TOSACO and a 100% equity interest in TOSACO retail. In the same meeting Mr Mulaudzi highlighted to us that the transaction had tight deadlines and we explained to Mr Mulaudzi’s investment processes of the PIC and he explained that the turnaround time will depend on whether KiliCap could obtain exclusivity and the quality and availability of the information provided to us we’ll be able to align ourselves within the time – the deadlines.

After some deliberation within that meeting Mr Mulaudzi agreed that he will send us all the information via the email to enable us to start working on the transaction.”

ADV ISAAC MONNAHELA: If I may intervene there. You say that you explained to Mr Mulaudzi – you explained to Mr Mulaudzi the PIC’s investment processes. What process – what did you tell him about the investment process?

MR TSHEPO RAPUDI: I mean this is the process we were on which it start from doing the scoping report. After we’ve prepared that scoping report we would go engage in the DD and during that DD we’ll be sending an information required list which if they can be able to provide us that information on time we’ll be able to perform our due diligence.

During the same due diligence process the team has to prepare their appraisal report which at that time would include other assurance teams like your legal, your risk to make sure that we go to PMC2 and for us to be able to do that we required that we need information as per barriers information request list. From there we will be – if we went to PMC2 and they have recommended to the FIP we'll be going to the FIP or we go to IC. That is the process which we explained to him.

ADV ISAAC MONNAHELA: Okay you may proceed.

MR TSHEPO RAPUDI: Thank you.

“On the same day Commissioner the 29th May 2015 I received an email from Mr Mulaudzi containing the following documents being the TISSA document. We had an information memorandum, KiliCap investment presentation, KiliCap covering letter and total SA PWC December 2014 draft financial report. I have annexed the covering letter which came up with this information for your attention Commissioner.

Mr Mulaudzi advised me that in order for KiliCap to secure the exclusivity which we needed on paragraph 10 he required a none binding expression of interest from the PIC so that he can be able to put a non binding offer to the TOSACO shareholders. On the 2nd June 2015 the PIC provided a none binding expression of interest letter addressed to the directors of TOSACO in support of KiliCap ...[indistinct]. I have provided Annexure B of this particular expression of interest letter Commissioner.

Following the issuance of this expression of interest

letter the shareholders of TOSACO informed KiliCap that they will not provide exclusivity because they had appointed Nedbank to run a competitive bidding process for the disposal of their shareholding in TOSACO. Furthermore they advised KiliCap to participate in this or in the bidding process. This response letter Commissioner I have attached it as Annexure C.

The team completed a scoping report which was presented to PMC1 on the 29th June 2015. The committee approved the proposal for the team to proceed to the due diligence phase which I have attached the extract of that minutes Commissioner.

The PIC and KiliCap signed an engagement letter on the 30th June 2015 which I have attached here as Annexure E. thereafter PIC was given access to the data room in order to conduct its due diligence and valuation. On the 24th July 2015 the teams from the impact investing, legal and risk division presented their respective reports to PMC2 requesting to rule comment to the transaction to the priority sector, small medium enterprise fund investment panel, herein which I'll be referring to it as PSSME FIP for approval.

After consideration of the transaction the committee resolved to recommend the transaction to be submitted the PSSME FIP for approval. These reports were duly submitted on the 27th July 2015. I have also attached Annexure F Commissioner for your reference which is the extract of the minutes of this particular PMC2.

MR EMMANUEL LEDIGA: Question, why was this in the PSSME area, you know. Was it because it's priority or small enterprises or?

MR TSHEPO RAPUDI: If you look at the rationale for the transaction where we did it within the impact investing - through you Commissioner - was that one of the elements of this transaction was just to do a BEE deal. Was to fund the role out of the franchising within the Total SA branded.

MR EMMANUEL LEDIGA: The SME part was ...[intervenes].

MR TSHEPO RAPUDI: Yes the SME part was one of the reasons we went to this FIP.

MR EMMANUEL LEDIGA: Alright.

MS GILL MARCUS: Sorry before you continue. Can I just take you back to paragraph 14 and unless I am misunderstanding it. If you look at Annexure D, 11.2. It was noted that an exclusivity agreement have already been signed with Nedbank being the financial advisor. I thought there was no exclusivity.

