

Hon. Minister's Statement
Portfolio Committee on Public Enterprises
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I have been called to account for my tenure at the Department of Public Enterprises (DPE), from November 2010 until May 2014. Before I begin, I would like to extend my gratitude to the Committee for the work being done in these inquiries, for upholding the democratic process, and for the opportunity granted to me to address the concerns around allegations of state capture in so far as I am able to do so. I am further grateful for the extension granted to me to peruse the relevant documentation. I have had to request large volumes of documents from the DPE. I requested these in batches, as I became aware of their necessity, and some of them have not yet arrived. Consequently, if this Committee has any questions that pertain to outstanding documentation, I will undertake to answer those in a further written submission upon receipt of the outstanding documents. For the time being; however, I ask the Committee to note that my testimony today is based on my memory, and on confidential documents that were provided to me. I have no issue providing these documents to Parliament should the confidentiality of those documents be lifted.

I take seriously both the allegations that have been made in relation to state capture, and my opportunity to address them. It has been disheartening and shocking for me to witness some of the appointments that I made years ago, and which were hailed publicly as positive appointments for Government, now being impugned. I take seriously the task of assisting this Committee in uncovering the extent of corruption that appears to have transpired.

The period for which I am expected to account covers approximately three and a half years. I requested clarity from this Committee as to what was expected of me, and I received a response indicating that I am required to do four things:

The first is to account for Mr. Dames' testimony. The second is that I am expected to account for governance at Eskom, the third is that I am required to account for all Board appointments made to Transnet, Denel and Eskom during my tenure at DPE, and lastly, I am required to address the issue of any alleged Gupta-linked contracts that may have been concluded at Eskom, Denel and Transnet during my DPE tenure.

To avoid confusion and repetition, I am therefore going to structure my submission to deal with the above topics in the following order: first I will discuss corporate governance at Eskom during my tenure, then I will address what I consider to be the material and relevant portions of Mr. Dames testimony before this Committee, and I will then deal with the additional

aspects required by the Committee such as clarity on Board appointments, governance, and contracts.

Brian's testimony included four aspects that I perceive as being relevant to me. The first aspect was the allegation about the Gupta meeting between my then-legal adviser, Mr. Mahlangu and a Gupta Brother. The second issue raised was the alleged difference in the quality of governance and structure between the Board led by Mr. Makwana and Board as it was led under Mr. Tsotsi. The third pertinent issue was Mr. Dames' resignation, and the last topic pertaining to me that he dealt with was the Koeberg Steam Generator Contract.

Governance at Eskom

I was then asked to address governance at Eskom. This request was not clarified by the Committee so I will respond by outlining governance in very broad terms, and I also want to set out the basic governance framework in which the Minister, specifically the DPE Minister operates, and in terms of which he is empowered in terms of certain actions, and constrained in terms of others.

In terms of structure, the SOCs have unitary Board structures, meaning they consist of a single Board with both Executive and Non-Executive Directors. The Board's Chairperson, Chief Executive, Finance Director and Non-Executive Directors are appointed by the shareholder. I will discuss details of those appointments later.

The Directors are drawn from diverse backgrounds and bring wide ranging experiences and professional skills to the Board. These skills are supplemented by external members at committee level.

The performance of the Board and individual Directors is evaluated each year. The term of non-executive directors is between three and five years depending on the particular SOC's Memorandum of Incorporation, and is subject to review at the annual general meeting (AGM). Retiring directors are eligible for reappointment. The management of day-to-day operations is delegated to the Chief Executive. The Chief Executive is supported by the Executive Management committee and its subcommittees.

Relating to Governance specifically, Eskom adheres to a myriad of laws, legislation and codes, including the Companies Act (2008) and the Public Finance Management Act (1999). King III, the Protocol on Corporate Governance in the Public Sector, and various international guidelines guide SOCs regarding best practice.

All SOC's are answerable to the government. I, in my capacity as Minister of Public Enterprises from 2010 to 2014, was the shareholder representative of the Government and had oversight responsibility for the SOC's.

Relating to governance, I would like to outline for the Committee the general process followed by the DPE, during my tenure, in appointing the SOC Boards, Board Subcommittees and Executives. I would also like to deal with the extent to which the DPE Ministers are involved in Procurement. What I am about to set out is the normal practice. There is usually some deviation relating to the processes in various SOC's depending on their MOIs.

In respect of Board appointments, the process commences in the run-up to the AGM of the relevant SOC. Prior to the AGM, the Minister is presented with a motion relating to certain Board appointments, which will become part of the resolutions taken at the AGM. The motion normally covers the proposed re-appointment, appointment or retirement or rotation of serving Board members. The motion is usually submitted to the Minister well before the AGM, and, when it is received, the Department then evaluates the names, and submits a memorandum to the Minister detailing the periods served by Board members, and which Board members should therefore be re-appointed or retired. If there are vacancies on the Board, the Department will recommend to the Minister candidates to fill those vacancies. When the Department conducts skills audits, and discovers that there are skills gaps on the Boards, the Department also recommends candidates to fill those positions. The names of candidates are sourced widely. When the Department recommends candidates to the Minister, it does so by providing a rationale for the proposed appointment, and the Minister is also provided with the resumes of the candidates. Once the Minister has applied his mind to these candidates, and given his approval, the preferred candidate's profile then serves before the relevant Cabinet committee, and only then does it serve before Cabinet. Cabinet approves all Board appointments, including executive directors who are ex-officio board members.