MR TSHEPO RAPUDI: I think at this Committee we understood that TOSACA was considering the exclusivity which later on it came to our attention that they are no longer - they are not entertaining the exclusivity part. When we went to scoping we've always went on the basis that we might be able to get exclusivity.

MS GILL MARCUS: Yes but the minutes does not say that. I was noted that an exclusivity agreement had already been signed with Nedbank being the financial advisor and from what I understand from the document it was a question that the counterparty had said they not signing the exclusivity because they've given Nedbank a mandate to

look for proposals.

So this is actually – it doesn't necessarily affect your testimony because your testimony is clear that the minutes says something different and I'm just drawing it to your attention.

MR TSHEPO RAPUDI: I've noted that through you Commissioner and the understanding at the time we were preparing the scoping report was that KiliCap is pursuing TOSACA shareholders to provide them with exclusivity.

COMMISSIONER: But when you got to the meeting you must have known then that there was an exclusivity agreement had already been signed with Nedbank because otherwise it wouldn't be in the minute.

It's not a criticism – once again it's not a criticism. All I'm saying is that by the time you got to the meeting from which this minute comes then you must have known then that there had been an exclusivity signed with Nedbank.

MR TSHEPO RAPUDI: So the exclusivity what happened is we got to know later on that there is no exclusivity. But during the time when the team was engaging with KiliCap working on the scoping report we've always worked on the understanding that exclusivity will be there and to find that there is no exclusivity Commissioner.

COMMISSIONER: I think we're in agreement there.

MR TSHEPO RAPUDI: Yes.

COMMISSIONER: All I'm saying is that by the time you go to the meeting or it was announced at the meeting or it was discovered at the meeting that they had been with Nedbank.

MR TSHEPO RAPUDI: It was discovered after the meeting I think that

Nedbank has got – what you call the – has got a mandate to do the bidding process.

COMMISSIONER: No that it really matters. I think you can go ahead.

MR TSHEPO RAPUDI: Yes.

“Commissioner on the 27th July 2015 the deal team received a letter addressed to KiliCap from Nedbank confirming that KiliCap has been shortlisted to phase two and they are expected to submit their final binding offer on the 7th August 2015 and this offer should be accompanied by unconditional funding support letter or term sheet. I have made reference – I’ve annexed this letter as Annexure G for your attention Commissioner.

On the 28th July 2015 the then former CEO of the PIC Dr Dan Matjila and Mr Ernest Nesani former executive head of legal informed me that other bidders selected to participate in phase 2 of the bidding process approached PIC for funding and given the situation I was informed to withdraw the investment proposal from the agenda and this investment proposal relates to the KiliCap from the agenda of the meeting of the PSSME which was scheduled to be for the 31st July 2015.”

ADV ISAAC MONNAHELA: If I may intervene there. Did they tell you who this other bidders were?

MR TSHEPO RAPUDI: In this meeting through you Commissioner I was not informed which other bidders were but the message was that we can’t proceed and get the approval of one bidder while there are other bidders which are bidding for the same asset.

“On the following day being the 29th July 2015 Mr Benedict Mogalo an investment associate at that time sent me two letters of support issued by PIC dated 30 June 2015. This letters of support were addressed to Sakhumnotho Group and the other one was addressed Lereko Consortium respectively. I have annexed these two letters as Annexure H for your reference Commissioner.

The following day being the 30th July 2015 I received two separate emails from Mr Mulaudzi ...[indistinct] this emails were being forwarded to me and this emails contained two separate letters addressed to PIC and the other one addressed to Nedbank informing them about the merger of KiliCap and Sakhumnotho Group. This letters were co-signed by both Mr Siphon Mseleku as the representative as Sakhumnotho and Mr Mulaudzi of KiliCap and they have signed this letters as the joined chairman of the merged consortium. I have annexed it Annexure A for the merger letter.”

MS GILL MARCUS: Sorry just in your Annexure. One of the Annexure is to Lereko who also seems to have been interested in the deal, were they left out all together or how did you come to a partnership between or how did the partnership arrive from the PIC’s part between Kilimanjaro and Sakhumnotho and what happened to the Lereko interest? Was that withdrawn by Lereko or what happened?

MR TSHEPO RAPUDI: Through you Commissioner. The only time that I knew about the Lereko was when the letter was sent to me. What happened to their application I do not know Commissioner.

MS GILL MARCUS: Okay.

MR TSHEPO RAPUDI: Thank you. On paragraph 21 Commissioner.

“The above notification of the merger between KiliCap and Sakhumnotho meant that there is now a new borrower in a form of KISACO not KiliCap in the transaction. On the 31st July 2015 I requested an information on Sakhumnotho Group for validation and to be used to update the appraisal report which shall be resubmitted to the PSSME FIP.”

ADV ISAAC MONNAHELA: May I intervene there? Had any due diligence been done on Sakhumnotho or not?

MR TSHEPO RAPUDI: Through you Commissioner. All what we did on Sakhumnotho Commissioner is that we had performed the know your client – what you call – for our FICA purposes so that we can know the shareholders of the new entity being called KISACO.

MS GILL MARCUS: But no due diligence?

MR TSHEPO RAPUDI: No due diligence was performed on Sakhumnotho as a group but we did a FICA assessment on that.

MS GILL MARCUS: Okay because the question arose in the previous presentation if I recall correctly – colleagues – was that there was a fee paid for due diligence that was split equally between Kilimanjaro and Sakhumnotho.

MR TSHEPO RAPUDI: Yes.

MS GILL MARCUS: One for work done and one for ostensible work done. So are we saying that there was no due diligence done on Sakhumnotho and therefore that money if I remember it was 50 or R60-million each. One was real at around 38 for the transaction and other

legal fees, it was R50-million each if I remember.

MR TSHEPO RAPUDI: I will get to that part when I get to paragraph 31, through you Commissioner.

MR EMMANUEL LEDIGA: Just to follow up on the – Lereko – ja Lereko and Sakhumnotho. When this was happening and you didn't know about this was it being done somewhere else within the PIC, is that normal that you could be doing one sponsor. Others could be doing other sponsors for the same transaction?

MR TSHEPO RAPUDI: Commissioner I think the question of whether this is normal it depends on the process which the ultimate sellers they are following. So if ever the seller – let's assume will provide – they are saying people should bid and after they are bidding they will be provided enough time to perform a due diligence. We can be in a situation where two different teams are looking at various sponsors because at that time they are looking to get exclusivity before they can get the funding.

But in case of this one you are sitting with the situation where you need to run the process because when you provide the final bidding you also need to provide the letter of funding at that time. So I will say the sequence of events will then make it normal because the other process will be going and while the other one – you know so it will not make sense or normal.

MR EMMANUEL LEDIGA: So to you this didn't make sense of it being parallel horses in the same race?

MR TSHEPO RAPUDI: More especially that at the end of the process all of them they must provide the funding support letter. So you'll see a

situation or you provided a non-binding then you are required when they provide their final binding offer they must have a funding support letter. So the – you know it will not make sense Commissioner.

ADV ISAAC MONNAHELA: If I may ask. At paragraph 16 of your statement the last or the sentence before the last one. You said after consideration of the transaction the committee resolved to recommend the transaction to be submitted to the PSMME FIP for approval and you were referring to PMC2. Did you go to PMC2 after the companies merged?

MR TSHEPO RAPUDI: Through you Commissioner. We did not go to the PMC2 after the companies merged.

ADV ISAAC MONNAHELA: Okay is there any specific reason why you did not go to PMC2?

MR TSHEPO RAPUDI: I think at the time when we were on the 31st July when this came to our attention we were left with almost three, four days before the 7th August 2015 and as the team while we were involved in that we were made aware that there is a new consortium – there is a new consortium that has merged at that time. A consortium that we've already been working on. So the team at that time felt that the fundamentals of the transaction being the outcome of the DD except the other borrower being the Sakhumnotho does not necessarily change.

As such what we did, when we went to the next committee we did inform the next committee being the FIP that we are bringing this transaction to your attention and note that there is this matter between Sakhumnotho and Kilimanjaro.

ADV ISAAC MONNAHELA: But don't you think that it was necessary

maybe for you to go back to PMC2 because when PMC2 recommended the transaction to FIP it knew that the sponsor was KiliCap. It didn't know about the merged entity.