I then also deem it necessary to set out how sub-committees are constituted, in order to dispel any notion of interference by me in the establishment of allegedly problematic sub-committees at Eskom, Denel and Transnet. All sub-committees are the business of, and are recommended by the Board. This is consistent with the Companies Act. The only committee that comes to the DPE Minister's attention is the audit and risk sub-committee, because the SOC's memorandums of incorporation (MOIs) provide that, at the AGMs, the Boards must present for my approval the members and the Chair of the audit and risk subcommittee. It is standard practice and common courtesy for the Chair of the relevant SOC to send a letter to the DPE, after the AGMs, setting out how the relevant sub-committees are constituted but those letters hardly ever reach the Minister's attention – primarily because the Minister has no practical interest in who is on what committee. This is because, if the Minister wishes to interact with an SOC, that Minister will either meet the Chair or call a special general meeting

– the Minister does not engage with sub-committees because sub-committees are the domain of the Board.

I would also like to say a word on the appointment of Executives at the SOCs. As I mentioned above, Cabinet has established a principle that the appointment of CEOs and CFOs must be recommended to Cabinet for approval, and not just for noting, as is the position with other Directorships. While I am on this topic, I also want to draw a distinction between acting and permanent appointments. Acting appointments are within the exclusive purview of the Board. The Board simply informs the Minister, and the Minister doesn't need to inform Cabinet. The position is different for permanent appointments, which is the position I set out earlier.

I hope that this clarifies for the Committee the Role played by, specifically the Minister of DPE, in the appointments of Board and Committees at the SOC, and I further hope that it dispels the incorrect notion that Ministers are at liberty to interfere in Board appointments. The reality is the Minister is severely constrained, and, in reality, just one cog in a very large wheel of SOC Board approval mechanisms.

Having dealt with the Board, I want to say a word on the Minister's role in procurement at SOC's. The short answer is that the Minister of the DPE does not have a role in procurement. The only time that procurement issues serve before the Minister is when certain large tenders require PFMA approval. Let me explain when this happens. Materiality thresholds are determined at every SOC. Materiality thresholds are the amounts at which tenders require section 54 PFMA approval from the Minister. Materiality thresholds are different at each SOC because they are determined by asset values. If a proposed tender value falls below the threshold, the Minister's approval is not required and the Minister is usually not notified of those procurement initiatives. If the threshold is exceeded; however, the SOC needs to apply to the Minister for PFMA approval. I must make it perfectly clear that, even in instances where the Minister's approval is required, the Minister is kept at arms-length throughout the process. First of all, the section 54 approval request should go to the Minister before the tender goes out, and, if there is any overlap, the Minister is not apprised of who the bidders or potential bidders are. There is no scope for interference. When the Minister considers the approval, he simply considers the business case before him, and either approves or rejects the request on that basis alone.

That concludes what I have to say on the general procurement practices. I now want to progress to specific details that were required of me by this Committee.

EXECUTIVE APPOINTMENTS

I have then been asked to address the Committee on Executive appointments during my tenure at DPE. This request was two-pronged. First, the Committee asked for clarity on the process of appointing all board members during my tenure at DPE, which I hope I provided above. Second, my testimony is required in relation to allegations of undue influence allegedly exerted by me on the appointment of Board members. I will address these questions chronologically and factually, in relation to Eskom, Denel and Transnet beginning with Eskom.

Brian Dames' Testimony – the Gupta Meeting in Midrand

I will begin with the Gupta meeting. Mr. Dames made mention during his testimony that my advisor during my Tenure, Mr Siyabonga Mahlangu (Mahlangu), called Brian to set up a meeting in Midrand to “see some people”, and to discuss official Eskom business. Brian thinks that one of the attendees at this meeting was one of the Gupta brothers. Brian went further, stating that, at the meeting, they discussed requests for coal contracts to Lethabo coal station in the Free State, and requests for another coal power station to be built in the Free State, after Medupi and Kusile were completed. This new coal power station was referred to as “coal three”.

According to Brian, he received a call from Mahlangu. I did not know anything about this phone call, nor did I have any knowledge of the scheduling of the meeting.

To this end, I think it is relevant that Mr. Dames, in his evidence did not say that I called the meeting. This is both fair and accurate. I can also tell you that Brian did not call me about this meeting either before it happened or afterwards. The first time I heard of this meeting was following Mr. Dames' testimony to this inquiry. If anything about the meeting made Mr. Dames uncomfortable, I'd go as far as to say that he should have called me about this. We had a good working relationship, and we communicated often.

Furthermore, this is the first time I have heard about a request to provide coal to Lethabo, and for a 'coal three', specifically, to be built in the Free State.

Brian Dames' Testimony – the alleged degeneration of the Board

Let us now deal with Brian's testimony about the quality and cohesiveness of the Makwana Board compared to the quality of the Tsotsi Board.

Let me address the problems with the Board that confronted me as soon as I arrived at DPE. Members of the Board, including Mr. Makwana, but with the exception of two appointments

that I retained when the Board was refreshed, had sat on the board for longer than nine years. This had been brought to my attention by a presentation the Department made to me.

After having had sight of the presentation, I was of the view that the board needed rotation, in order to comply with good corporate governance, with respect to two issues. Firstly, was the rotation of board members who had served for a lengthy period. Second, was revising the mandate of the Executive Chairman to be a Non-Executive Director and Chairman, to avoid overlap between the role of Board Chairperson and CEO of the entity.

Having concluded my explanation about the Eskom Boards and their quality, that brings me to the next issue, being Brian's resignation.