MR TSHEPO RAPUDI: I agree we should have gone to the PMC2.

ADV ISAAC MONNAHELA: You may proceed.

MR TSHEPO RAPUDI: Thank you. On paragraph 22.

“Mr Mongalo coordinated a meeting between the PIC and the members of KISACO. The meeting was held on the 3rd August 2015 at the PIC offices for the following purposes:

1. The introduction of the merged consortium to the PIC deal team.
2. Update by the consortium of its bid, submission and key silent future of the futures of the consortium's merger.
3. Communication with the PIC approval process henceforth.

On the 6th August 2015 PIC sent a funding undertaking letter of support to Nedbank prior to KISACO submitting its final bid on the 7th August 2015. Paragraph 6 of that letter stated that, I quote:

We confirm that should the consortium be selected as the winning bidder the PIC hereby confirms its interest and commitment to provide an aggregate up to 1.7-billion in funding to the consortium to satisfy its total purchase consideration for the proposed transaction which I'm attaching at Annexure J the letter of funding support.

The above confirmation by the PIC Commissioner was subject and conditional on the approval of KISACO as the preferred

bidder and final approval of the transaction by the PIC relevant committee.”

On the 12th August 2015 the teams from impact investing legal and risk division presented their respective reports to PSSME FIP for approval. At this meeting the committee considered the transaction resolved to recommend the transaction to the investment committee for final approval which I’m attaching the minutes of that PSSME FIP as Annexure K for your attention Commissioner. The investment recommendation was presented to the investment committee for approval. At this committee – at this meeting the committee considered and approved the transaction which I’m attaching annexure L1, 2 and 3 which contained the minutes, the resolution and the document that was submitted.

ADV SECHABA MOHAPI: Mr Commissioner, may I just bring it to the attention of the Commission that annexure L2 does not form part of the annexures to the statement because of the size thereof but we have provided it in soft copy to the secretariat.

CHAIRPERSON: Thank you.

MR TSHEPO BERNARD RAPUDI: On the same day, being the 14 August 2015, Commissioner, the Nedbank confirmed via an email that KISACO had been selected as the preferred bidder and a letter confirming this was received on the 18 August 2015. It means at this time, Commissioner, the borrower now is being selected as the preferred bidder and PIC has also approved the funding.

MS GILL MARCUS: And what the quantum of the funding?

MR TSHEPO BERNARD RAPUDI: The quantum of the funding that was

approved at this committee, through you, Commissioner, the PIC approved 2.1 billion of which 1.7 billion was to deal with the acquisition of the shares, the KISACO shares, 300 million was to deal with the KISACO Retail expansion and the 100 million was to deal with the transaction of related cost.

MS GILL MARCUS: So given that there hasn't been rollout I'm assuming that the 300 million has not been drawn down and that it would have to be reapplied for?

MR TSHEPO BERNARD RAPUDI: The 300 million has not been – the timeline for Retail has expired and we'll need to do – to go back to committees if ever we have to finalise it.

MS GILL MARCUS: Ja, but it was never granted – it was never paid out.

MR TSHEPO BERNARD RAPUDI: It was never paid out, yes.

MS GILL MARCUS: So it's a reapplication should that be required.

MR TSHEPO BERNARD RAPUDI: Correct, Commissioner.

MS GILL MARCUS: And the 100 million was for the legal fees between the two.

MR TSHEPO BERNARD RAPUDI: Yes, so the only amount that was disbursed is 1.8 billion.

MS GILL MARCUS: Where does 1.7 come from?

MR TSHEPO BERNARD RAPUDI: The 1.7 billion is the final bidding offer that KISACO Consortium made to Sakwe(?) shareholders.

MS GILL MARCUS: The bid was – the bid for the deal was 1.7 and 100 million was given to ...[intervenens]

MR TSHEPO BERNARD RAPUDI: To the borrower for its ...[intervenens]

MS GILL MARCUS: To the borrowers.

MR TSHEPO BERNARD RAPUDI: It's to transaction ...[intervenes]

MS GILL MARCUS: Two elements, 50 million needed for doing the transaction.

MR TSHEPO BERNARD RAPUDI: Correct, Commissioner.

MS GILL MARCUS: And did you validate that those were actual expenses?

MR TSHEPO BERNARD RAPUDI: Come again, Commissioner?

MS GILL MARCUS: Were those actual expenses incurred by each party to the bid, 50 million, 50 million, was it actually expended – I mean, were there legal fees, whatever the fees were, adviser fees, did you actually validate that that 50 million was required and that the work had been done?

MR TSHEPO BERNARD RAPUDI: To my understanding and recollection at that time, yes, the cost was incurred because we – when you look in terms of when we were finalising the transaction you'll realise we had for example five legal teams, one representing KiliCap one representing Sakhumnotho. Not five, four legal teams and PIC had twinning legal teams which was made up of Bowman and another entity [indistinct] in corporation.

MS GILL MARCUS: Ja, but your legal teams are part of your own costs, you don't pay that out as part of the deal, the ...[intervenes]

MR TSHEPO BERNARD RAPUDI: So what we did in this transaction was that we made the borrower pick up PIC's cost as part of their loan application. Yes. Continuing from paragraph 8, Commissioner:

“The internal PIC legal team was responsible for the drafting

and negotiations of the legal agreements with the assistance of two external legal firms namely Bowman Gilfillan and [indistinct] Incorporated. All the conditions precedents which were part of this agreement were met and signed off by the PIC legal team as part of the disbursement file sign-off process which I've made the checklist to your attention which was signed off. Following the project handover meeting on the 27 November 2015 the disbursement was made on the 9 December 2015 which have provided the proof of payment thereof."

Commissioner, what I just want to add there is that the 1.7 billion was paid to Main Street, being the ultimate company wherein which the KISACO be a shareholder and the 100 million was paid to KISACO, the entity being the borrower in this case.

Through you, Commissioner, Now I'll want to deal with transaction cost, how we were dealt with. The loan amount of 2.1 billion was approved comprising of 1.7 billion relating to the acquisition of the shares. 300 million relating to the rollout of the 20 retail stations – retail service station sites and the 100 million to fund the consortium transaction-related cost.

Commissioner, essentially there were two loans, one of 1.7 billion related to the purchase of shares and the 100 million for this transaction cost. As I've indicated, the funding for the rollout of service station have not been disbursed.

On the paragraph 33, to date we'll just want to put it on record that KISACO has paid back the 258 million to PIC. In terms of the application of funds, Commissioner, it is first allocated to the cost and

taxes, interest and the principal debt, therefore the loan of the 100 million has been fully repaid with the balance of the funds having been applied towards the reduction of the interest accrual.

On paragraph 34, Commissioner, we just want to provide that KISACO is up to date with its obligation in terms of the agreement concluded with PIC. KISACO has not yet implemented the retail service station of the approval, this approval has expired and it will have to make a fresh application to the PIC.

In terms of the target being the TSA the company has performed well, has performed in line with the base case projection when the application was considered.

ADV SECHABA MOHAPI: Can I ask you, on the R100 million were you – Mr Moletsi testified before this Commission that they had entered into an agreement with B & P Capital, if I remember correctly, that they will pay 2% plus VAT. Did they provide you with any document to that effect?

MR TSHEPO BERNARD RAPUDI: Thank you. Through you, Commissioner, what we know is that we – just after we went to the scoping we were introduced to the B & P Capital that they will be working with us and I think throughout the transaction, due diligence and so forth, we were liaising with B & P Capital and other service providers which were appointed by KiliCap and who were also being made aware of the fact that they've got a risk based adversary fee or mandate which was for 2%.

ADV SECHABA MOHAPI: I believe that one would expect that mandate to be in writing. Did they provide you with the mandate in writing or did

you just rely on their say-so?

MR TSHEPO BERNARD RAPUDI: They confirmed to us via email that they've appointed B & P Capital to be their advisers and unfortunately we did not request the mandate in writing.

ADV SECHABA MOHAPI: And then now what Sakhumnotho?

MR TSHEPO BERNARD RAPUDI: So on the Sakhumnotho point of view, Commissioner, we – the time when they were introduced to us you will realise at that the time the DD process for both the PIC or the potential bidders has already been completed so we didn't really deal a lot with the advisers from Sakhumnotho but we were made aware that during the due diligence process for their bidding process being Sakhumnotho they also have got similar arrangements that KiliCap has got of advisers.