Brian Dames' Testimony – his resignation

Let me say at the outset, so there is no uncertainty about my position, that when Brian resigned from his position at Eskom, it was a loss to the company. Let me set out how his resignation unfolded according to my recollection: Brian was already CEO when I arrived at the DPE. I had and still have the highest regard for him. Brian submitted two resignations to the Board. When he initially wanted to leave Eskom, I convinced him to stay on. I was not in favour of Brian's exit from Eskom because of his capability, integrity and strong leadership which brought stability, and instilled confidence among Eskom's stakeholders. Therefore, I thought it was important for him to stay. I recall having told them that Eskom could not afford to lose Brian at that time because of the massive build programs that Eskom was involved in, and because they needed to raise capital in respect of those build projects. It was a critical time for Eskom and Brian was necessary to maintain company stability during that period. It seemed to me, that there were tensions between Brian and some members of the board, which could have become a distraction. I intervened, and recall having informed Mr. Tsotsi at a meeting once in my residence in Pretoria that "Brian is not going anywhere."

I maintained this position until he finally tendered his second resignation in 2013, when it became clear that the tensions between him and Tsotsi could not be resolved. At that stage, the Board accepted his resignation and I urged them to focus on transitional arrangements. I speak sincerely when I say that I endeavored to the best of my ability to ensure Brian remained at Eskom, and it was unfortunate to have lost his services. In the end, Brian left Eskom two months before I was redeployed from DPE.

Brian Dames' Testimony – The Koeberg Steam Generator Tender

The last issue I want to deal with in relation to Brian's testimony is the Koeberg Steam Generator Tender. I want to factually clarify the reasons that the process had to be restarted.

The reasons for this are simple. The Koeberg Steam Generator Tender was a large Tender. It was above Eskom's materiality threshold. Because of this, it fell outside the purview of the Board, and needed my approval under section 54 of the PMFA.

I remember that section 54 approval letters had been sent to me on a Wednesday – I can't recall the exact date - and the very next day, when I was reading the application documents, I received a request that I needed to speed up the approval. I called the Department and queried this. I told them that I only received these documents the previous day, and that it was not possible to expedite the process. I needed to study the documents and apply my mind. In response to my query, I discovered that Eskom had already called the company that was going to supply the generators and that they were ready to sign the contracts. In other words, Eskom was going to sign the contracts before I had even finished applying my mind to the documents that were in front of me. I was being expected to merely rubber stamp the section 54 application, instead of approve it, and I was not willing to do that. I also recall that the Department then found that the process was flawed [CONFIRM WITH DPE]. It was for these two reasons that I therefore refused to grant the section 54 approval, and I told Eskom to start the process afresh. I understood, of course, that Eskom was under pressure to deliver on the build projects but that couldn't be allowed to jeopardize the entire process. That's why I refused to approve the section 54 application at that stage.

This concludes my comments on Brian's testimony for the time being. Should the Committee have any further questions afterwards, I will of course answer them.

Executive appointments at Eskom

I will now address what have been deemed to be significant Board and Executive appointments at Eskom. In this respect, I will address the re-constitution of the Board in 2011, Ms. Molefe's appointment as the CFO, and the recruitment of a new CEO at Eskom during my tenure.

Before I begin, it may help the Committee to note for the sake of clarity that Eskom's articles of association at the time stipulated that the Shareholder appointed the Chairman, the Chief Executive and the non-executive directors after consultation with the Board. The remaining Executive Directors were appointed with Shareholder approval.

Board appointments

There has been a lot of talk about my decision to re-constitute the Board at Eskom in 2011. I will address this first. I addressed the excessive terms that had been served by the Board members while I was dealing with Brian's testimony. That was the reason for the decision I

took in May 2011, after an audit of the Board had been completed. I therefore shall not re-hash it now. I recommended at the time that two Board Members, Dr Bernard Fanaroff and Dr Boni Mehlomakhulu, be retained for continuity, and that the following candidates should be appointed as non-executive directors:

1. First, Zola Tsotsi was appointed as the new Chairperson. Mr. Tsotsi presented as an eminently qualified candidate. He held a BSc degree in mathematics, and chemistry and an Honours in chemical engineering. Prior to his appointment as Chair of the Eskom Board, he held the position of Finance and Administration Director at RPP Pipe Support and Bellows, he had been Managing Director of Maisha Energy and had held many prior positions at Eskom such as corporate consultant, corporate strategy manager, and corporate environmental affairs manager. His work background provided him with a notable skillset in Government policy advice and implementation, strategic management of companies, and management of administrative and financial performance of companies.
2. Second, Mr Colin Matjila was appointed because of his skills in transformation, co-operative governance and economic development.
3. Third, Ms Yasmin Masithela was appointed because of her extensive risk management experience and her many years in the corporate sector. She also held a Masters in tax law, an LLB and Higher Diploma in company law.
4. Fourth, Surprise Sedibe was appointed because of his wealth of experience on numerous executive committees.
5. Fifth, Neo Lesela was appointed because of her industrial engineering background and her experience in programme management.
6. Sixth, Mr Mkhwanazi was appointed because he was, at the time, the Chairperson of Transnet and had a wealth of experience acting in CEO positions (eg at Metrorail and Transnet). We also wanted him to help create alignment between the two entities with respect to the road to rail programme. He was also well-qualified with a BSc degree in mathematics, applied mathematics and electrical engineering.

In August 2011, a further three NEDs were appointed to fill vacancies on the Board. They were:

1. Ms Jabu Luthuli, who was a chartered accountant skilled in risk management, project management, labour relations and strategic planning;

2. Ms Queendy Gungubele skilled in human resources management, labour relations and strategic planning;
3. Ms Diatile Zondo who was a chartered accountant, with skills in auditing and strategic management.

I trust that gives sufficient detail as to the appointment of the Board. To summarise, the main reason for the re-constitution was to bring the Board into line with good governance principles under the King Codes, and to retire Directors who had been on the Board for unacceptably long periods.

I will now turn to deal with the next topic: The appointment of Ms. Tsholefelo Molefe's appointment to the Board as CFO.

Ms. Molefe's Appointment as CFO

The appointment of Ms Tsholefelo Molefe as Financial Director of Eskom had also caused a stir, because the incorrect public perception appears to have been that her competitor for the position, Mr. Sehoole, on the face of it, appeared more qualified than she did. I will outline what, in fact happened, and why, as the shareholder I refused to approve Mr. Sehoole's appointment, and instead confirmed Ms Molefe's appointment.

On 7 October 2013, the Ministry received a letter from Mr Tsotsi, the Chairpoerson of Eskom at the time, requesting approval for the appointment of Mr. Sehoole as the Financial Director of Eskom. In terms of the MOI of Eskom at the time, the Board evaluated, nominated and appointed a candidate, provided that the shareholder supported each candidate. In the event that the shareholder did not approve the candidate, the candidate could not be appointed to the Board, and the Board would have to nominate an alternative candidate. In summary, I needed to support and endorse the candidate.

I received advice in the form of a decision memorandum from the Deputy Director General of Legal and Governance on this topic on 29 November 2013. It was plain that Mr. Sehoole was the Board's preferred candidate at that stage; however Ms. Molefe's names also appeared as on of the top names on the list that had been provided to me. The Department had identified certain concerns about the recruitment process pertaining to Mr. Sehoole's proposed appointment, and I was advised of these. Firstly, the letter recommending Mr. Sahoole had omitted relevant documentation.

In addition to these shortcomings, I also had numerous other problems with the proposed appointment of Mr. Sehoole. First, Woodburn Mann, the headhunting agency had produced a report that indicated that Mr. Sehoole may have difficulty working in political environments.

While this may ordinarily not seem to be a problem, Eskom plays a public and therefore political role. The Executive Directors must be able to hold their own in political environments, and doubts had been expressed to me about Mr. Sehoole's ability to do this.

Second, I was also alerted to the fact that it would be difficult for the Department to meet Mr. Sehoole's current remuneration package. At the time, Mr Sehoole was receiving guaranteed annual remuneration of R 4.5 million+ with a bonus of R4.2 million. Eskom's prior CFO had earned a total remuneration of R5.9 million.

Lastly, and of great concern to me was that the proposed appointment of Mr. Sehoole gave no consideration to gender parity. The majority of Executive Directors on the Boards of SOCs were male at the time. I did not want to be responsible for perpetuating gender inequality if I could justifiably avoid doing so by ensuring that a competent female candidate was appointed. To that end, I had in front of me Ms. Molefe's CV which indicated that she was well-qualified for the role, and I was of the opinion that she would capably fulfil the role of Chief Financial Officer, if appointed. What was more was that Ms. Molefe's name was one of the top three candidates' names given to me but there had been no cogent reason given for denying her the appointment. To assuage any doubt of Ms. Molefe's qualification for the role, her brief background was that:

1. She had a BCom Honours, and had qualified as a chartered accountant;
2. She had joined Eskom in 2005 already as a Finance Manager; and
3. Was soon thereafter promoted to Divisional Executive.
4. She had been reporting directly to the CEO at the time and served as an executive Committee member.

Overall, the concern was that Mr. Sehoole's remuneration would prove a challenge, and I was concerned about the reservations he'd expressed about working in political environments. Additionally, Ms. Molefe who was a qualified and experienced chartered accountant, female, and had developed through the Eskom ranks was apparently, according to the advice memorandum I received, also considered favorably by the selection committee but no cogent reason had been given for not having favored her possible appointment.

I raised my concerns with the Board. The Board subsequently reviewed their decision and recommended that Ms. Molefe be appointed. I had no hesitation in approving the appointment for the reasons stated above. That concludes my submissions on Ms. Molefe's appointment.

The Recruitment of the Chief Executive of Eskom

While it may or may not be contentious, I also feel it is prudent to deal with and explain the fact that a new CEO was not appointed at Eskom after Brian resigned. Brian had resigned from Eskom in November 2013. He was scheduled to leave Eskom on the 31st of March 2014. The Eskom Board needed to appoint a new CEO. The Board needed to do so in consultation with me. This did not happen during my tenure. When I left DPE in May 2014, a new CEO had still not been appointed.

Close to the end of Brian's resignation period, the Ministry received a letter from Mr Tsotsi. According to the letter, the Board recommended that a special committee for the recruitment and identification of the CEO be constituted to review the three top candidates at the time. I did not know who these were. Along with that request I was asked to sanction the appointment of an acting CEO while the recruitment process was undertaken. The names I was given were:

1. Group Executive (Technology) – Mr Dan Marokane;
2. Group Executive (Sustainability) – Dr Steve J Lennon; or
3. Group Executive (Transmission) – Mr Ntsokolo.

With respect to the appointment of the interim CEO, I deferred to the board on that decision, as I believed it was their responsibility.

Those are the only Board activities which I can recall as being somewhat contentious in relation to Eskom. That concludes my submissions on the Eskom Board, and I will now proceed to deal with Denel.

Denel and the Appointment of Riaz Saloojee.

One appointment at Denel during my DPE tenure which has been questioned, was the appointment of Mr. Saloojee, and the extension of his term. In terms of Denel's Memorandum of Incorporation at the time, the shareholder appointed the Chairman and Directors. All executive directors, which would have include the CEO and CFO, were appointed by the Board, and their appointment had to be approved by the Shareholder.