ADV SECHABA MOHAPI: Did they or did they not provide you with any document to setting out what the agreement or arrangement between them was?

MR TSHEPO BERNARD RAPUDI: I met the adviser once on the meeting that I referred to on the 3 August and there was no any other further information that was provided to me or to the team regarding the arrangement with their advisers.

ADV SECHABA MOHAPI: Where did you get the figure of R100 million from or the 50 million each?

MR TSHEPO BERNARD RAPUDI: Through you, Commissioner, so you will realise at the time when the two companies are merging, we have been negotiating with KiliCap and we understand the cost structures that they have and here enters the other company being Sakhumnotho to which really they should have for the sake of the due diligence or for

their bidding they will have gone through the same process and we are made to understand that they also have got that, so therefore what you'll have done mathematically we will have said okay, this side, if you say you have agreed on the 50 million and there's a no entrance and that says they're going through the same process therefore you'll add – you'll make the 50 million – you'll add the two 50 millions, you arrive at 100 million.

ADV SECHABA MOHAPI: But based on Mr Mulaudzi's evidence they could not have agreed on 50 million. What he testified to was that they agreed with B & P Capital, that they would pay them 2% of the transaction fee or the acquisition fee.

MR TSHEPO BERNARD RAPUDI: Yes.

ADV SECHABA MOHAPI: Plus 2%, if I remember correctly, and he said that that amount was 38 million. Then what about the R12 million?

MR TSHEPO BERNARD RAPUDI: Okay. So if you check, he probably referred to one mandate which is the risk-based mandate and he never – he didn't mention the – if I'm not mistaken, he would have mentioned that you will have had the legal cost which I've already indicated that as part of that 100 million the PIC, the legal team, was paid out of that 100 million. You will have paid, you know, your Competition Commission filing, but further to this, to bring to the attention of the Commission is that at that time when we were doing this, the understanding was that you are going to have TOSACO Retail to be operational. So beyond this approval you'll want the KISACO to have a Manco structure that will implement the TOSACO Retain because the 300 million was more to go to what the rollout. But the feasibility studies, to set up the back office

and so forth will have required part of the funding to go – part of the transaction costs to go towards that part of the – TOSACO Retail implementation.

CHAIRPERSON: Do you know when these companies approached the Competition Tribunal to approve the merger?

MR TSHEPO BERNARD RAPUDI: I think we would have gone to the Competition Tribunal around – because we had various Competition Tribunal approval because TSA has got operations in other countries, so we'll have received the last Competition Commission approval around end of November which I think was coming from Namibia or so but the South African one would have received it much earlier because the TOSACO – the sellers were already ahead, you know, in terms of the filing.

ADV SECHABA MOHAPI: Thank you, Mr Commissioner.

CHAIRPERSON: If I may indicate why I asked the last question, I was asking it because the two companies had merged. My concern was will they have needed – would each of them have needed to appoint its own law firm for purposes of applying to the Competition Tribunal for approval of the merger if there was – if they only need to appoint one law firm or two maybe, then it goes to the issue of the costs involved that...

MS GILL MARCUS: I think that just a couple of things, more points and if you can answer, it's quite clear the way this was done that it added a 100 million or a percentage of the 100 million to the costs because you had the duality but that is probably relatively small in relation to the implications of a merger being foisted on two parties at a late date and

in fact what we've seen now, which we didn't see in the previous one is that in fact there was a third party that was interested in the same deal. So to me really the question that I would ask you, is how comfortable are you with concluding a transaction of this nature where incomplete governance and processes appear to be the case given time pressures because that's one thing that's coming through frequently, is given the time, we didn't go to PMC2. Given the time requirements, we didn't do that. So does time become the element of getting the deal through on time more important than ensuring that the PIC considers the transaction in the processes that have been determined and how comfortable are you knowing that you complete transactions without complete governance?