On the 15th of November 2011, I received a decision memorandum from the Acting DDG of CIPM. In terms of this memorandum, I was advised that the contract of the Denel Group CEO, Talib Sadik, was coming to an end on 31 December 2011. I was further advised that the Board had conducted internal as well as an external searches (assisted by an Executive search company) for the best candidate.

The Board recommended Mr Saloojee, who was their preferred candidate. Mr. Saloojee was at that stage the CEO of SAAB SA, had previously been the VP of SAAB International, and the

Group Executive of SAAB Grintek Defence. He was also the Chairperson of the Airforce Reserve Council. His track record having been a CEO at Tau Aerospace, Metatek and Grintek Integrated Defence Systems spoke for his executive capabilities. He was academically qualified after having completed the SANDF Joint Staff Course (equivalent to a Masters degree) and other developmental management courses.

I approved the decision memorandum on the 18th of November 2011, and signed both attached documents. Mr. Saloojee's appointment to the role was effective from 1 January 2012 for a period of three years.

In May 2013, the Department received a letter from the Denel Chairperson, and concerned the review of the term of office of Mr Saloojee. The Chairperson was requesting Mr. Saloojee's term be extended from three to five years, on the basis the Denel's new MOI provided for this.

I was advised by the Department in an advice memorandum on 5 June 2013 that, in fact, Denels' MOI was not explicit on the term of a CEO; and that therefore the Department's Guidelines on the appointment of CEO's should be followed if Denel wanted Mr. Saloojee's term extended. According to the Guidelines, the Board, in considering the succession plan for the position should have prepared an annual report to me which should have included the Status of the CEO's contract, the CEO's performance assessment and the Board should also have been able to show how it had ensured that the performance scorecard of the CEO had been aligned to shareholder compact targets.

I was of the view that I could not approve the Board's request, until the Board had undertaken the proper procedure provided for in the Guidelines, and provided sufficient motivation. At the time, this had not yet happened. I therefore addressed a letter to Mr. Zoli Kunene in June 2013 in which I raised the exact concerns I've just mentioned. My concerns were subsequently addressed, with the Board re-iterating its support and contentment with Mr. Saloojee's performance. On 22nd January 2014, I therefore gave my approval of the Board's decision to extend the CEO's term to 5 years, after which Cabinet was informed.

That concludes my submissions on Denel and I will now turn to Transnet. Regarding Transnet I intend to address Board appointments, Brian Molefe's appointment, the proposal of Mr. Iqbal Sharma's appointment to the position Board Chair, and related appointments.

Transnet – Appointment, Re-Appointment and Termination of Transnet Board Members

At Transnet, at the time, Non-executive Directors were appointed to the Board by the Shareholder Representative on, generally, a three-year term which was confirmed annually at the annual general meeting (AGM). As for the appointments themselves, the Board was

responsible for the appointment of the managing director (who was referred to as the CEO), after consultation with the Shareholder, and the Board appointed the CFO and informed the shareholder.

At Transnet's AGM in July 2010, which was prior to my arrival at DPE, it was resolved that the non-executive directors at Transnet be re-appointed for a period of one year, on acting appointments, until the finalization of a review of the Board which was to be conducted by the Department.

The following non-executive Directors were re-appointed for a one year period:

1. Prof Everingham (Acting Chair);
2. Ms Matyumza;
3. Dr Haste;
4. Ms Ntshingila;
5. Mr Hankinson;
6. Ms Gcaba;
7. Mr Joubert;
8. Ms Ramon;
9. Mr Moyo.

When I arrived at the DPE, the Transnet Board was, in effect, an acting Board, operating on one year appointments that had been made at the AGM. The review conducted by the Department had revealed that the Transnet Board had a similar problem to the Eskom Board that I described earlier. The majority of the Directors had been sitting for a longer period than was permitted.

After the AGM, and on 9 December 2010, therefore, I issued letters of re-appointment only to three NEDs to maintain Board and company stability. They were:

1. Mr. Moyo
2. Ms Ntshingila
3. Ms. Gcaba

I also appointed 12 new NEDs to ensure that vacancies on the Board were filled. These appointments were:

1. Mr M. Mkwanazi;
2. Mr D Mkhwanazi;
3. Mr P Malungani;
4. Mr Skosana;

5. Ms Moola;
6. Mr Fannuchi;
7. Ms Doris Tshepe;
8. Prof Schrempp;
9. Mr Sharma;
10. Ms Mnyaka;
11. Ms Ellen Tshabalala;
12. Mr Gazendam;

Here I would like to explicitly counter the narrative that these board appointments were incompetent or aimed to weaken Transnet. Among these board members were respected, leading businesspeople such as:

- Mr. Peter Moyo, currently CEO of Old Mutual
- Ms. Nasmeeera Moola, a senior executive and economist with Investec Asset Management
- Ms. Nolwazi Gcaba, currently a Partner at Adams & Adams

We certainly attempted to appoint strong and competent boards. As government, we appreciate the need to reform oversight of state owned companies, and there are processes underway to standardize appointments of boards and executive management. We therefore welcome any lessons in this regard, which will emerge from this inquiry. It is important however, that the inquiry concern itself with what we could have known at the time when making appointments. If people we appointed went on to do wrong things later, we cannot be held accountable unless there is something about their profile which could have been detected at the time we appointed them, which showed they were likely to do wrong things.