MR TSHEPO BERNARD RAPUDI: Through you, Commissioner, I think if you look at the process that the team that I led ran Commissioner, you'll realise that this team was not under time pressure, the team had all the time. I mean the time when we received the application on the 29 May going to PMC1 on the 29 June, going again to PMC2 on the 24 July targeting FIP on the 31 July because if you see that FIP of the 31 July the team was saying we want a situation where when KiliCap makes its final bid we are sitting with the resolution.

MS GILL MARCUS: I agree.

MR TSHEPO BERNARD RAPUDI: Yes.

MS GILL MARCUS: But that is not what happened.

MR TSHEPO BERNARD RAPUDI: Yes, I'm ...[intervenes]

MS GILL MARCUS: Because there was an intervention that derailed a due process.

MR TSHEPO BERNARD RAPUDI: Yes, I was getting to that because the question was how comfortable we were, you know, so we get to be informed about the other parties. At the same time you don't want a situation where when these guys they do they final bidding, you don't have their approval. So at the beginning, you realise that it was an element of saying there is a deal that the same consortiums might not win, either KiliCap can go along, doesn't win or the consortium got together, they don't win and the PIC doesn't take a risk. That is the first part, that the deal was more related in terms of what the decision of the TOSACO shareholders take in terms of who they sell to.

The issue of not going back to PMC2, I think at that time the team when we discussed that probably the best solution given what was before us was to go to the next committee and say we have got this merged entity being called KISACO however we are not taking any risk on KISACO until they have got a certificate that says we are the preferred bidder. So that was the solution that the team thought at that time will be appropriate.

MS GILL MARCUS: I accept what you're raising but the question for me comes back to process as a person advising on an investment, from what you've said today I'm not confident that you did the same due diligence approach to Sakhumnotho that you did with Kilimanjaro – with KiliCap, so therefore it may have been done and you accepted what was done because it was something of certain – that's what you've indicated today that you accepted that the due diligence that they things had been done and therefore it was on par so that when they merged in that very short space of time there were two parties had not known each other

and therefore I coming back to the question of process within the PIC, that's what I'm trying to get at, not to look at it and say could you have done something different, I'm trying to look at process where you have multiple bidders for the same entity or interested parties in the same entity coming to the PIC. How is that managed and it may not be something you can answer but it is something that indicates that there's gap that comes so late in the day. I'm quite sure it's not a unique circumstance where you've got more than one interested party in a transaction. If the PIC is interested in a number of parties, what steps, what processes does it follow to determine which it would support or not support or ask to merge or whatever and where does that lie because each of these parties should have come to a different committee or to a PMC1, a PMC2. Where does this get picked up to say hang on, we've got two or three coming on the same transaction and therefore what is the process to make sure that is as thorough and rigorous as possible in determining that and that's what missing for me in what you've outlined is they should have gone to PMC1, they should have gone to PMC2, they should have had a letter from the CEO about whether we are doing this or that or the other. Somewhere there would have been a coordination and therefore – or should have been a coordination to say how many bidders do we have for project x or transaction y. And that's what's concerning me about what you've presented today, is where is that dealt with in the PIC in the manner that creates or ensures the rigor that's required by the PIC. I'm sure you can answer it but I think it's an issue that's arisen out of your testimony.

MR TSHEPO BERNARD RAPUDI: I agree, Commissioner, and there

should have been a proper coordination between the team that was aware about Sakhumnotho and other parties bidding and bringing to the attention of the team that was running KiliCap and I agree I'm not the person to answer in terms of at what level do we create that coordination.

MR EMMANUEL LEDIGA: Just in terms of the R100 million fee, the last time we talked about here was people felt it was quite a lot of money for that transaction amount. What's your feeling about that, the 100 million on that transaction, the quantum.

MR TSHEPO BERNARD RAPUDI: Through you, Commissioner, I think the time when we were doing the transaction, Commissioner, you'll realise the way we structured the transaction, it's first of all we – the team was compatible with the asset cover, so if you check in terms of the value of the shares that we bought at that time we – you know, one could have bought that stake for amount of R2 billion and when we look in terms of the loan funding that we were providing to KISACO, so the team was comfortable in terms of the asset cover and through the loan term or the term of the loan when we were doing the projections we were coming up with asset cover of average of 1.57.