Chronologically, the next new appointment was that of Brian Molefe into the position of CEO. Again, in relation to this position I re-iterate that the Board appoints the CEO, only in consultation with me. However, in this instance, that is neither here nor there as I cannot pretend to have had any objection to the appointment of Mr. Molefe at the time. On the facts before me at the time, he was a stellar candidate. He was a former DDG at the National Treasury, and former CEO of the PIC where he had been appointed by the then Minister of Finance. Mr Molefe was highly regarded in the financial sector at the time. Markets reacted very positively to his appointment, as he was regarded as credible, highly skilled, and experienced.

That concludes my submission on Brian Molefe but I want now to turn to Mr. Iqbal Sharma and the attempt to have him appointed as Chair of the Board. There were some inter-related movements and appointments on the Board so I will address those simultaneously, for the purpose of completeness.

It began in May 2011, when I received a decision memorandum from the Acting DDG: Transport in terms of which I was advised on the proposed appointment of new NEDs to the Transnet Board. I was given their names and profiles. I was asked to sign a cabinet memorandum seeking cabinet's approval on the appointment of:

1. Ms Yasmin Forbes (as NED) ;
2. Mr Nisi Coubey (as NED);
3. Mr Almir De Sousa (as NED);
4. Ms Mapheto Mohuba (as NED);
5. Mr Iqbal Sharma (as Chair and NED)

I will deal first with Ms. Forbes and Mr. Choubey in so far as there is interest in those appointments. In terms of the decision memorandum, I was advised that there were two vacant positions on the Transnet Board. The first had been reserved for a rail specialist, and the second had become vacant after Professor Schrempp resigned from the board in February 2011.

After Schrempp's resignation, a skills audit was conducted and it was found that the Board had skills deficits in two areas, The first was the rail, risk management and pipes or ports sections, and the second was the risk and audit committees. The Board was of the view that a person with an ITC background should be appointed to fill the gap on the audit committee but the Department took the view that someone with ports management experience would be more effective given the difficulties faced by Transnet at that time.

Notwithstanding the Department's feeling that someone with ports management experience should fill the vacant post, they were willing to accept an ICT candidate. As such, they recommended the appointment of Yasmin Forbes who had the IT experience and Mr Choubey who was the rail expert that the first post had been reserved for.

I will deal now with the suggested appointment of Mr. De Sousa and Mr. Mohuba. To this extent, the memorandum also advised me that Don Mkhwanazi should retire at the 24 June 2011 AGM, to be replaced with Ms Mohuba. the reason for this was that his skill set was not considered unique. It was a duplication and therefore unnecessary on the Board and an unnecessary expense, whereas Ms. Mohuba was the owner and MD of Mereteng Investment and had a wealth of business, operational and executive experience. I was further advised that Mr. Almir De Sousa should be appointed as an additional NED of the Transnet Board. He was a project lawyer at Aurecon and his skills were in legal, international trade, public private partnerships and project finance.

Let me now finally come to Mr Iqbal Sharma. I was advised that Mr. Mafika Mkwanzazi, the Chair at that time, should be replaced with Mr. Iqbal Sharma. Before I deal with Mr. Sharma, it may be prudent to explain why the Board was possibly going to be in need of a new Chair in the first place. The reason given in the memorandum to me for the termination of Mr. Mkwanzazi's Chairmanship was that prior to being Chairperson, he had been a CEO of Transnet, and that as there should be a strict line between executive and non-executive functions on the Board, the Department advised that a Chairperson who was a former CEO could create difficulties. Consequently, it was therefore anticipated that a replacement Chair would be necessary.

The reason for Mr. Sharma's proposed appointment was related purely to his skillset. At the time, Mr. Sharma was a well regarded businessman. He was the former DDG/CEO of Trade and Investment South Africa (TISA), in South Africa's Department of Trade and Industry. He was responsible for having led the development and implementation of trade and investment policies and strategies. He had also previously headed up the Trade Policy Division, overseeing SA's global economic strategies, managing South Africa's bi-lateral trade relations and negotiations. Prior to working with the DTI, he worked for large multi-nationals such as PepsiCo and the Bank of America. I recall that he was hailed by the media as "one of South Africa's most remarkable entrepreneurs". It was on this basis that I did not register any objection to Mr. Sharma's proposed appointment.

In any event, the issues relating to Mr. Mkwanzazi were resolved and he continued as Chair, which rendered the debate as to his successor moot. Cabinet consequently rejected his appointment as Chair but approved his appointment as a NED. At the time when I signed off on the Cabinet memorandum recommending Mr. Sharma's appointment, no information relating to any questionable Gupta associations had been brought to my attention. I signed off on his proposed appointment purely on the basis of his skill set.

That concludes my submissions on Mr Sharma, and I would like to deal next with Mr Singh's appointment as CEO.

Appointment of the Chief Financial Officer – Mr. Anoj Singh.

On the 14th of December 2011, I received a letter from Mr. Mkwanzazi, regarding the CFO position at Transnet. At the time, the position was that Mr. Anoj Sing had been the acting CFO since March 2009, after Mr. Wells was promoted from CFO to CEO. This was before I was appointed Minister of Public Enterprises. In November 2011, the Transnet Board mandated the Corporate Governance and Nominations Committee to finalize the appointment of Mr. Singh as the CFO and to consult me in accordance with their MOI. According to the letter, the Board had conducted their processes, and had been satisfied with Mr. Singh's performance in his acting position and thus wanted him appointed permanently.

I was also advised by the Department that Mr. Singh had been at Transnet since 2003 and had institutional memory, that the position of CFO had been vacant since 2009 and Mr. Singh had been acting in that position since that date. It was also obvious that Mr. Singh possessed the appropriate skills and experience for the role, and that appointing a new CFO might destabilize Transnet just before it embarked on a massive build-project.