The second thing, to answer that question through you, Commissioner, is that when you look in terms of the performance of TSA when it comes to liquidity to the shareholders, TSA, it's one of those companies, for example, will look at the – to Sakwe shareholders that were exiting, they bought their shares back in 2003 for roughly around 1.2 billion or 1.3 billion at that time and at that time when they were exiting here they've already fully paid their loan. So that gave us

comfort that there is enough liquidity to be able to settle this additional loan to cover the transaction-related cost.

In addition to that when we were doing out – we're closing this deal I think to Tulle(?) SA and it's December, we were made aware that there will be dividends that are coming in the next 12 months which, you know, this additional 100 million will be quickly be repaid hence we are sitting with – within the three, four years we are seeing almost R258 million being repaid.

MR EMMANUEL LEDIGA: Ja, look, sort of granted I can hear that but, I mean, the fee was like 5.8%, like 6%.

MR TSHEPO BERNARD RAPUDI: Agreed, Commissioner, that in ordinary course of business if ever we did not have the two merged consortium or a situation where you have to pay similar cost to both parties, we will not be arriving at that number but we find ourselves in a situation where this fee, it has doubled because of what has transpired within the process but what we are saying it's even that doubling(?) where the team was still comfortable with those three reasons that PIC, you know, were not exposing the client into that. Maybe just also to add in our structure, one of the things which we had is that we have got what we call equity kicker in our loan funding. So our loan, it's also linked to at maturity, the value of these shares. So you'll see a situation where we are getting a 30% equity kicker at the value of the shares and the exit or at maturity of this loan.

MR EMMANUEL LEDIGA: So it was a great transaction, you know, from your side, you know, from your point of view then, I mean...

MR TSHEPO BERNARD RAPUDI: This is one of those BEE transactions

in South Africa that if ever we can get – because of most of the BEE deals you find the BEEs are sitting in the deals where they've got debt, there's no liquidity, so in terms of this transaction we are seeing transformation that you'll see economic benefits being transferred to the beneficiaries unlike where you are stuck with debt for a period of 10 years hoping that the value of the shares that you bought in 10 years has increased, you know? That's the first part that makes me say this is one of the BEEs, in South Africa we can get number of them, I think we will be able to achieve transformation quickly.

Secondly, the 300 million because really the 300 million was going to unlock – we're going to create entrepreneurs because KISACO Retail was not going to operate these service stations. What they were just going to be, they were just going to be a property holding entity leasing these service stations to the franchises. So we're going to tap in terms of creating those entrepreneurs, minimum 20, but also the number of jobs within those – each service station. I think we're assuming that at that time that 1 000 jobs will be created out of this retail platform.

MR EMMANUEL LEDIGA: And then the final question from me is that when Sakhumnotho was hoisted into the transaction was there a shock at the PIC or it was just normal process, normal day and all that?

MR TSHEPO BERNARD RAPUDI: Shock at the PIC or the ...[intervenes]

MR EMMANUEL LEDIGA: Was there shock that why are you getting a new consortium when things are so advanced and all that?

MR TSHEPO BERNARD RAPUDI: The fact of the matter is none of the

bidders has won the bidding of the shares so at any time until the 14 August none of them will claim to say I was the preferred bidder of this asset. The shock in a normal ordinary course when someone new that you're not expecting it comes to your attention, I think people respond differently and I think will have been shocked but not to a shock of that that we can't continue doing our job. We got shocked and we followed instruction that was there to conclude the transaction.

MR EMMANUEL LEDIGA: Alright, ja, thanks from my side.

ADV SECHABA MOHAPI: Mr Commissioner, if there are no further questions that will be the witness's evidence and that will be the business for the day.

CHAIRPERSON: Yes, thank you.

ADV SECHABA MOHAPI: Thank you.

CHAIRPERSON: Mr Rapudi, thank you so much for your time. Thank you for the information that you've placed before us, it has thrown some light on other matters although I wanted to ask a last question but that's alright, I'll let it go, but thank you so much for your testimony.

MR TSHEPO BERNARD RAPUDI: Thank you, Commissioner.

CHAIRPERSON: We'll then adjourn until ten o'clock tomorrow morning.

INQUIRY ADJOURNS TO 10 APRIL 2019