I informed Mr. Mkwanazi that I concurred with the appointment of Mr. Singh.

To conclude on this point, Mr. Singh was already acting CFO at Transnet when I arrived at the DPE. His profile clearly set out that his career progression at Transnet was highly commendable and there were no complaints about either him or his personal and business associations. Further enhancing his profile was that he had served on boards such as Nedbank, the Land Bank, and Telkom. At the time, any Gupta connections that he had were unknown to me. On the facts as they were before me at that time, I would have had no justification for rejecting the appointment of Mr. Singh, even if I was empowered to do so.

With respect to the board chaired by Mr. Ben Ngubane, this board was appointed after my tenure.

That concludes my submissions on Board appointments at these three SOCs.

Gupta Related Contracts.

I have then, lastly, been requested to inform the Committee of any Gupta-related contracts that were concluded during my tenure at DPE. This topic is challenging as the extent of Gupta-related corruption is only now surfacing. It is becoming increasingly apparent that even tenders that appeared lawful may have been tainted. The best I can do therefore, is to address the tenders that occurred at Eskom, Denel and Transnet, during my tenure, which have attracted significant media attention.

At Eskom, the primary issues that have attracted attention were Trillian, the Regiments Saga, and Tegeta. All of these occurred outside of my tenure at DPE. I cannot therefore comment on them. The only interaction I had in relation to Tegeta, is when I ordered a forensic investigation in 2017 as the Minister of Finance. In so far as the steam generator tender is concerned, I provided the relevant information earlier.

At Denel, the only Gupta-related contract I am aware of was the proposed VR Laser Asia partnership, which happened after my tenure as Minister of Public Enterprises. As Minister of Finance, I did not give concurrence to the VR Laser proposal.

At Transnet, the pertinent issues that arose under my tenure at DPE was the Transnet application for 1064 locomotives, and the sponsorship of The New Age Business Breakfasts. I will deal with each of these below.

Transnet PFMA Application for the Acquisition of 1064 Locomotives

I am going to outline my role relating to the locomotives Tender. I trust that this will clarify the extent of my involvement, and consequently and necessarily dispel any notion that I was in any manner involved in preferring or selecting suppliers.

On 2 May 2013, after having so resolved on 25 April 2013, Transnet submitted a section 54 PFMA application to me to approve the acquisition of 1064 locomotives (465 Diesel and 599 electronic locomotives) that was estimated to cost R38.6 billion over a seven year period to allow the aged fleet to be replaced. This was above the materiality threshold.

On 13 June 2013, I received a decision memorandum from the DDG Transport advising me of Transnet's application for approval to invest R38.6 Billion in the acquisition the locomotives. The locomotives were for Transnet Freight Rail's (TFR) General Freight Business (GFB). In terms of the memorandum, I was advised to sign the letter to the Chair approving the application. The business case that was made out was, in summary the following:

1. First, there had been no investment in GFB locomotives between 1992 and 2008;
2. Second, the average life of the fleet locomotives was 32 years whereas the design life of a locomotive is 30 years;
3. Third, 374 of the locomotive fleet were expected to be written off within 7 years.
4. Fourth, the above was unworkable considering that Transnet's market demand strategy (MDS) had projected a 90 million tonnes growth in GFB. It was necessary to replace the aging fleet if the MDS strategy was to be realized.
5. Furthermore, GFB was expected to grow by 9% by 2018/19, and the majority of growth would be generated by rail-friendly bulk commodities such as manganese, manganite and iron ore. Further, coal transport was expected to shift from road to rail transport.
6. Historically, the GFB unit in TFR had been plagued by inefficiencies because of the aged locomotive fleet. As a result, TFR planned to invest R194 billion over a seven year period, of which R143 billion was allocated to GFB. It was hoped that this would lead to increased customer satisfaction, and stop the customer exodus from rail to road freight.

7. The aging fleet was a serious problem. The fleet plan showed that the fleet would decline from 1889 in 2014 to 1692 by 2019, and a further 50% reduction in the fleet would occur within 10 years after that. With a fleet that size, TFR would only have been able to meet 50% of its MDS target.
8. The procurement of the locomotives (and other rolling stock) would provide Transnet and the rest of the country a unique opportunity to strategically re-position the rolling stock industry for localized assembly and localized manufacture of component parts, and the project was also aimed at increasing localization of manufacturing.
6. In summary, the new locomotive purchase was going to create value for Transnet by enabling Transnet to achieve their MDS target resulting in a positive NPV, top line growth, enhanced return on assets, an improved environmental footprint, an increase in operational efficiencies, and it would assist in an anticipated shift from road to rail.
7. Aside from the benefits to Transnet, there were also enormous benefits to the economy such as: R68billion in localization benefits due to the local content requirements; the catalyzing of the development of a locomotive production industry, the development of manufacturing skills and the creation and preservation jobs.

In terms of governance on the project, I was advised that an enhanced governance process was in place for the acquisition, and that this included the establishment of a locomotive steering committee (LSO) which was mandated by Transnet's Executive Committee and chaired by the Group CEO. The purpose of the LSO was multi-dimensional and included monitoring business case development, recommendation of the business case for approval to the relevant authorities, procurement and tender processes, negotiating contracts and tenders. Over and above that, a governance framework had been developed specifically for this transaction and included high standards of confidentiality.

I was satisfied with the business case, and I approved the memorandum on 3 August 2013. On the same date, I wrote a letter to Mr. Mkwanazi granting the approval sought, citing certain conditions. There were three conditions. The first was that Transnet would provide me with a clear statement with regard to Transnet Engineering's (TE) vision in the locomotive supply chain, and what capabilities would need to be developed to make this a reality. The second condition was that they would supply me with TE's seven year locomotive supply chain strategy. The third condition was that Transnet would provide a clear plan as to the strategic fit of this locomotive procurement to the broader road to rail migration objective, and the last condition was that I would be provided with a view of the localization strategy.

Transnet Engineering subsequently provided the information sought, and they met with the Department on the 28 February 2014. After this meeting, and on the 11 March 2014, I received a decision memorandum from the DDG: Strategic Partnerships in which I was advised that, in light of the discussion and information provided, the Department was satisfied that the procurement process and negotiations that were under way sought to achieve and address the industrial development objectives (nationally). However, the Department at that stage registered its concerns about TE's role as opposed to the role of the private sector in procurement, which was later resolved.

Subsequent to this, there were tender-related delays in the acquisition of the locomotives. Although tenders closed in April 2013, PFMA approval was only granted in August 2013 and tender negotiations could not commence until PFMA approval had been attained. It was thus expected that contracts would only finally be awarded by February 2014. The acquisition of the 1064 locomotives was running at least a year behind schedule. As a result of the delay, there was a revenue shortfall which was exacerbated by the delay of locomotive delivery.

Because of this, and in April 2014, I received an application from Mr. Mkwanazi requesting approval for the acquisition of 100 dual voltage electric locomotives for an export coal line at an estimated cost of R4.840 Billion.

I was informed that this acquisition was initially approved by the Board on 24 January 2014 at an estimated cost of R3.8 Billion which was within the Board's threshold, however after the contract negotiation process, it transpired that the estimated total cost of the investment would be R4.840 billion which required shareholder approval under section 54 of the PFMA. The 100 locomotives would be deployed on the coal export line which would release 125 locomotives to be used in the GFB, protecting revenue in the GFB and allowing growth.

What I have just stated here was the extent of my knowledge of the locomotives tender at the time. I had no other information. I did not know who was involved in the bidding process, and therefore interfered in no way. My involvement in the process was in granting the PMFA authorization. I would like now to move on to the New Age Sponsorship Breakfasts, and to clarify the measures taken by myself and the Department in an attempt to curb this issue.

New Age Sponsored Breakfasts

In early 2011, numerous SOCs informed the Department that they were receiving requests from other government departments and SOCs to provide them with information about the SOCs, to provide sponsorships, and purchase flight tickets. I was informed that the SOCs, who were trying to foster good inter-governmental relations were finding it difficult to decline the requests that were being made, and they requested the DPE's intervention.

Around the same time, I became aware that the New Age wanted sponsorships from Transnet and Eskom for business breakfasts. I was upset about these sponsorships because it was a large sum of money, even though it was below the materiality threshold and was strictly within the operational purview of the Board. I felt it was inappropriate that such large sums of money were being spent on breakfast sponsorships, especially in the midst of such large-scale build projects that were being undertaken. I considered all of the above, and I issued instructions to the Chairs of the SOCs that all such sponsorship requests, and requests for information must be routed through the Department in the future.

By 2013, the problem had escalated and the Public Protector had initiated an investigation into the matter. I was informed that the Public Protector's main focus was an investigation into fruitless and wasteful expenditure at Eskom, Transnet, SABC and Telkom, and the allegation that the Department exercised undue influence on those companies in deciding to sponsor the TNA breakfasts. It is apparent from what I have just stated, and from the written instructions that I sent to the Chairs of the SOC's that I was doing the opposite of militating in favour of the TNA sponsorships. I was, in fact, highly incensed by the news that had reached me.

In issuing the written instructions, I did the best I could to curb such requests for sponsorships but the reality is the accounting authority of the Boards of SOCs are solely responsible for preventing fruitless and wasteful expenditure (section 51(1) of the PFMA). The Boards of SOCs were therefore solely responsible for having measures in place to ensure that the sponsorship of TNA breakfasts were consistent with approved policies. The Boards would ordinarily have records related to this sort of expenditure readily available and they are the only ones who can account for them.

Needless to say, in relation to the Public Protector's investigation, full transparency was expected from the DPE to assist her. The majority of the information requested by the Public Protector was in the possession the SOC's Boards. I therefore requested the SOCs to release all requested documentation directly to the Public Protector. Under the PFMA, I was empowered to instruct the SOCs to cede the information to me directly, but I felt that this would be inappropriate given the allegations of undue influence already being made against the Department. I further addressed a letter to the Public Protector affirming mine and the DPEs full support of the investigation and further informed her of the fact that I had requested that the SOCs cede the information requested directly to her office.

Conclusion

This brings my submissions to an end. I am hopeful that the account that I have given this Committee will vindicate me in relation to the issues that I have been called here to account for. During my DPE tenure, I wanted my legacy to be one of decisive and fair action, and I

acted accordingly. I made decisions to ensure good governance, and I appointed people who I viewed as competent to fulfill some very important roles in the SOCs that were under the DPE Portfolio. I am severely disappointed that those roles appear to have, in certain instances, been abused. I regret any role that I inadvertently played in the appointment of any Director who subsequently failed to prioritise the interests of the relevant SOC, and more importantly, this country. At the time, I acted on the facts available to me, and made what I thought at the time were meritorious appointments. I, at all times during my DPE tenure, acted in the interests of the SOCs and of the public. At no time did I interfere with Board appointments, committee constitution, or tenders during my tenure. I re-affirm my commitment to the Constitution, to the public, and as a result, to this process. I thank the committee and citizens watching at home for their patient attention. I will now take questions.